

Minutes\*

**Faculty Consultative Committee**  
**Thursday, May 22, 2003**  
**12:00 – 2:00**  
**381 Mondale Hall**

- Present: Dan Feeney (chair), Gary Balas, Susan Brorson, Charles Campbell, Tom Clayton, John Fossum, Marti Hope Gonzales, Mary Jo Kane, Candace Kruttschnitt, Judith Martin, Fred Morrison, Jeff Ratliff-Crain, Martin Sampson, Charles Speaks, Carol Wells
- Absent: Jean Bauer, Muriel Bebeau, Gary Davis, Arthur Erdman, Marc Jenkins, Marvin Marshak
- Guests: Professors Laura Cooper, David Born (Grievance Advisory Committee), Ms. Carolyn Chalmers (University Grievance Officer); President Robert Bruininks, Executive Vice President and Provost Christine Maziar, Associate Vice President Richard Pfitzenreuter
- Others: Ms. Katie Stuckert (Office of the Vice President and Chief of Staff), Ms. Elizabeth Wroblewski (Office of the Executive Vice President and Provost)

[In these minutes: (1) report on creating an ombuds function at the University; (2) P&A emeritus status, Senate reorganization; (3) the budget (with the President, the Executive Vice President, and the Associate Vice President and Chief Financial Officer); (4) University of Michigan affirmative action Supreme Court case; (5) other business (Clerk of the Senate, replacement for Professor Kruttschnitt, football stadium)]

**1. An Ombuds Function**

Professor Feeney convened the meeting at 1:00 and welcomed Professors Laura Cooper and David Born and Ms. Carolyn Chalmers to discuss the report from the Grievance Advisory Committee (which Professor Cooper chairs and which Professor Born will chair starting next year) on the establishment of an ombuds function at the University.

Professor Cooper began by recalling that this Committee had last fall asked the Grievance Advisory Committee (GAC) if there should be an ombuds service for University employees. The GAC looked at comparable universities, talked with campus leaders, and deliberated the options. The GAC concluded there were four unmet needs that an ombuds office could meet:

- a lack of transparency about where to go when one has a problem because there are different offices with different jurisdictions;
- people do not know the boundaries of each office, and some problems may fall into the jurisdiction of more than one office--or it may fall into the jurisdiction of none of them;
- a fundamental concern is that people are forced into an adversarial relationship to pursue ANY concern; to use the University Grievance Office, one must file a grievance, which involves a document alleging that a supervisor violated some University policy or procedure or practice (Ms.

---

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

- Chalmers can do some intake counseling but if her office is to be formally involved, there must be a filing);
- people need more information because the University is a complex place and it can be hard to find the person who can solve a problem.

One individual asked why it has to be her versus the University in a grievance, Professor Cooper related; the person asked "am I not part of the University?" People prefer more consensual solutions and would rather work with Ms. Chalmers to be more creative in avoiding win-lose situations. There is, she concluded, a need for a neutral, knowledgeable, respected, and skilled source of information and dispute resolution authority.

Before they propose an office, Professor Cooper said, they needed to be realistic in light of the budget situation of the University, so they have proposed what they see as an interim solution. They suggest the creation of a Dispute Resolution Council in order to increase transparency, make the processes more visible, and emphasize that the University does care about its employees. The GAC believes the office could develop an ombuds service, perhaps using retired faculty, as a pilot project for what might be done in the future.

Would this be like the Department of Homeland Security, an umbrella for existing organizations, Professor Kruttschnitt asked? The Dispute Resolution Council would only be a coordinating body, Professor Cooper said; the proposal would not create a structure under any officer but calls on the offices to coordinate their activities to create an ombuds function. The GAC is not recommending any structural consolidation or integration but rather coordination among free-standing organizations. They are not recommending integration, Professor Cooper said in response to an additional question, but that could be an outgrowth of the recommendation--perhaps there are efficiencies that could be achieved, but there may also be conflicts that would arise if offices were conjoined.

