

Minutes*

Faculty Consultative Committee
Thursday, October 16, 2008
1:15 – 3:00
238A Morrill Hall

Present: Emily Hoover (chair), Nancy Carpenter, Carol Chomsky, Shawn Curley, William Durfee, Janet Fitzakerley, Marti Hope Gonzales, Michael Hancher, Kathryn Hanna, Caroline Hayes, Jeff Kahn, Judith Martin, Martin Sampson, Cathrine Wambach, Becky Yust

Absent: Gary Balas, Dan Dahlberg, Brian Isetts, Michael Oakes, Nelson Rhodus

Guests: Regents Professor Tom Clayton (Chair, Academic Freedom and Tenure); Dann Chapman, Jackie Singer (Employee Benefits)

Other: none

[In these minutes: (1) Coalition on Intercollegiate Athletics; (2) Enterprise Financial System; (3) cost-pool statement; (4) proposed change in the student-rating-of-teaching policy; (5) amendment to the Regents Academic Freedom and Responsibility policy; (6) statement on University responsibility to researchers; (7) health-care savings plan; (8) fringe-benefit costs]

1. Coalition on Intercollegiate Athletics

Professor Hoover convened the meeting at 1:15 and noted that the Committee had recently received several messages related to the Coalition on Intercollegiate Athletics (COIA), including a set of draft bylaws. She said she believed it would be helpful to have a review of the role of COIA and its relationship with the University and its athletic committees.

The Committee was provided with a brief history: COIA was created as a result of faculty-senate leadership discontent with events in athletics in several of the major west-coast universities. There was communication with counterparts in Big Ten and other athletic conference schools, and at the annual meeting of the CIC faculty leaders (the CIC includes all the Big Ten schools plus the University of Chicago and the University of Illinois-Chicago Circle) in 2002, the faculty leaders agreed to collaborate in the creation of COIA and elected three representatives from the Big Ten to serve on the steering committee of COIA. One of those elected was the staff to this Committee, who thus serves as a representative from the Big Ten (not specifically the University of Minnesota).

The purpose of the group, "an alliance of 56 Division 1A university faculty senates," is "to promote comprehensive reform of intercollegiate sports . . . on a variety of issues related to the overall problems facing intercollegiate sports. These issues include but are not limited to academic integrity, athlete welfare, governance of athletics at the school and conference level, finances, and commercialization" [See <http://www.neuro.uoregon.edu/~tublitz/COIA/index.html>].

* 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 represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

Originally COIA envisioned it would exist for two or three years, work for changes through the NCAA, and then go out of existence. COIA has discovered that it will take longer to achieve its goals than its members originally thought, so at a meeting of the membership last spring, COIA concluded it should seek foundation or other private support; in order to do so, it must obtain federal 501(c)(3) tax-exempt status, and to do that it must have bylaws. So a minimalist set of bylaws have been prepared and submitted to the COIA members for approval.

COIA has no relationship to the athletic committees of the University, although they are consulted about issues that arise at COIA and are provided information about COIA activities.

Committee members were provided a copy of an article from The Chronicle of Higher Education reporting on an assistant men's basketball coach who is paid more (\$420,000) than the institution's president (\$340,848) and who was given his job (apparently) solely because he brought with him an outstanding basketball player. The player left the institution after one year because he was the #2 pick in the NBA draft, but the assistant coach remains at the institution. Members of the COIA Steering Committee have found this so offensive to academic values and practices that they are contemplating adopting a statement about the situation.

Professor Durfee suggested with tongue in cheek that the event had one good side in that it demonstrated a university was prepared to pay high salaries for high quality.

Professor Sampson commented that this incident comes at an interesting time, given the financial turmoil in the economy. It may lead institutions to ask if they can legitimately pay these kinds of expenses and salaries in athletics and whether or not there should be a lid on salaries. [It was noted that the NCAA a number of years ago tried to put a cap on salaries in one sport and lost decisively in court on anti-trust grounds.]

