Minutes

Senate Consultative Committee
January 14, 1993

Present: Mario Bognanno (chair), John Adams, David Dahlgren, Amos Deinard, Judith Garrard, Jamie Hodgson, Sonja Hoheisel, Paul Holm, Benjamin Liu, Tom Lopez, Karen Seashore Louis, Irwin Rubenstein, Anne Sales, Tess Shier, Dan Sinclair, Denise Tolbert, James Tracy, Shirley Zimmerman

Guests: President Nils Hasselmo, David Whitt (Morris alternate)

1. Discussion with President Hasselmo

Professor Bognanno convened the meeting at 12:30 and welcomed the President. The President said he wanted to join the meeting briefly to make a statement on the question of changing to semesters.

The issue has been on the agenda for a long time, he noted, and faculty and students appear to be more or less divided in their views on whether or not to make the change. By implication, the governance system referred the question back to him, he said, and he has given it considerable thought. After reviewing the University's agenda, he told the Committee, he has become convinced that there is a need to take a radical look at curriculum and pedagogy--and that making a calendar change would halt any possible reforms. At other institutions, rather than the change serving as a vehicle for reform, it stymies reform because the calendar change process itself is so overwhelming. As a consequence, he said, he has concluded this is not the time to change to semesters.

Another reason for not making the change is that major curriculum reform has just begun on the Twin Cities campus and faculty have been engaged in developing new courses. To make the change would disrupt that effort.

What is needed, the President said, is a radical, fundamental look at pedagogy--how we teach. That examination should occur as part of the planning process.

In response to a question, the President said that he would suggest a moratorium--of perhaps five years--on any proposals to change to semesters.

The President agreed that cost was one factor. Faculty members, said one Committee member, are concerned that the change would be very costly and that it is not feasible to consider it when they may be asked once again to take no salary increase. The President pointed out that the change would cost "millions," and that this is a bad time to put that much money into a logistical change when the University is struggling with resource problems. This does not mean, he added, that a reconsideration of starting and ending dates could not be re-examined.

It may be, the President said, that identification of the best calendar to serve educational needs will emerge from the discussion of curricular and pedagogical reform. It may not be quarters-versus-semesters; perhaps another model will be identified.

In response to a query, the President said he did not believe the present variations in calendar

among the several campuses was an obstacle and that he did not believe there is any need to standardize starting dates. The only question he considered at this point was semesters versus quarters.

One Committee member commended the President for putting the decision on hold while larger issues are considered, such as what an urban public university should be doing, the full range of its responsibilities with respect to staffing and to student needs, and faculty and professional/administrative responsibilities to the institution. The ideas of possibly moving away from B-based appointments, and of providing curricular and research opportunities to meet the special needs of clientele and staff, are attractive. It makes sense, it was said, to try to decide what should be accomplished and then devise a calendar to permit them.

Another Committee member disagreed, while concurring with the decision with regret. It is inevitable that there will be standardization of calendars in higher education in the United States, in order to contain costs; when schedules do not mesh, providing special courses or sending faculty or students to other campuses is very difficult. The moratorium should be on IMPLEMENTATION, not on discussion--or else, in five years, the University will again reach a point of needing to make a decision without having considered the issues.

The President agreed that the change should not be mechanical but rather one made in conjunction with decisions about delivery of educational opportunities (e.g., the University has many commuter students and different clienteles); one structure may not serve everyone well.

The major reasons for not making the change, the President summarized, are faculty workload (the need to rewrite EVERY course offered), cost (the educational benefits of the expenditure are not, at this point, clearly defined), the need for a fundamental look at curriculum and pedagogy (which would likely be side-tracked by a calendar change), and the proposition that a calendar change should be informed by the consideration of curriculum and pedagogy in the context of strategic planning.

Professor Bognanno expressed relief at the decision and thanked the President for joining the meeting.

2. Protocol, Administrative Response to Senate Actions

Professor Bognanno next turned the attention of the Committee to the protocol on administrative responses to Senate actions and outlined the events which led to its drafting. About a year ago, he related, he looked at Senate actions for the previous 3 - 4 years and realized that the status of many of them was unclear. The protocol is intended to ensure that when the Senate acts, the administration will respond in some fashion.

What if a president declines to respond in any meaningful way to the "Question to the President" that would automatically appear on the Senate docket if the administration has not responded to a Senate action within 90 days? Presumably the President will indicate what the administration does not like in the measure, Professor Bognanno said, and will invite renegotiation or resubmission of the document. It may also be that there has been insufficient time to deal with the Senate action, or that it is being worked on. There are no sanctions in the protocol; if a president were to say the action will not be accepted or implemented, there is no (and cannot be any) provision REQUIRING the President to implement a Senate

action. The Senate constitution does provide that when the President and Senate are at odds, the Senate can appeal to the Board of Regents.

