

Minutes*

SENATE COMMITTEE ON FACULTY AFFAIRS
Thursday, January 14, 1993
3:15 - 5:00 p.m.
238 Morrill Hall, Regents Room

Present: Carl Adams (chair), Daniel Canafax, Mary Dempsey, Carol Carrier, Ann Erickson, Ann Fallon, Audrey Grosch, Bernard Selzler, Michael Wade, Steve Laursen

Guest: Mario Bognanno, Chair, University Grievance Policy Review Committee

The meeting was convened at 3:15 p.m. by the chair, Professor Carl Adams.

Chair's Report

Professor Adams reported that Dean Mark Brenner would be joining the January 28 SCFA meeting to discuss additional changes to the Academic Misconduct Policy and the nature and scope of the newly formed Academic Integrity Committee.

Minutes

The November 19 and December 17 minutes were approved.

University Grievance Policy

Professor Adams welcomed Professor Bognanno, chair of the University Grievance Policy Review Committee, to discuss the proposed revisions of the University Grievance Policy. The committee, he said, was appointed about a year ago by Professor Tom Scott [then chair of the Senate Consultative Committee] and President Hasselmo to review and recommend improvements to the University's grievance procedures. The committee has met continuously throughout that period as well as meeting with many individuals and organizations to understand the scope of the current system and the needs for a new system.

The proposed policy, Professor Bognanno said, is different from the current policy in a number of areas:

- It includes not only faculty, academic staff, and students, but non-unionized civil service employees as well, making it a very broad inclusive policy. The only excluded groups are unionized employees and employees of the University Hospital and Clinic.
- The policy is primarily concerned with employment disputes that students and employees experience. It does not include disputes relating to such things as academic standing of

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students, grading, or issues of promotion and tenure for faculty.

The review committee, Professor Bognanno told SCFA, is concerned that all colleges have in place a due process mechanism that permits students to air problems of an academic nature and, thus, will be drafting a motion requiring all colleges, including the Graduate School, to develop such a mechanism. This proposal is not now included in the text of the revised draft but will be added.

A second idea not included in the document, but again to be added, relates to peer advocates. The committee foresees somewhere in the process that a grieving employee may bring an advocate with him/her to the proceedings. Professor Bognanno said the administration, while agreeing in principle with the advocate concept, does not feel it is appropriate to have on the University payroll individuals who serve as advocates assisting in grievances against the University. Therefore, the committee envisions a volunteer system for advocates with central administration funding office space and an employee to serve as coordinator of the advocate program. A similar system is currently used by civil service employees.

With regard to the policy itself, Professor Bognanno said, it is very clear in a number of important areas; one of which is timelines for processing. There is provision for finality and at the end of the policy there is a major innovation called arbitration.

Under the proposed policy, grievances are initiated by filing a written statement of the grievance with the office of the University Grievance Officer (UGO). It is hoped that resolution can take place at a **Phase I** informal meeting of the grievant, respondent, and the UGO within ten working days from the date the grievance was filed. The purpose of the Phase I meeting is to facilitate grievance resolution through informal discussion and negotiation between the parties.

Grievances not resolved at Phase I may progress to a **Phase II** meeting between the grievant and an appropriate supervisor(s) of the Phase I University representative, and the UGO. The purpose of the Phase II meeting is to facilitate grievance resolution by informing and involving higher University administration. If all parties agree, the UGO may serve as a mediator in a settlement facilitating role. If the grievant is not satisfied with the supplemental response, the grievant may proceed to a Phase III panel hearing.

The purpose of **Phase III** is to provide an internal evidentiary hearing by a three person panel consisting of one member of the University Grievance Board chosen by the grievant, one designee of the vice president of the unit in which the grievant is employed (or by the President, if the unit reports directly to the President), and one hearing officer from the Hearing Officer's Panel. After the Phase III hearing, the panel will prepare a decision consisting of a statement of the issues, contentions of the parties, findings of fact, opinion and award, if any. The decision is not binding on either party. If the grievant is not satisfied with the decision of the panel, s/he may proceed to Phase IV. However, at this point the grievant must sign an acknowledgement of his/her voluntary choice to proceed to binding arbitration to resolve the grievance, and waive and release all rights to pursue substantially the same claim in any other forum.

Phase IV is binding arbitration. The purpose of Phase IV is to provide an opportunity for the parties to voluntarily engage in final and binding arbitration by a three person panel. The panel shall be chaired by a neutral arbitrator and include a University Grievance Board member selected by the grievant, and a designee of the vice president of the unit in which the grievant is employed.

Other important points noted by Professor Bognanno included:

- The policy is not a legally binding document until the employee chooses to proceed to Phase IV arbitration when s/he signs a waiver saying s/he will not go to court and agrees to binding arbitration. If at the end of Phase III the grievant does not want to arbitrate, s/he may choose to proceed through the court system.
- Civil Service employees currently have the right to arbitrate under their grievance procedures.
- On the issue of timeliness, even if an employer believes the grievant has waited too long, s/he must take him/her through the early procedural phases--it is not until Phase III when jurisdictional issues are discussed.
- The question of jurisdiction initially will be made by the University Grievance Officer; if contested, final jurisdictional authority rests with the Senior Vice President for Academic Affairs.
- It is the responsibility of the employee to advance the grievance to each stage--the employer cannot stop the process at any point.
- The role of the University Grievance Officer is to make jurisdictional determinations, provide counseling and guidance, facilitate the scheduling and management of cases, and function as a mediator.
- The number of individuals involved in the new system will be greatly reduced from the current system.