2. Enterprise Financial System

Professor Hoover closed the meeting for a brief discussion of the Enterprise Financial System in light of the comments that department chairs had made over the previous two weeks during lunch conversations they had had with Committee members. The Committee agreed that Professor Hoover should communicate its sentiments to President Bruininks again.

3. Cost Pools Statement

Professor Hoover next raised the issue of how the University should respond to budget cuts, should they become necessary. She has taken the position with the President, she said, that any cuts in academic budgets should be accompanied by corresponding cuts in non-academic budgets. Following brief exchanges on wording, the Committee voted unanimously in favor of the following statement:

If the University is faced with a situation that requires budget cuts, the Faculty Consultative Committee strongly urges that any percentage cuts in academic budgets be matched by comparable cuts in the non-academic units.

Professor Hoover welcomed Professor Clayton to the meeting to review three items from the Academic Freedom and Tenure (AF&T) Committee, two of which were presented to the Senate for information at its last meeting.

4. Proposed Change to the Student-Rating-of-Teaching Policy

Professor Clayton turned first to the proposed amendment to the student-rating-of-teaching policy (new language in CAPS, language to be deleted [**in bold in brackets**]):

--The disposition of written comments on student-rating forms shall be decided by each college or campus. IN UNITS WHERE ALL WRITTEN COMMENTS ON STUDENTS' EVALUATIONS ARE ROUTINELY SENT TO THE CHAIR AND/OR TO REVIEWING-BODIES AND INCLUDED IN THE FILE, THE INSTRUCTOR CONCERNED HAS THE RIGHT TO ASK THE CHAIR, [**OR**] A DESIGNATED SENIOR FACULTY MEMBER, OR A STANDING OR AD-HOC COMMITTEE TO WITHHOLD FROM THE FILE COMMENTS HE OR SHE VIEWS AS LIKELY TO BE PREJUDICIAL. THIS PROVISION IS INTENDED TO COVER RACIST, SEXIST, HOMOPHOBIC, AND OTHER PERSONAL COMMENTS, AND IS NOT INTENDED TO EXCLUDE FROM THE FILE NEGATIVE COMMENTS DIRECTLY RELATED TO THE COURSE. (The phrase "or a standing or ad hoc committee" is added in response to a comment at the Senate meeting that such mechanisms are used in some units.)

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COMMENT:

The Committee on Academic Freedom and Tenure (AF&T) noted the difference of opinion between the Senate Committee on Educational Policy and the Senate Committee on Faculty Affairs about the disposition of written comments on student-rating forms when the most recent version of the Senate policy was adopted. AF&T concurs with the concern expressed by SCFA about the potential impact of [**inappropriate**] negative comments on evaluation of instructors for promotion, tenure, and merit. After reviewing the comments provided to SCFA by Professor Marti Gonzales on the social-psychological research that demonstrates the disproportionate effect OF EVEN A SINGLE [**a small number of**] negative comment[s], AF&T recommends the changes indicated above. Speaking not of slurs but of traits, Shakespeare's Hamlet noted a very similar effect:

So oft it chanceth in particular men that, . . .
Carrying, I say, the stamp of one defect,
Being nature's livery, or fortune's star,
Their virtues else—be they as pure as grace,
As infinite as man may undergo—
Shall in the general censure take corruption
From that particular fault.

BE IT NOTED THAT this policy does not include the excision of negative comments directed to the content or pedagogy of a course.

[Note: this version of the Comment also includes the quotation from Hamlet, which the Senate version did not. The Committee agreed with Professor Clayton that it was relevant to the point being made.]

Professor Hancher inquired why the word "inappropriate" was removed from the COMMENT. Because it is highly subjective, Professor Clayton said. Professor Chomsky said that she also is concerned about the removal of "inappropriate" because the problem isn't negative comments, which are allowed if relevant; the problem is inappropriate comments. She also said she was troubled by the wording in the motion itself, which provides that the faculty member can ask to have statements removed but does not provide any standards by which to judge the request. The department head must decide, but isn't told what must be. Another problem is the reference in the policy language to excluding "prejudicial" comments. ALL negative comments are prejudicial, she said, but in the case of the rules of evidence, the standard is that it must be UNREASONABLY prejudicial. Professor Clayton said he thought Professor Chomsky's point was covered by the last clause: "is not intended to exclude from the file negative comments directly related to the course."

