

Minutes*

Senate Committee on Faculty Affairs
Tuesday, April 2, 2002
3:07 – 5:00
238A Morrill Hall

Present: Richard Goldstein (chair), Josef Altholz, Carole Bland, A. Saari Csallany, Daniel Feeney, William Garrard, Roland Guyotte (by telephone), Nan Kalke, Cleon Melsa, Harry Savage, Wade Savage, George Seltzer, Thomas Walsh, Carol Wells, Timothy Wiedmann

Absent: Kent Bales, Carol Carrier, Neil Graf, Darwin Hendel, Roberta Humphreys, Robert Jones

Guests: Professor Fred Morrison; Ms. Betty Hackett (Student Judicial Affairs); Associate General Counsel William Donohue

[In these minutes: (1) grievance policy and emeriti faculty; (2) possible changes in insurance coverage; (3) interviews of faculty who have left the University for another academic institution; (4) issues of student conduct and harassment of female faculty; (5) Tenure Subcommittee statements on promotion and on misconduct investigation timelines; (6) insurance and faculty liability (e.g., automobile); (7) an extra meeting]

1. Grievance Policy and Emeriti Faculty

Professor Goldstein convened the meeting at 3:07 and welcomed Professor Morrison to discuss the proposed language in the grievance policy covering emeriti faculty. Professor Goldstein recalled that Vice President Carrier had said that Professor Morrison was happy with the new language.

Professor Morrison said that was not the right word. He explained the background of the issue to the Committee. Originally the grievance policy did not cover any grievances by emeriti faculty; any disputes would go to arbitration. The Grievance Review Committee thought emeriti faculty should be included in the policy. At the same time those issues were being aired, this Committee promulgated the Emeriti Bill of Rights, which includes an informal dispute resolution mechanism but does not involve the University Grievance Office. The Office of the General Counsel believed that the Emeriti Bill of Rights also removed emeriti faculty from the grievance policy.

The deans do not want emeriti faculty included in the grievance policy; they worry that emeriti faculty will file too many grievances and quibble over a lot of things.

There is discussion about several matters that emeriti faculty could grieve under the grievance policy, and the President has agreed. There is no disagreement that there could be a grievance about post-retirement employment and about any WRITTEN agreement that pertained to a faculty member's retirement.

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Then there was language added to the policy that provides emeriti faculty may grieve "if a written contractual obligation executed during the employment period pursuant to a valid delegation of authority is violated after the employment terminates; provided, however, that the remedy in such a case will be limited to a financial remedy." Professor Morrison said he had no problem with the language EXCEPT that referring to "a valid delegation of authority." That language was inserted by the Office of the General Counsel and refers to the delegation of authority document from the Board of Regents, which says who in the University can make promises. The document is not yet completed, but the General Counsel wants the Committee to agree to it in advance.

One could question whether a dean had the authority to commit to provide office space to emeriti faculty, and that would require a separate proceeding to determine the dean's authority, Professor Morrison said. That is where the argument now stands, over "valid delegation of authority." If a department secretary writes a letter promising a corner office and secretarial support to an emeritus faculty member, such promises would not be binding on the University, but if a dean writes such a letter, one must be able to presume he or she is acting on behalf of the University. "Valid delegation of authority" takes these disputes into arcane language and he would like to get rid of it.

There is a meeting next week to discuss these issues; Professor Morrison said he understood the Committee's position, which is to make the provisions as fulsome as possible.

Professor Goldstein said that person who assigns office space will be a department head or dean, and their promises should be binding. He said that the remedy should not be limited to a financial remedy; if there was agreement on an office, the department should not be able to pay the individual money instead. The grievance policy does not provide for dollar amounts, Professor Morrison observed, but calls for a specific remedy; in this case, however, it calls for dollars and not a specific remedy. Some emeriti faculty want to continue their research, advise graduate students, and maintain a lab if they have support; they should be able to do so.

It would be helpful to have clarity on who has authority, Professor Bland observed. Professor Morrison agreed; there have been problems on this point in the past. But what this language says is that "something was offered by someone who did not have the authority to do so, you relied on the offer, you had no reason to know the person did not have the authority, so we will not hear your complaint," rather than "let's find a remedy."

2. Insurance Issues

Professor Morrison turned next to issues arising from his role as chair of the Benefits Advisory Committee (BAC). The BAC has received proposals for dental insurance and retiree health insurance; there is good news, but there will also be questions on which this Committee should provide advice before final decisions are made.