Professor Ratliff-Crain said he understood the budgetary concerns but he wondered if the interim solution the GAC has recommended would respond to the four concerns they identified. An ombuds person would be truly neutral, Professor Cooper said, and would work for both sides to try to solve the problem (rather than in a "me versus you" approach). Individuals would not be required to file a written grievance. They recommend an ombuds service but not an ombuds office.

How would the function be staffed, Professor Ratliff-Crain asked? As the Dispute Resolution Council thought appropriate, Professor Cooper said. The GAC will also explore ways that the University Grievance Officer role could be expanded to provide a more non-adversarial service.

Is the University Grievance Officer in Human Resources, Professor Speaks asked? It is in the President's Office, Professor Cooper said. Is there a dispute resolution function within Human Resources, he asked? There is not, Professor Cooper said. How would a faculty member know whether to go to EEO, the Judicial Committee, etc., Professor Speaks then asked? That is precisely the problem, Professor Cooper exclaimed. Some universities have a website: "Got a problem? Go here." The University needs to do something similar.

What would the full-blown version of an ombuds function cost, Professor Sampson asked? And would establishing it nonetheless save the University money? That question was raised by the Committee on Faculty Affairs, Professor Cooper said, and Professor Bland pointed to survey results demonstrating

that faculty often leave because they are dissatisfied with the climate in their department, not because of money. So there is an argument that a well-functioning ombuds office can help in retention and save people. It is, however, difficult to identify these savings in a cost-benefit analysis. The GAC did not do an analysis of costs of their recommendation or of a fully-implemented ombuds office. If they believed it truly important, the senior administrators could say they will cut a position somewhere else to create an ombuds office--although she has not heard anyone say that, Professor Cooper commented.

All might want the full-blown version of an ombuds office, Professor Martin said, but this seems to be a good first step. Most people do not know what services are available and there is a varying amount of knowledge in the different colleges. She endorsed the "Got a Problem?" website idea.

One of the usual functions of an ombuds office is to provide feedback to the institution, Professor Cooper said. Right now that feedback is diffused around the institution; it may be that different offices are seeing the same problem but are not communicating about it. The GAC recommendations could help address that lack, she said. The ombuds office can provide information to the University about where it needs policy changes, training, and so on.

Professor Fossum commented that the Committee on Faculty Affairs had an extended discussion of the report from the GAC and the prevailing opinion was that the effort go forward. Faculty Affairs supported the more full-blown version. It is expected that the dispute load will increase next year so it is important the ombuds function be addressed. The tendency is to look at the issue from a cost standpoint but an ombuds office saves more than money. One thing that people need to look at is the invisible costs in the present system--the grievant's time and the supervisor's time that is not being spent productively. If those costs can be reduced, and people educated about how to deal with problems, these costs that are never measured can be reduced and there will be real benefits from having the ombuds function.

Professor Cooper agreed that it is important to communicate the University's view about conflict, given the budget situation, and that it cares about its employees and wants disputes resolved correctly.

Professor Feeney recalled that there had been a meeting about the ombuds function several months ago with Executive Vice President Maziar; her chief concern was budgetary. He said he agreed with the coordinated effort approach; that could be seen as an interim that, if successful, could pave the way for a more full-blown ombuds function. Right now there is nothing to encourage these offices to work together. One would hope that if someone with a problem goes to the wrong office, the person will be referred to the right place and not just told "we can't deal with that."

Ms. Chalmers commented that the various offices do communicate but not around the table in a way that links them in a coordinated fashion and that makes the processes more transparent. They do get together periodically to talk about how better to serve the University community. Just asking if there is a problem is a message about service, however. She said she sees these units as having a service mission and culture, and it is part of the core educational mission to demonstrate how the University acts when there is a problem.