Committee members discussed "personal" comments and the fact that some personal comments can be positive, and others can appear to be positive but may still be offensive (e.g., comments about body parts). Professor Chomsky noted that excluding a comment may not always be the best idea, since the numeric evaluation is left in the file with no indication that some of the numbers come from an individual who made offensive remarks. But it is the choice of the faculty member to decide whether to ask that something be removed, Professor Chomsky pointed out.

Professor Curley said one could argue that a student who makes sexist, racist, homophobic, or other derogatory comments relinquishes his or her right to comment on the course and the form for that student should be removed. Professor Clayton said the committee discussed that option briefly and decided it was going too far and that it would be too difficult to apply. Professor Curley suggested that including the (probably) negative numeric ratings but not the inappropriate comments would remove the context necessary to understand the numbers (and why they should be discredited). Professor Chomsky noted that, if it seems warranted, a faculty member who succeeds in excluding inappropriate remarks can add to the file a comment that the numbers should be understood knowing that such remarks were made.

Professor Martin suggested inserting "personal" before "comments" in the COMMENT and deleting both "inappropriate" and "negative."

Professor Chomsky suggested inserting the word "unfairly" before "prejudicial" in the text of the motion.

Professor Durfee said he would prefer that other changes not be made to the motion or the comment and expressed appreciation for the language and the careful work of the Academic Freedom and Tenure Committee in crafting the amendment to the policy.

The Committee voted unanimously in favor of the amended proposal.

5. Amendment to the Regents Academic Freedom and Responsibility Policy

Professor Clayton turned next to the proposal to change the Regents policy on Academic Freedom and Responsibility [the entire Comment proposed for the Senate docket is not included; new

language proposed by Academic Freedom and Tenure is in CAPS, deletions from the AF&T [**in bold in brackets**] and deletions suggested by the Regents office in [**CAPS BOLD** in brackets].

* * *

Academic freedom is the freedom to discuss all relevant matters in the classroom; to explore all avenues of scholarship, research, and creative expression; and to speak or write [**as a public citizen**] without institutional discipline or restraint ON MATTERS OF PUBLIC CONCERN AS WELL AS ON MATTERS RELATED TO [**THEIR**] PROFESSIONAL DUTIES AND [**TO**] THE FUNCTIONING OF THE UNIVERSITY. Academic responsibility implies the faithful performance of academic duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that the individual is not speaking for the institution in matters of public interest.

COMMENT:

The Senate Committee on Academic Freedom and Tenure has taken note of what it considers to be an ominous development in case law in the United States and recommends an amendment to the Regents policy Academic Freedom and Responsibility. The Committee wishes to make it clear that the amendment it has proposed is intended to preserve the status quo, in response to a trend in federal court cases that may restrict the subjects of discourse in the University. The amendment does not abridge any authority or freedom of action that is already the prerogative of the Board of Regents or of members of the University administration.

The focus of the amendment the Committee has proposed is on faculty members and other University staff who participate in the governance system and who may express views critical of institutional proposals. The Committee recognizes, however, that freedom to speak about the affairs of the University "without institutional discipline or restraint" does not extend to those who hold senior administrative positions. The Committee understands that the Board of Regents and the President have the right to expect that senior officers and others in key administrative positions (at the level of dean or above, for example) and their immediate staff will support the University's mission and the policies, procedures, goals, and programs established and announced by the Board of Regents and the President, and will not publicly undermine them. This includes, for example, statements before the legislature, to the media, and the like.

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Professor Clayton reported that is the view of AF&T that something like this is needed in order to protect, among other things, all of faculty governance, given the shenanigans taking place in the courts. Given the apparent trend in court decisions, faculty members could be subject to discipline for making a critical comment at a committee meeting. The primary change he brings to the Committee today is a new second paragraph in the "Comment" section, which provides that the freedom of speech accorded to faculty members does not apply to senior administrators (identified in the Comment as deans and their staff and above). Professor Clayton commented that if administrators can say anything they wish at any time there would be chaos.