The dental network can be expanded, at a cost, but they have found the money. The bids on life insurance are better than the current costs, and if the University is willing to introduce a phase-down at ages 65, 70, and 75, it can save a lot more money. Those funds could be used to pay for better dental coverage. In his view, Professor Morrison said, life insurance is for younger people; those who are his age and older should not carry a lot of it. This insurance is provided by the University, and can create a perverse incentive to stay on the payroll in order to retain the life insurance; to phase it down would

remove that incentive and provide funds to improve dental coverage. The phase-down is specifically permitted by the age discrimination law and a formula is used. Virtually all companies phase down life insurance. One also receives Social Security at 65, which more than makes up for the life insurance, Professor Altholz observed.

There is another piece that relates to life insurance, Professor Morrison told the Committee. The University offers optional life insurance for which employees can sign up (without a health exam when they are young, with an exam when they are older). There is also a provision put in by the state--incomprehensible, in his view--that if one carries the optional life insurance to their last five years of employment, he or she receives a paid-up policy of 50% of the value that the employee has for the rest of his or her life. The premiums for the optional coverage go up astronomically as people get older but some people do pay them.

The BAC has been told that the premiums for the optional life insurance are too high and could be reduced by 25%. They could be reduced by an additional 36% if the paid-up policy is eliminated. The question, Professor Morrison said, is whether people should be rewarded for sticking with the optional insurance for a long time (which few do) or if the premiums for everyone should be cut significantly.

The paid-up policy is an element of the state plan, Professor Morrison affirmed, but the University is moving out of that plan. The BAC asked what it would cost to replicate the state plan and was told of the 25% reduction, and of the additional 36% reduction if the paid-up plan were dropped.

Professor Goldstein said this is a "crazy plan" but at the same time it would be wrong to take it away from people who have been told they would have it. Professor Morrison agreed and said it could be phased out over the next five years or so.

Will the present health plans stay the same for a year, Professor Goldstein asked? They will remain the same probably for three years with some minor tweaking, Professor Morrison said. There is an option to renew in five years. The number of participants in Definity was the smallest, Professor Goldstein noted; can that plan be tweaked to attract more participants? It can be, Professor Morrison said; he himself has it and has been asked by many people how it works.

Professor Morrison was told of problems with health plans that had been mentioned at the most recent Faculty Consultative Committee meeting, and in particular with Definity not paying. Professor Morrison said they were aware of that problem and that it is being addressed. Definity was six weeks behind in paying bills; it is now down to four weeks.

Professor Altholz suggested that the provisions for people who are out of state for a period need to be tweaked. Professor Goldstein added that the provisions about the order in which one can take money out of special accounts (the medical account provided by the University for Definity and an individual's optional medical reimbursement account); the requirement that one take money from the Definity medical account first makes Definity less attractive, because then there may be unused money left over in the reimbursement account that is lost, whereas if the reimbursement account can be used first, the University medical account can be rolled over to the following year.

Professor Goldstein thanked Professor Morrison for joining the meeting.

3. Exit Interviews

Professor Bland next distributed copies of a draft motion concerning interviews to be conducted with faculty members who leave the University to go to other academic institutions. She recalled that she had been asked to draft such a motion after presenting the results of the exit interviews in the report from the Faculty Development Working Group at an earlier meeting. The results of those interviews were so interesting that they should be done regularly, Professor Goldstein said; one question is whether they should be conducted while the faculty member is still at Minnesota (but leaving), or when they have left and have some distance.

The motion does not specify the method, Professor Bland said. There was difficulty with some colleges in even obtaining the addresses of the faculty who had left. If the Faculty Senate were to ask for such information, that would be a help.

The Committee voted unanimously in favor of putting the motion on the Faculty Senate docket.

Professor Bland also reported that she had presented the preliminary results of the Working Group report to the Senate Research Committee and had received a number of useful suggestions. The final report should be ready in June.

4. Student Conduct Issues

Professor Goldstein welcomed to the meeting Betty Hackett, Director of Student Judicial Affairs and Director of the Office for Student Academic Integrity, and commented that the Committee had heard about student harassment of women faculty members and wished to know how it can be addressed.

Ms. Hackett said that she had been informed of the Committee's interest by Vice Provost Robert Jones; she reviewed what currently happens at the University.