One individual inquired whether the Rajender grievance would have fallen under the jurisdiction of the proposed policy if the policy had been in place at that time? Professor Bognanno responded that if Professor Rajender had been a P&A employee, she would have been eligible to file her grievance under the proposed policy if mechanisms within the Equal Opportunity and Affirmative Action Office (EOO) had not been in place. As a faculty member, however, her grievance would have been heard by the Judicial Committee. [As a footnote, Professor Bognanno reminded SCFA members that since the Rajender case, a mechanism has been established routing gender discrimination cases through the EOO, which will not be changed under the proposed policy.] The link between gender discrimination cases and the proposed University Grievance Policy, he noted, is that if a respondent in a gender discrimination case does not agree with the disciplinary action handed down, s/he can file a grievance under the University Grievance Policy alleging that s/he was improperly judged. This holds true not only for gender discrimination cases, but for other situations as well, such as academic misconduct decisions, sexual harassment decisions, violations of the Student Conduct Code, etc.

Another question involved class action grievances, which Professor Bognanno said are allowable under the policy. Bases for grievances include violations of rules, regulations, policies, or practices pertaining to an individual's employment contract. Discretionary actions, such as salary adjustments and performance evaluations, may not be grieved, except to determine 1) whether the discretionary action was

made in accordance with relevant University rules, regulations, policies, procedures, practices, or criteria; and 2) whether the action constitutes a clear abuse of discretion. When asked about a specific situation in which a group of faculty felt they had been discriminated against regarding salary decisions, Professor Bognanno said, if the administrator followed all of the guidelines s/he should have in reaching the determinations, then the faculty members would have no case. However, if an individual or group of individuals can show there was a clear abuse of discretion by the administrator, a grievance can be filed.

"Can phases be skipped," inquired another individual? "No," Professor Bognanno responded, "however, at any point a grievant may turn to the courts for resolution."

Another question focused on joint jurisdiction and whether an individual who had filed a grievance through a different mechanism (e.g. the Sexual Harassment Board) could re-file the grievance under the University Grievance Policy if s/he was not satisfied with the decision in the first hearing? Professor Bognanno responded that they could not. One member questioned the "fairness" of a system that would allow a respondent to re-open a case by grieving the disciplinary action and causing "double-trauma" for the grievant of the original hearing.

The issue of fees and expenses for the outside arbitrator was also brought up. Professor Bognanno said expenses will be shared jointly by the administration and the grievant. Those costs, he said, should be considerably less than the fees and costs of proceeding through the court system. The awards, however, are also limited--there is no basis for punitive damages, etc. The review committee toyed with the idea of the losing party paying the full costs, Professor Bognanno said, however, the custom in other institutions and in the private sector is one-half to each party.

One member noted the incorrect reference to "professional and administrative staff" and asked that the correct class description be used throughout the policy.

Another question was posed concerning the selection process for arbitrators. Professor Bognanno said the policy requests the Bureau of Mediation Services to provide the University Grievance Officer with a listing of non-Minnesotan arbitrators holding either tenured faculty rank or emeritus status in a university and who hold membership in the National Academy of Arbitrators (NAA). This process was selected, he said, because many of the NAA members are tenured faculty members who understand the academic community. The review committee is not aware of organizations that include, for example, civil service arbitrators.

SCFA recommended that the policy, if approved, be reviewed in three years.

In response to a final question concerning funding, Dr. Carrier said she believed central administration would provide appropriate funding if the policy is implemented.

A motion was then approved to endorse the University Grievance Policy with the expectation that comments suggested by SCFA be included in the document.

Compensation Policy

Copies of the amendments to the Faculty Compensation Policy agreed upon at the previous meeting were distributed for final review. Professor Adams pointed out that two footnotes had been added to the policy:

Footnote 2: The process determined through consultation may include faculty participation in the judgements regarding compensation changes as a committee of the whole or through a salary committee consisting in whole or in part of elected members.

Footnote 3: No mention is made of a possible across the board component of compensation increase because it is assumed that no faculty input is required at the unit level for such increases.

Both footnotes are intended for clarification. Footnote 2 clarifies that faculty may choose to participate in judgements regarding compensation changes but are not mandated to do so. As SCFA agreed to at its previous meeting, an amendment mandating participation was prepared for presentation at the Faculty Senate meeting to ensure appropriate discussion of the issue. Professor Bognanno told committee members that earlier in the day the Faculty Consultative Committee endorsed the text in Footnote 2, but did not endorse the amendment. SCFA members agreed that because the amendment is the basis of a substantive change to the policy approved by the Faculty Senate last spring, it should be brought to the Faculty Senate's attention.

The meeting was adjourned at 5:00 p.m.

-- Martha Kvanbeck

University of Minnesota