Professor Bognanno cautioned, in response to several questions about what to do if the Senate received an unsatisfactory answer from a president, that any reasonable person is going to respond to a question from the Senate. There are many things the administration might be doing in response to Senate action and there is no need to try to itemize them. Another Committee member urged that the protocol be left as is; it would serve no point to try to push the matter. Yet another individual pointed out that there are annual reviews of the President; if the administration's response to Senate actions were an issue, presumably it would come up in the review.

After a few editorial amendments were suggested and agreed upon, the Committee voted without dissent to place the protocol on the docket of the Senate.

3. Student Senate Consultative Committee Matters

Ms. Tolbert next asked if the Committee would consider a minor change to the Senate constitution permitting the removal of students from committees if a student missed two meetings (rather than two consecutive meetings). A specific proposal outlining the change was to have been prepared for the meeting but was not ready; the Committee agreed to take up the proposal at its meeting of February 4.

Ms. Tolbert also asked if the Committee would hear from a student, Erik Jensen, about the disposition of a resolution on biotechnology, a resolution that was referred last year to the Committee on Social Concerns but that has not been dealt with. Following brief discussion, Professor Bognanno said he would meet with Mr. Jensen and then contact the Committee on Social Concerns to ask that it follow up on the Senate action.

4. Protocol on Senate Committee Involvement in Central Administrator Searches

Professor Bognanno next asked the Committee to consider the protocol on searches that had been distributed with the agenda. The only unresolved point, he said, was whether or not student alternates to search committees should be allowed.

After discussion, the Committee agreed that this issue was unrelated to the protocol (Senate COMMITTEE involvement in searches) and more appropriately an issue of how search committees are constituted. Faculty members of the Committee, however, were sympathetic to the problems confronted by student members of search committees--especially if there is only one student on the search committee--and urged that the matter be pursued with the administration.

The Committee then agreed without dissent to place the protocol on the docket of the Senate.

5. Revised Grievance Policy

Professor Bognanno then turned to the revised draft grievance procedures. He told the Committee that the grievance review committee has been in more-or-less continuous session since it was appointed--it has held perhaps 20 meetings--and has talked to a lot of people. The current draft is very different from

the previous one, primarily as a result of presenting the earlier draft to the Senate and to many others around the University. He would, he said, like to have the draft acted on at the February 18 Senate meeting.

The grievance policy is all-inclusive, he pointed out--it includes faculty, civil service staff, P&A staff, and student employees. The only employees not included are Hospital staff and employees covered by a collective bargaining contract.

There will be three motions before the Senate with respect to the grievance procedures:

-- First, the procedures themselves.

-- Second, statement (not yet prepared) that academic grievances involving students are left to the colleges and, therefore, each college must have in place processes to deal with academic grievances, and must establish them by July 1, 1993.

-- Third, another statement not yet prepared concerning an employee advocate office. The grievance procedure committee favors such an office; the President's Cabinet is reluctant to pay people to advocate actions against them--and, Professor Bognanno reported, the Cabinet has been clear on this point all along. An alternative now being discussed would be provision of an office, and perhaps some supplies; there would be a staff person to answer questions and to refer people to volunteer advocates. The issues involved in this proposal will be discussed next week.

In the hour-long discussion that followed, several issues were raised.

-- The student ombuds service would not be affected at all by this grievance procedure.

-- The procedures do not preclude anyone from going straight to court, if they wish, rather than relying on the procedures first (they are not a contract, except at the Phase IV hearings, so it is expected that the courts would not require they be used to exhaust internal remedies prior to litigation). It is only at Phase IV, when one decides to accept binding arbitration, that one must sign a waiver agreeing not to sue if the decision is adverse.

-- In Phase IV, the arbitrator comes from outside the University.

-- The scope of what may be grieved includes rules, regulations, policies, and practices concerning the terms of the individual's employment contract, including the grievance procedure itself; the procedures do permit a class action. Discretionary acts are exempt (pay decisions, evaluations), although one can grieve if the appropriate rules, policies, and so on were allegedly inappropriately applied (employer abuse of discretion).

-- Promotion and tenure cases would continue to be heard by the Senate Judicial Committee

-- Student academic claims not related to employment are not covered. If an employee is found guilty and disciplined, under the provisions of other groups (e.g., the Student

Conduct Code, the policy on sexual harassment), the discipline may be grieved under these procedures.