The Student Conduct Code, which sets out standards enforceable against students, is currently being reviewed. Among its provisions is one that prohibits disorderly conduct on campus, although there is an inclination to have a specific provision about classroom conduct. The current draft reads (as part of list of behaviors for which students may have discipline enforced against them) "Disruptive Classroom Conduct: behavior that substantially or repeatedly interrupts or prohibits either the instructor's ability to teach or student learning. The classroom extends to any location where a student is engaged in work towards academic credit or other program based requirements and related activities." The language would explicitly extend the standard to instruction or learning settings beyond the campus, including on-line learning, labs, practicums, and so on.

In the meantime, Ms. Hackett said, disruptive classroom behavior can be handled under the Student Conduct Code. Since 1997 her office has provided a policy template that colleges can use to set up a mechanism to take administrative action. The template expects the instructor to take the first step, if the behavior is not too serious; there may be instances when the behavior is so serious that her office as well as the police are contacted because of a threat to people or property.

Many problems arise because students are unschooled in academic life; they do not know how to argue in an academic setting, when to yield, that they should not grandstand. When there is an incident,

faculty or departments can consult with her office and develop a strategy to deal with it. Ultimately, a student can be "disenrolled," but it is also possible to switch classes if circumstances permit.

Ms. Hackett said her office wants to know about disruptive behavior, even if it is expertly addressed in the event of future difficulties with the same student. Some behavior is without malice; it can be aberrant, reflecting the distressed life of a student. Some behavior, however, is with malice and mean-spirited.

People who receive offensive emails should call 5-0006 on the Twin Cities campus; that is the computer security number. The Office of Information Technology can authenticate where messages originate, as some students can forge headers and the like. When warranted OIT can close accounts and require students to come in; this is one reason to encourage faculty and staff to use the X.500 account, because it is difficult for OIT to trace communications from external Internet Service Providers.

The policy on sexual harassment, Ms. Hackett said, does not always translate well to student life, but action can be taken under its provisions if student actions are based on gender.

Beyond changes in the Student Conduct Code, Ms. Hackett said her office intends to produce a brochure on classroom management that provides clear advice on how to respond to a full range of classroom conduct concerns, threats, for example, and how to maintain civility in the classroom. The Center for Teaching and Learning Services also provides information and assistance to faculty.

Where is there language that covers disruptive classroom conduct, Professor Savage asked? Ms. Hackett said it is covered in part of the Code that enumerates the standards for which students can be held accountable:

5. DISORDERLY CONDUCT ON CAMPUS. Threats to, physical abuse of, or harassment which threatens to or endangers the health, safety, or welfare of a member of the University community; breach of the peace; physical assaulting another; fighting; obstructing or disrupting teaching, research, administrative, and public service functions; obstructing or disrupting disciplinary procedures or authorized University activities; vandalism. (The full code can be found at <http://www.sja.umn.edu/conduct.html>)

The committee reviewing the Code is inclined to retain this language but add the language applying specifically to classrooms. The sanctions which the Code permits range from a warning to expulsion from the University.

It would be nice if all students would receive a message, perhaps once per year, about respecting the rights of others irrespective of race, gender, and so on, and that also pointed out that respect includes such things as not sending obscene or unwanted emails, Professor Goldstein said. Professor Altholz said that other statements are required on syllabi; adding one more about civility and respect would not hurt. A statement should come from the University, not the individual instructor, Professor Goldstein suggested. Or students could be given a copy of the Student Conduct Code, Professor Altholz responded. The President could send a welcome message that included a statement on respecting the rights of others, Professor Goldstein maintained.

The group working on the Code would welcome suggestions from this Committee, Ms. Hackett said.

Do these incidents happen a lot, Professor Seltzer asked? Her office may only deal with a small percentage of students who generate difficulties. Ms. Hackett said. There is wide variation in behavioral dispositions, she said; some is to "get your goat," some is because students are unpracticed in behavior in an academic setting, some is students trying to get attention. The University can have a lot of policies but the best thing to do is to talk with students about expectations and what is happening for the instructor and the class when a student misbehaves--and it may be necessary to clarify who has authority.

Ms. Hackett said she will come to any department or office and will join sessions with students.

Fall Semester 2001 was very difficult for many students and a good deal of classroom disruption was reported to her office.

Professor Wiedmann noted that the College of Pharmacy has a code of conduct; peer pressure can be more effective than an instructor or administrator doing something. Pharmacy also has an honor code, Ms. Hackett observed; the felt affinity between students creates effective peer pressure that many students may not feel when they attend the University. She said she often must explain to students why behavior that is acceptable at a mall or elsewhere is not acceptable at the University and that it is important to have a respectful environment for learning and teaching.