Does this policy affect political displays, Professor Wambach asked? Professor Clayton said the Committee does not believe there should be such constraints; that is a matter of individual choice. The

Illinois policy, which the Committee discussed at its last meeting, is "tyrannical and demented." One expects faculty to exercise common sense, Professor Martin said.

Professor Wambach recalled that some faculty members took their courses off campus during the recent strike by clerical workers. That was against University policy, Professor Martin said; Professor Chomsky added that the policy before the Committee today is about speaking out, not action. She noted that the Illinois policy was a response to state law while the policy before them does not bind the state; it is a definition from the Board of Regents about what constitutes academic freedom at the University and therefore what governs University action.

Professor Chomsky asked if the Board of Regents will be consulted before the policy is brought to them. Professor Clayton said the Regents office had been provided a copy of the draft and noted that there are two amendments they suggested. Professors Hoover and Durfee will bring the draft policy to the Regents Chair and Vice Chair at their quarterly meetings with them.

Given that the Board will be asked to change their policy, the Illinois issue is not irrelevant, Professor Kahn maintained. The "Comment" is all related to speech and one could point to Illinois as an example of why the policy is needed. Noting that example could strengthen the case because there are events occurring outside the scope of the current Comment that demonstrate why the policy is needed. The policy change being proposed was not motivated by the example of Illinois, Professor Chomsky said. Professor Martin said she would prefer not to see a policy proposal that is time-sensitive (responding to the peculiarities of the Illinois situation).

Professor Wambach recalled the recent controversy about the science-teaching-and-student-services building. If compromises had not been reached, there was the possibility that deans would have appeared at the legislature protesting. This policy says they could not do that. It is because of that potential that the second paragraph was added to the Comment, Professor Clayton said. The General Counsel reviewed the policy and suggested that from his point of view such language in the Comment was necessary if the Board were to respond positively, because it would likely not look favorably on a policy that permitted administrators to take public positions in opposition to the plans and goals of the Board of Regents and the University administration. Professor Clayton noted that the Academic Freedom and Tenure Committee had supported the additional paragraph in the Comment.

The Committee voted unanimously in favor of the proposed policy recommendation.

6. Statement on University Responsibility to Researchers

Professor Clayton next brought a minor change in the Statement on University Responsibility to Researchers to the Committee for review; the change was made in response to a suggestion at the Senate meeting when the draft was presented for discussion. Additional language in CAPS, deletion in [brackets].

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MOTION:

The Faculty Senate and the President affirm their mutual understanding that, in cases of unpreventable major adversity affecting faculty members, whether due to accident, the weather, building collapse, or any other external cause, the RELEVANT administrationS will immediately do all in [its] THEIR power to enable faculty members affected to resume their professional activities as soon as possible; and will ensure that they will not be held responsible for professional performance to the extent that their professional activities are disrupted through no fault of their own.

COMMENT:

The Committee on Academic Freedom and Tenure (AF&T) heard reports about the impact of the collapse of the 35W bridge on research being conducted in a building near the site of the bridge. Our general concern was the potential impact on review of individuals for promotion, tenure, and merit in the case when research facilities are disrupted because of natural disaster or other causes beyond the control of the faculty member. After several discussions, including a discussion with Vice President for Research Tim Mulcahy, we concluded that a general statement, to be embraced by the President as well as the Faculty Senate, would establish expectations without binding anyone to particular solutions. The range of possible problems precludes the adoption of a more specific policy, so AF&T recommends this general statement.

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Professor Sampson queried the wisdom of the phrase "any other external cause." What if the European Union disappeared and thus eliminated the research agenda of a probationary faculty member? Would this statement cover that kind of event? Professor Yust said she believed it would because the faculty member would have to start an entirely new line of research. Professor Martin recalled that a probationary faculty member had been promised a lab for research but it had been delayed; as a result, the probationary period for that faculty member was extended.