Professor Balas suggested that providing oversight and communication among the various offices is something that the central administration should be doing. He said he was surprised that issues were not already tracked and surprised that this Committee needs to send a message about how to do administration. Professor Cooper responded that many organizations have ombuds functions--

corporations, government, as well as universities--and while it is true that an organization should be well-administered, most organizations find they need a way to deal with problems. Do these offices report to different places and never meet, he asked?

Professor Speaks said that while the Committee could not know the costs of the two different versions, it should not be constrained by the budget situation. It should say what it believes right and what should be recommended. Professor Sampson recalled that the President has said the University must keep investing or it will die. This may be a good example of a new investment that might be warranted. He said he would strongly encourage the administration to look at this as a priority and not just shelve the issue. The University has fallen behind its peers in this respect and has also fallen behind other organizations; the ombuds function is a widely-used way to resolve problems. The University could also be more vulnerable than it would like; without feedback and information mechanisms stresses on the institution could wreak far greater costs than the ombuds office. There would be no single budget category in which the costs would be incurred, and no way to assess them, but they could be significant. Finally, Professor Sampson said, this feels like the right way for a university to go.

Professor Morrison, responding to Professor Balas's concerns, said that when he served as University Grievance Officer he had about 130 grievances--about half of them from a single college. He brought this problem to the President, who was very surprised. Steps were taken to try to address the problems in that college. An ombuds office can be helpful in identifying these kinds of things.

Professor Morrison said he agreed with Professor Sampson. In addition, he said, units operate inefficiently while "employees and supervisors are growling at each other and not doing their work." A large number of grievances come from departments that are going through substantial changes, which cause a lot of problems to emerge that are not dealt with well. He said he agreed that the University should take an active approach that in the short run will deal with the problems it will face. He related that he had come to this meeting from another meeting, and en route he passed a meeting for displaced employees. This proposal affects not just them but also those who are left behind who must do the work.

Professor Kane also agreed and said that many people will not file grievances because they do not want to get into a bad situation that could explode. She said she was all in favor of efforts to streamline the process and to make it more informal. She also asked if the GAC had collected any information about how effective the ombuds offices are at other institutions. Are they just symbolic? What impact do they have?

Professor Cooper said they asked for that information and received some responses. There are only modest tools available to evaluate the effect of the ombuds offices, however. Ms. Chalmers reported that there is a project to study the US Post Office ombuds function, conducted by a faculty member at Indiana University, that will have credibility. Most ombuds offices consist of one, two, or three people; they did not receive data but did receive good anecdotal information. Professor Cooper said she has seen the human resources literature that estimates the benefits of an informal dispute resolution system versus the costs of litigation; the numbers are quite large. But there is nothing about money saved or improved employee satisfaction. But none of the ombuds officers were a disaster, Professor Kane asked? They were not, Professor Cooper affirmed.

Professor Fossum reported that MIT has had an ombuds service for over 20 years and there are extensive studies of it available. He also noted that the costs of an employment-related suit are quite high

for employers with research indicating that the average cost, of a one-person lawsuit, is \$160,000. That does not include the costs if the dispute goes to trial nor does it include the employee costs.

If the administration wants to fund this effort, and considers it a high priority, it will find a way to do so, Professor Speaks said. Professor Kruttschnitt said this was a worthwhile idea but she could not say it would be at the top of her list of where money should go. Discussion of budget priorities is extremely important--and the Committee has not had that discussion with the President.

Given the two possible approaches, Professor Ratliff-Crain said, he did not see them as either/or. But the Committee needs to be explicit about whether it regards the interim solution as a stopgap measure on the way to implementing the full proposal. Looking at the problems the GAC identified, it appears that they will only be solved with a neutral ombuds office and not with third-party assistance provided if required--which negates its effectiveness.

Professor Gonzales said that she agreed with many of the foregoing comments and added that a lean budget does not mean the Committee should not ask. This is a good time to do a pilot project and get the website set up. The initial effort will provide data about the options for grievances versus informal dispute resolutions. This is a valuable opportunity to collect hard data.