Mr. Savage inquired if a student would be censured if he or she is inattentive in class, tired perhaps from partying too late the night before. He also asked if there is a corresponding faculty/staff code of conduct (such as not using drugs or coming to class under the influence of alcohol, something for which they might be tested in the future).

One of the specific problems that led to this discussion, it was noted, was the appearance of obscene comments on teaching evaluation forms for women faculty. It also includes sending pornographic material, Professor Goldstein said. He added that it is not easy to ignore these messages; he has been told of them by women colleagues and he respects their judgment.

Does not the department head have the right to excise such comments, Professor Guyotte asked? In some departments the department head does not receive the comments; they are provided directly to the faculty member. There is a wide variety in practice on how the comments from the evaluation forms are distributed. This is something the subcommittee on teaching evaluation should address, Professor Goldstein said.

The language of the Code should have more body and mention more examples, Professor Savage suggested, so it calls attention to the behavior that is prohibited. It should cover all interactions with faculty, Professor Goldstein added. What about anonymous actions, Professor Csallany asked? If students are told often enough to be respectful, the message will sink in, Professor Goldstein said; some Committee members expressed doubt.

Why should an instructor have to put up with an environment that contains offensive messages, Professor Wiedmann asked? Why should women have to put with harassment in evaluation? It is said that the evaluations are anonymous; cannot that change? And if so, why not? The University has an

obligation to protect its employees from harassment, even if it means students can be identified on evaluations. It is possible to have a number on the forms so they are anonymous to the instructor but not to the system. This requires more than just educating the instructor.

Professor Goldstein said his point is about educating students. Professor Walsh doubted this would be effective. Ms. Hackett said that she has spoken with the Council of Undergraduate Deans, who see a coarsening of society overall, but they agree that the effort to instill civility and respectfulness is worth the effort. It is necessary to remind students what they are at the University for and that behaviors acceptable elsewhere are not acceptable here.

In response to a question about possible increased harassment of Arab or Middle Eastern students, Ms. Hackett said she would not know the extent because she is involved only when a specific student is involved and identified as responsible.

Her involvement in events is after the fact, Professor Goldstein said; students need to be told before the fact and any message should be short. Professor Walsh said the reason there is a syllabus so that instructors can say "I told you so." It is hard to do that about behavior if the codes are buried in some bureaucratic language. There must be a point at which something is said and at which students can be told that they cannot possibly have overlooked it. Ms. Kalke commented that she does put it in the syllabus for her course.

Professor Savage said that there is a culture of permissiveness. His department has had few problems but did have a disruptive student who a young faculty member did not know how to deal with. When the behavior was repeated, he said he was astonished that the faculty member did not go to the chair. He said he is stunned by the attitude that this is a faculty problem; it is something that should be dealt with from the top, by a dean or chair. Students should be told this behavior will not be tolerated and it is the chair's responsibility to see that it does not happen.

Should the Committee consider a recommendation to the effect that the institution does not tolerate disrespectful behavior, Professor Savage asked? Or recommend a rule that the syllabus should include language about conduct. Professor Altholz said that there is already a requirement for language about sexual harassment and plagiarism, which, he fears, only alerts students to what they might not have thought of on their own.

Professor Goldstein said he would bring this up with the chairs of the Educational Policy Committee and the Faculty Consultative Committee and consider a brief statement to students.

5. Tenure Subcommittee Matters

Professor Goldstein turned next to Professor Garrard for a report from the Tenure Subcommittee.

The Subcommittee is working on several things, Professor Garrard reported, and has prepared two recommendations for the Committee. First, there was a question about the timelines in academic misconduct investigations; the Subcommittee adopted the following statement:

The Tenure Subcommittee was asked by the Faculty Consultative Committee (FCC) whether the timelines for allegations of academic misconduct are appropriate. The question was

prompted by what appeared to unreasonably long delays in completing various steps in one particular case.

The Tenure Subcommittee met with Professor George Sheets, Chair of the Senate Judicial Committee, to discuss the specific case and the guidelines generally. In the judgment of the Subcommittee, based on Professor Sheets' comments, the timelines for investigations of academic misconduct appear to be acceptable.