Professor Kahn pointed out that the circumstances envisioned by this statement have occurred in Galveston. This statement says the institution will help. He said there are really two parts to the statement: (1) if a hurricane comes through, the University will rebuild research facilities; and (2) faculty members will not be judged a failure by promotion and tenure standards for the duration of the disruption. The first element could be more difficult for the University than the second. Professor Clayton said the two seemed compatible to AF&T: the University will not hold the individual to account and will try to help him or her do his or her work. It is too general, Professor Kahn said. It only expresses a sentiment, Professor Clayton responded. Professor Kahn suggested the statement might be more specific in saying that the individual will not fail promotion and tenure, and perhaps something should be in the tenure code. Professor Clayton said he would leave that option to the next chair of AF&T; this statement is a "folksy honorific." It is hortatory, Professor Hancher agreed, and that was appropriate.

The Committee voted unanimously in favor of the revised statement and gave Professor Clayton a round of applause for the work AF&T had done.

7. Health Care Savings Plan

Professor Hoover turned next to Professor Hanna for a report from the Senate Committee on Faculty Affairs (SCFA) on health-care savings plans (HCSP). She welcomed Mr. Chapman and Ms. Singer to the meeting.

Professor Hanna reported that SCFA is recommending to this Committee revisit the HCSP issue and that it move, at the Faculty Senate, that it reinstate the 2.5% contribution to the Faculty Retirement Plan and retain the 0.5% contribution to an HCSP. That is different from what the Faculty Senate voted on last year, which was to reduce the 2.5% contribution to 2.0% and to put the other 0.5% into an HCSP.

The issue came up because the P&A staff have voted for a different option: they wish to retain the 2.5% contribution to the Faculty Retirement Plan (in which P&A staff participate) and add 0.5% to a contribution to an HCSP, with the additional 0.5% to come out of salary increases beginning in July, 2009 (a one-time event, because the funds would be recurring after that).

SCFA recommends that the faculty adopt the same recommendation as the P&A staff. There are over 300 people who have dual faculty/P&A appointments, and it would be administratively easier to have the same plan for everyone. The HCSP has not yet been implemented, Professor Hanna said, but the goal is to do so at the start of the next fiscal year. Ms. Singer commented that there are individuals who go back and forth between faculty and P&A appointments, sometimes from one pay period to the next, so Employee Benefits or Human Resources would be required to check manually each of these appointments so that the individuals were making the correct contributions.

The plans are not legally required to be uniform, Professor Hanna reported in response to a question from Professor Gonzales. Faculty and P&A staff can have different HCSPs. Nor need the contributions be the same (the two existing proposals call for faculty and P&A staff to contribute 0.5%, but the P&A staff retain the 2.5% employee contribution to retirement while the Faculty Senate recommended reducing the 2.5% to 2.0%). It comes down to a reduction in the size of the paycheck (or a reduction in the amount of the raise) versus no change in the paycheck, Professor Hanna concluded.

Professor Yust said she believes most faculty can understand the desire to avoid a complicated system, given experiences with EFS, but it seems odd that if an individual moves between appointments there cannot be an appointment code that automatically signals which retirement-plan contribution should be made. Ms. Singer agreed that would work if the appointments were made consistently across the University, but the decisions are made in the colleges, and some may code them differently than others.

Professor Chomsky said that whether or not there is an administrative problem with two plans, the P&A staff, by voting for the option they have, may very well suffer a greater impact through the loss of .5% of salary than will faculty, but have judged that having more retirement funds available is more important than the extra salary now. This proposal makes sense, she said, and is a reasonable change for the faculty to make. Professor Hanna agreed.

Ms. Singer reported that the P&A staff felt strongly that they wanted to protect their retirement-plan contributions, perhaps in part because their salaries on average are lower than the faculty's. Doing it this way also eliminates the waiting-period issue (for P&A appointees who have a waiting period before getting into the Faculty Retirement Plan), because the HCSP deduction can be taken separately from the 2.5% retirement contribution. It also addresses the problem for those few P&A employees who

participate in the Minnesota State Retirement System rather than the Faculty Retirement Plan and for federal employees. In neither case could those employees participate if the HCSP contribution comes from a reduction in the retirement-plan contribution.