Professor Martin asked Professor Cooper how she would imagine the Dispute Resolution Council recommendation working. What structure would make the proposal work? Professor Cooper said she thought that would be part of whatever action this Committee takes. Ms. Chalmers is prepared to identify ways it could work. At the invitation of FCC, either Ms. Chalmers or the GAC could invite the organizations to begin implementing the recommendations; Ms. Chalmers said she would be glad to take the initiative.

Professor Martin moved to endorse the recommendations of the GAC and to ask the administration for whatever funding is needed to implement them. The motion was approved unanimously.

Professor Feeney said the Committee owed Professor Cooper and the members of the GAC a big "thank you" for work on a project that started over lunch with Professor Cooper. This is the first time the issue has reached a critical level. The Committee gave Professor Cooper and her colleagues a ringing endorsement for their work.

A copy of the report from the GAC is appended to these minutes.

## **2. Updates**

Professor Feeney reported that he had convened a meeting about the proposal for emeritus status for P&A staff and said he would bring the issue back at the May 29 meeting. There has been strong support for the proposal from the Committee on Faculty Affairs.

Professor Fossum pointed out again that this proposal did NOT come from the P&A staff, it came from a member of this Committee. Many P&A staff have given a lot of devoted service to the University and this is a way to recognize that service. It would require ten years of service to be granted emeritus

status, which means that someone was retained, has given good service to the University, and has consistently been a good performer. Such individuals should be recognized.

Professor Feeney commented that the Committee should keep in mind that there is much the faculty can do in working with CAPA (the Council of Academic and Professional Administrators). The next issue will be reorganization of the University Senate. He said he asked Professor Martin if she wants him to continue to play the lead role on the reorganization; she does. A recent meeting with the CAPA and Civil Service representatives led to the suggestion that instead of 37 representatives from each of the two groups, they would prefer 25. The issue is making slow progress and there are still issues to be resolved, and a proposal will be brought to the second Senate meeting in the fall for discussion.

What was the student reaction, Professor Ratliff-Crain asked? They saw a bigger change than the others. Their chief concern was representation on the Senate Consultative Committee, Professor Feeney said, by campus and for undergraduates and graduate/professional students on the Twin Cities campus. The faculty accepted their proposal. Students lose proportionately less than the faculty in the Senate itself; the student numbers decrease from about 59 to 50; faculty numbers decrease from about 175 to 125. The students did not have a problem with the other elements of the proposal.

### **3. The Budget**

Professor Feeney next welcomed President Bruininks, Executive Vice President Maziar, and Associate Vice President Pfutzenreuter to the meeting to discuss the budget.

The President began by saying that little had changed, except that the University received about \$6-7 million per year less in cuts than had been projected. As the University balanced the budget and built a two-year framework, it faced a structural deficit of \$19 million. Of the \$7 million in additional funds from the state, \$1.5 million will be put in student financial aid. (Dr. Bruininks added the University needs to rethink the way it does student support.) The remainder of the money will be used to reduce the structural deficit. In year one, the remaining shortfall will be covered by central balances for the next fiscal year; at the end of year two the budget will be balanced. Tuition rate increases will stay about what was proposed.

Unfortunately, one of the most potent tools for communicating the impact of the reduction of state support is through the impact those reductions have on tuition rates. The University needs to balance its budget, increase salaries the second year of the biennium, and keep investing money in academic programs. There could be additional financial challenges if the revenue forecasts are not positive, and they are not looking great right now. The University will need to look to tuition increases again if there is no new revenue in the equation. The University could cut a lot of highly visible programs, each with a constituent, but such cuts will not carry the same message as tuition increases. At the same time, he expressed worry about the impact of these increases on students.

Dr. Maziar said she had the sense that the committee leadership in the legislature felt bad about what happened to higher education and they did not include a lot of accountability riders to restrict how the institutions will deal with the challenge. That has set the University up for better relations with legislative leaders than has been the case in the past.