-- There will likely be cases where the question of jurisdiction is arguable (e.g., a graduate assistant terminated because of "whistleblowing"--would the case fall under the academic misconduct policy or the grievance policy? What about the graduate student terminated because of alleged failure to make progress to a degree?) Initially, the University Grievance Officer would make a jurisdictional determination; if contested, final authority for jurisdictional issues rests with the Senior Vice President for Academic Affairs (which office already possesses that authority). Some would like the jurisdictional decision of the Senior Vice President to be grievable; the trade-off becomes complexity versus quick justice. If one is unwilling to trust the Senior Vice President, then the status quo is also unacceptable. Everyone, interjected one Committee member, always wants to keep every option open in the event of an unfavorable decision, which results in endless pursuits of remedies. The committee is willing to consider making the jurisdictional question subject to binding arbitration, Professor Bognanno said, but use of the forum will cost the employee money.

-- The presiding officer at a Phase III hearing panel (of three people) will be a member of the same employee class as the grievant, except for students, in which case a faculty member will preside. One student on the Committee suggested that students should also serve as hearing officers. The reasons for the proposal, Professor Bognanno said, include training, longevity, maturity, and possible conflicts for students.

-- One of the problems with the current provisions is that they can go on forever, so there have been (liberal) time provisions established, and based on workdays, not calendar days.

-- Another problem with the current procedures is that one can constantly challenge proceedings on technical grounds. In the proposed procedures, the employer may not discuss procedural issues until Phase III; at Phases I and II, only the merits may be addressed. Professor Bognanno agreed that the language establishing this procedure could be strengthened.

-- The Phase I hearing includes only the University Grievance Officer, the grievant, and the respondent; at Phase II, the respondent's supervisor is included and, if the grievant wishes, an advocate.

-- The Phase III hearing is evidentiary and requires a written decision.

-- Disputes about discovery are very complicated. Under existing procedures, if the employee needs data to make the case but the employer will not provide it, there can be a long dispute about discovery. (For example, a student employee making $5000 wants data on every student employee hired for the last five years; the University can object that the cost of providing the information is too great, given the grievance.) In these procedures, a discovery dispute is not a basis for delaying a hearing before a Phase III panel. The hearing officer makes a judgment: if in favor of the employer, it is on the merits with the

evidence in hand; if in favor of the employee, there is no longer any discovery dispute. If the employee loses, he or she may take the grievance plus the discovery dispute to arbitration.

-- In the Phase IV hearings, which are binding arbitration, the employer and employee can use the same representative they had in the Phase III hearings, or they may choose a new one. The arbitrator is an outside neutral, selected from list provided by an outside agency; the University and the grievant alternately strike names until only one is left. After a hearing, the decision is final and binding. If an employee does not wish to go to binding arbitration, he or she can go to court after the Phase III hearing.

-- The cost of arbitration, Professor Bognanno estimated, would be about $3000, half paid by the employee and half by the University. Why would anyone go through this procedure when all they might obtain, by the limits in the procedures themselves, is the status quo? The award limits in this policy are the norm, Professor Bognanno explained, and they would give an employee his/her job back plus back pay plus the employment record cleared; this sort of procedure covers about 25 million Americans. There is now a uniform code being purveyed by the American Bar Association to the states for use with white collar workers. It notes that initially one assumes the employer is acting in good faith and that there is a disagreement--and there is no basis for either side making money on the dispute. In Minnesota, all unionized faculty and other union employees pay one-half the cost of arbitration, which is the best buy one can get for justice. The alternative is to sue, which will cost a great deal more. In those instances where employer bad faith is suspected, Professor Bognanno said he has seen a few cases where punitive damages have been awarded, but this is very rare.

It would be possible to adopt a model whereby the "loser" would pay the full cost of arbitration if found to be at fault. The problem is that the employer has a relatively greater ability to pay for the gamble ability to pay. Thus, one seldom sees such a provision in similar policies. Furthermore, often the arbitration award is split, so one cannot say which side is a clear winner or loser. The general social preference supports splitting arbitration costs evenly. Given the assumption that the employee has lost the job, getting it back, plus lost pay, plus a clear record is no small gain. This procedure also permits, one Committee member noted, at least the possibility of re-entering one's job under somewhat amicable circumstances. It is for this reason that the Phase I hearing is private and informal; it is hoped that the dispute can be resolved without further ado. And if one feels that one has been SO trampled that the arbitration limits are unacceptable, one could litigate.

-- Minnesota would be the first university in the country to adopt a widely-applicable policy of binding arbitration as a form of alternative dispute resolution; it has for decades declined to accept it, so this is a considerable change.

Graduate and professional students, Professor Bognanno was told, and will need more time to study this proposal. Graduate and professional students were not represented on the committee that developed the procedures and must have time to consider them. Professor Bognanno acknowledged the concern and said he is meeting with the Council of Graduate Students next week to go through the

proposal; he agreed to try to meet the concerns of the students.

The meeting adjourned at 3:10.

-- Gary Engstrand