Professor Curley said he personally was in favor of the SCFA recommendation. But a proposal of this nature was brought to the Faculty Senate several years ago and voted down. He said he will vote in favor of the proposal but there were objections a few years ago that need to be addressed. Professor Hanna said she was not at the meeting but heard at the time that one objection was that it was unnecessary because there would be universal health-care in the country in a few years. Committee members laughed. The earlier plan also had a graduated scale based on years of service (so that individuals closer to retirement would contribute more to catch up), which would have meant some employees would have given up nearly 3% of salary beyond their retirement contribution. Many felt they could not afford that. This plan is much simpler, she said.

The Committee voted in favor of forwarding the recommendation to the Faculty Senate. Professor Hanna agreed to work with Ms. Singer to identify simple ways to explain the proposal, with examples. Professor Hoover thanked Mr. Chapman and Ms. Singer for attending the meeting and participating in the discussion.

8. Fringe Benefit Costs

Professor Hoover turned now to a more general discussion of present and future fringe benefits. She reported that she had spoken with Vice President Carrier because the President has talked several times about the possibility of a cafeteria plan for benefits. Dr. Carrier told her they hired a consultant a few years ago and the report demonstrated there is not enough money in the fringe-benefit pool to fund the additional benefits the Senate has recommended from time to time (e.g., tuition benefits for dependents, increased child-care availability, offset of a tax liability for same-sex domestic partners, etc.) if the condition includes no change in retirement and health-care coverage. The President is not open to changes in either of those, so there is not enough money in the system to allow for increased benefits. The President, Professor Hoover said, asked if the faculty are willing to expand the fringe benefit pool in order to have more money to offer additional benefits.

So, Professor Yust said, as a department head, if she has \$100,000 for a position, approximately \$65,000 now goes for salary and \$35,000 goes for fringe benefits. What would the change be? That \$60,000 would go for salary (for example) and \$40,000 would go into the fringe benefit pool.

When the faculty were invited to suggest issues of importance that FCC should bring up with the President and Provost, the item that came up the most was tuition benefits for dependents, Professor Hoover reported. Vice President Carrier told her that without a reduction or change in contributions to the retirement or health care, it is not possible successfully to implement a cafeteria plan. Professor Hanna noted that Vice President Carrier is coming to talk to SCFA about these issues later in the month.

The President has pushed back on all these requests that keep coming forward, Professor Hoover said, because they contain no information about financial impact. It is a good point and there should be a larger discussion about it. Professor Yust said the Committee needs to know the cost of the various proposals and what other schools offer. Professor Hoover recalled that Dr. Carrier had informed her

fringe benefits are distributed differently at different schools; another institution might have better childcare or a tuition benefit but Minnesota offers higher retirement benefits.

Professor Kahn pointed out that this issue came up in the discussions of the faculty-culture task force. Some faculty argue that benefits are distributed unfairly (e.g., the University provides a greater health-care subsidy for families than for single employees) and argue that the University should give everyone the same amount of money and let them distribute it as they wish. But the University will not have equal coverage for health care until the society offers universal health care. There will be strong arguments, he warned, because this is a controversial matter as soon as health care is mentioned. Professor Hoover said the President takes the view that all must have retirement and health care coverage and the University's position on health care is that "we will take care of you and your families." Professor Wambach said that those who favor a tuition benefit want it added as a benefit, not subtracted from the Faculty Retirement Plan.

The Committee needs to have a discussion of these issues, Professor Durfee said, and the discussion needs to appear in the minutes.

Professor Martin commented that if the state faces a budget deficit like it did five years ago, fringe benefits may be up for discussion whether people want it or not. A reminder: 2003-4 was a year of major benefit changes. On that pleasant note, Professor Hoover adjourned the meeting at 3:05.

-- Gary Engstrand

University of Minnesota