The President agreed. Going into last summer the University knew the strategy would be challenging and that there was a need for a conversation with state leaders. The University emphasized remaining competitive and its responsibilities to use tuition money wisely. The University took the high ground and had public support through the legislative session, including from some who have not always worked actively on its behalf. The message to the legislature was simple: preserve the base budget and let the University do its job. That message was repeated in public meetings, to the legislature, to the Governor, and around the state.

The President said he is aware that there has been concern about consultation and whether it was thorough or timely. As he looks back, he said the administration did consult on major issues throughout the year but he could have done things better and the process needs review. He said the budget reductions would be revisited over the summer; the administration tried to protect academic programs--but it must be recognized that nothing could be protected completely in the face of cuts of this magnitude.

In the case of some bills before the legislature, the University was asked if it could do research on a topic (e.g., energy). That could mean up to an additional \$10 million in one-time money for research as well as an additional \$2 million in recurring research funds.

The capital projects bill will not be decided until the end of the session. The University with either receive support for a number of projects or it may get little.

The President said he took a second look at the FCC budget principles and said the Committee would be pleased at the alignment between the budget assumptions and its principles. Some of items were strategy rather than principles and those are under discussion at present. For example, the Committee raised questions about subsidies to non-academic units; the President said he would like to look at the broader question of cross-subsidies in general. There are big questions involved and they will be brought to the Committee once they have been taken up by the Provost's Budget Advisory Task Force. Are the subsidies right? Are they being paid for in the right way? Some of the subsidies that exist, the President noted, could be for academic units. Dr. Maziar commented that the University needs to improve its data in this regard; the cost accounting/cost analysis data are not as good as those in the private sector.

The President then reviewed some of the items from the list of FCC budget principles.

In terms of moving A appointments (11 months) to B appointments (9 months), that is very much under consideration, Dr. Bruininks told the Committee. When he was Provost he turned down requests to convert B appointments to A; he is encouraging units to switch A appointments to B and some are doing so. He has, however, turned down some proposals to convert A to B appointments because the conversion costs were too high; the University should not agree to buy off people and mortgage the future of a department for five to seven years.

The President also said the meaning of "land grant" was very much under review. He said he would like to talk more about that subject. People should think of the University as the state's most important resource, but it looks "like a picket fence" in the way its resources and services are delivered across the state. He said he would like to move to a regional approach rather than an agricultural station here, an experiment station there. The whole may be less than the sum of its parts right now, he said.

He started the service and productivity initiative and now the University must decide what to do. The easy apples have been picked. In some cases, the University may have to spend a little money to save a lot. He said he would return in the fall about how to capitalize some changes that could save the University millions of dollars per year. These would be major strategies with savings "marbled through" the institution in many places, and units will need help capturing them so the resources can be put into teaching and research. The University does not work sufficiently as an entire culture (such as buying things institutionally).

System-wide admissions could eliminate some competition between the campuses.

The President said he would be troubled by differential tuition at the undergraduate level.

Professor Morrison said that on the issue of consultation, many faculty perceive that at the college and lower levels, consultation has been poor or non-existent. The President said he thought that might be true. One reason is that time was compressed; another was that some deans may have wanted to wring out productivity increases. The deans just made decisions and did not talk to anyone, Professor Morrison said; he said he hoped that situation would improve. The President said he would review the process and make it a part of future expectations.

Looking forward, Professor Speaks said, one can assume that in 2006-07 there will again be a budget challenge. The University must start NOW to think about how to deal with it. The President agreed that he did not want to spend the entire year talking about the 2004-05 budget. He said he would like to get it done early in the fall and get to other issues, such as long-term financial questions, tuition, the University's relationship to the state, and the longer-term academic agenda. He said he also did not want to spend all of the time on the actual 2006-07 BUDGET but more on the framework for the budget.

Professor Kruttschnitt posed three questions. (1) Will tuition increase 13-14% both years of the next biennium? (2) What is the University eliminating/what have the reductions been? (3) What are the budget priorities for 2004-05?

The President responded first to the second question. The list is not precise yet, he said, but it will include reductions in selected academic programs, including extension programs and agricultural stations, Facilities Management operational zones on the Twin Cities campus, and a number of centers. The story is still being written; not all decisions have been made. There is a tendency to think that the University has not successfully dealt with the budget problem unless it can point to 10-12-15 things it has cut. The President said he was not sure he agreed. The University could have eliminated a campus, for example, but he does not believe that would be a good idea or in the best interests of the University. He said he will not jump on a solution because it appears to be politically expedient. This is the most creative group of people in the state, he said, and it should be able to deal with the situation without making cuts that are expedient and visible but perhaps not best for the institution.

Mr. Pfutzenreuter reviewed the budget data with the Committee; he cautioned that the table he handed out is an evolving document. The total financial problem for the 2003-05 biennium is \$318 million after cost re-estimates are made (reduced costs of utilities, operating new buildings, and so on; there were no policy decisions, these are simply more recent estimate of costs). (The \$318 million reflects a budget "challenge" of \$130 million in 2003-04, which carries through 2004-05, plus an additional "challenge" in 2004-05 of \$58 million.  $130 \times 2 + 58 = 318$ . This is biennial math.)

Of that \$318 million "challenge," the solutions fall into several broad categories.

-- Cost shifts or contributions from faculty and staff make up 17% of the solution (changes in the health plan and a salary freeze for 2003-04, the latter of which totals \$20.5 million next year if there had been a 2.5% increase). The President said again he has made it clear that the University cannot have a salary freeze for two years in a row, and that it is not wise to do it for one year. There was a lot of pressure on the University to impose a freeze for two years.

-- Administrative, programmatic, and operating cost reductions account for 32% of the solution (the 2002-03 rescission, 2003-04 and 04-05 budget reductions, which will be selected and targeted, for both support and academic units). Most descriptions of the budget reductions are in the Office of Budget and Finance and will be summarized and categorized and provided to the Committee. At the present time, a 2.5% salary increase is being modeled for the 2004-05 budget.

In addition to the \$25 million unallotment in spring, 2002, there will be \$17.4 million in administrative, programmatic, and operating cost reductions in 2003-04 and an additional \$18.2 million in such cuts in 2004-05.

-- Other revenues will make up 7% of the solution, which includes reductions in the central ICR funds and one-time use of institutional balances. The balances will help to bridge to the second year of the biennium. There were not enough recurring cuts in the first year of the biennium to match the reduction in revenue. The President said the University could impose more cuts but he believed there would be more creative ways to get through the next couple of years.

Mr. Pfutzenreuter said he wished it emphasized that these are CENTRAL balances that are being used, NOT UNIT BALANCES, and that these balances act as an internal loan between fiscal years.

-- Students will pick up 43% of the solution through increased tuition and fees (an increase of \$45 million in 2003-04 and an additional increase of \$47 million in 2004-05). The administration will be sure that there are enough funds in academic units to support the 2.5% compensation increase.

Professor Kruttschnitt inquired if there any retention funds in the budget; not in these figures, Mr. Pfutzenreuter said. Retention decisions and funding will be up to the units, although, the President observed, they are often joint solutions with the administration.

The correct label for the wage freeze for 2003-04 is "continuation of competitive underpayment," Professor Fossum said, and it represents a failure to accomplish what the University set out to do several years ago.

Professor Speaks said he wished to repeat for the record a comment he made at the Finance and Planning meeting. The rules of the game for tuition will be different. Colleges will pay an increased IRS tax from tuition revenue; central administration will apply 85% of the remainder to the lost state funds (leaving the tuition dollars in the college but removing the state dollars), balance the budget, and create academic investments--and the college will keep the residual 15% as increased revenue. Those amounts have already been set, however, and he expressed worry that some colleges might increase enrollment, even if that would be academically unwise, in order to obtain more tuition revenue. The Finance and

Planning Committee was told that the Provost would monitor enrollment. The President agreed, but pointed out that some academic units can increase enrollment. Enrollment targets have already been set, Dr. Maziar said.

Will the 85-15 split continue the second year of the biennium, Professor Speaks asked? That has not been decided, the President said. That is part of the conversation about the budgeting model. There needs to be more consistency across years and there also need to be incentives for productivity. The University would not raise tuition 14% if it did not need the money to balance the budget and invest to support academic programs, but there needs to be some tuition on the table for the colleges as an incentive. The amount of tuition applied to the loss of state funds is likely to be less in 2004-05 in order to ensure that units have sufficient money for compensation increases, Dr. Maziar said.

Professor Balas expressed concern that central ICR funds are seen as money the administration can use to solve a budget problem. Those funds are growing because research funding is increasing. Dr. Maziar pointed out that ICR funds reimburse the University for funds it has already spent on the research infrastructure, and that they do not cover other University costs. In terms of investment in academic directions, Professor Balas maintained that some of the money (\$4 million in 03-04 and an additional \$12.1 million in 04-05) should be invested in research.

Has the University considered increasing its ICR rate, Professor Kruttschnitt asked? Some private institutions are at 75%. That amount is being negotiated with the federal government next year, Dr. Maziar said. There is a highly-motivated federal team that wants to keep the rate as low as possible, while the University wants to increase it. The public institutions with rates above 50-51% are being pulled down; those below have some room to increase. The University is currently at 48.5%. Part of the problem is that ICR funds are made up of two components, one of which, administrative, is capped--so even if there are, for example, new federal regulations that impose administrative costs, there is no way to recover the money.

The President said he would like a discussion in the fall about the long-term strategy to improve the student experience. \$5 million has been identified for investment in student goals next year, and an additional \$9.5 million the following year.

Professor Feeney thanked the President for joining the meeting.

#### **4. University of Michigan Affirmative Action Case**

Dr. Maziar remained with the Committee and explained that a decision in the University of Michigan affirmative action case is expected in June. The University could have a very short period of time to respond; the administration is organizing an initial meeting with deans and admissions professionals to be sure that all start with the same background information. No matter what the Supreme Court decides, the admissions professionals and administrators must very quickly be able to talk intelligently about the result and its implications for Minnesota. There may be a need to revisit administrative policies and practices; she promised there would be extensive consulting. There may need to be provisional policies.

Professor Martin suggested that any materials on this subject be forwarded to the Senate office for distribution to the Committees.

## **5. Other Business**

Professor Martin announced that she wished to nominate Professor Stuart Goldstein to serve as Clerk of the Senate for 2003-04. The Committee approved unanimously, as it did the renomination of Professor McGowan to serve as Parliamentarian for next year. The names will be forwarded to the President.

Professor Martin also reported that she has asked Professor Martin Sampson to serve in place of Professor Kruttschnitt next year, who will be on leave. The Committee voted unanimously to elect Professor Sampson to the seat.

Professor Kane inquired about an email article the Committee had received indicating that the University has been approached by the Vikings once again about a stadium. Dr. Maziar said it was wishful thinking and there had been no such contact. There is still interest in exploring the possibility of a University-only stadium. But is there anything in the hopper, close to being announced? There is not, Dr. Maziar declared. Is there any architectural planning under way, Professor Campbell asked? Not to her knowledge, Dr. Maziar replied.

Professor Feeney reminded Committee members that they were to formulate questions about the budget and submit them for discussion at the meeting next week. He then adjourned the meeting at 3:00.

-- Gary Engstrand

University of Minnesota

**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 decision-making 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 decision-making 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 decision-making, 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*

Mary Jane Towle, *Administrative Director, Medical School*

Grievance Office Staff

Carolyn Chalmers, *Grievance Officer*

Mary Tate, *Deputy Grievance Officer*

Laura Wegscheid, *Case Administrator*

Research Assistant

Nicole Bolton, *Student, Law School*