In the specific case, the internal guidelines were followed, although there was a lot of back-and-forth about the statement of the case and jurisdiction. It may be that the University administration was too fastidious in seeking to identify rules that were broken, but no one was denied due process. We understand the administration was informed that it is inappropriate to use tactics that may stop an issue from being heard through the normal process.

The Committee agreed that the statement should be forwarded to the Faculty Consultative Committee.

The second statement approved by the Subcommittee was as follows:

The Tenure Subcommittee was asked by the Faculty Consultative Committee (FCC) to respond to a question about the standards that should be used by a department in making a decision about promoting an associate professor to full professor.

The Tenure Subcommittee believes that the standards and process used to make a decision about promotion to full professor should be consistent with the unit's statement required by Section 7.12 of the "Regulations Concerning Faculty Tenure."

The Subcommittee will recommend appropriate changes or clarifications to the Regulations Concerning Faculty Tenure or applicable administrative policy in the near future.

The question was whether it can or should be easier to promote a faculty member from associate to full professor than to promote from assistant to associate professor (with tenure). The feeling of the Subcommittee is that the promotion should be consistent with department standards, and while it does not propose to dictate how the unit applies the standards, it believes that the promotion to full professor should be stringent because it is the highest faculty rank over which the faculty have any control in awarding.

In one sense, the decision to promote to associate professor is more important because it also carries the grant of tenure, but full professor is a higher title, so it should not be easier to obtain, Professor Goldstein said. It is a lot of work to evaluate a candidate for full professor, Professor Garrard said, and while he would like to be able to recommend a reduction in this kind of workload, the Subcommittee cannot do so in this case.

Ms. Kalke recalled that Professor Bland had raised a question about what happens if the department standards change. That comes up in post-tenure review, Professor Goldstein said. Faculty can choose what standard they will be judged by--the one under which they were hired or whatever is the current statement of the department. Does the inventive drive or creativity drop when a faculty member is

given tenure, Mr. Savage asked? It is more a case of feeling outmoded or not active in fields the department administration feels are important, Professor Goldstein said; it is not that they are less active.

In his view, this came down to academic freedom, Professor Feeney said; a department cannot tell a faculty member what to do research on. If that does happen, it should be reported to a higher authority--beyond the chair or dean.

The Committee discussed whether the department 7.12 statements speak to standards for promotion and tenure. They are supposed to, and there was a group, including the Tenure Subcommittee, that reviewed all of the statements. Professor Goldstein said there also needed to be minimum standards across colleges and departments; the Provost and the Dean of the Graduate School used to be the ones who maintained those minimum standards. The 7.12 statement is supposed to be specific, Professor Feeney said, and the Tenure Subcommittee said it should be applied equally in promotion from assistant to associate professor and from associate to full professor.

The Committee voted unanimously to accept the statement and forward it to the Faculty Consultative Committee. It was suggested that an Interpretation to the tenure code be drafted.

Professor Garrard said there will be a third statement coming from the Subcommittee about who should have a voice in the hiring and promotion of tenured and tenure-track faculty. In some cases, non-tenured/tenure-track faculty have been involved. The Subcommittee is working on a statement, which has proven very difficult to write in such a way that it does not interfere with acceptable search procedures. The concern is that others (not tenured/tenure-track faculty) are having a strong impact on hiring of tenure-track and tenured faculty. It is the view of the Subcommittee that that decision should be made by the tenured and tenure-track faculty. This is related to larger issues of governance as the number of non-tenured/tenure-track faculty increases and there is an overlap in roles.

Professor Goldstein thanked Professor Garrard for his report.

6. Insurance and Faculty Liability

Professor Goldstein welcomed next Mr. Donohue from the General Counsel's office to talk about faculty liability and use of personal automobiles for University work. Mr. Donohue said he was pinch-hitting for Mr. Cary Jones, who was unable to attend. Not many of these cases come to the General Counsel's office, he said, but he understands the concern about auto accidents if someone is doing the University's business when the accident occurs.

Professor Feeney said the example is the assistant professor driving a dean candidate around the area; if the dean candidate is killed, there will likely be a lawsuit. He asked the question about University liability during a dean search and was told that the University had no liability if the person was driving their own car. That is not conducive to collegial behavior, he observed. And what about when a faculty member entertains a dean candidate in his or her home and the furnace blows up? If people are doing the University's bidding, the liability could have negative ramifications if people understand their risk.

In terms of automobiles, there are two kinds, Mr. Donohue said: University cars and personal cars. University cars are covered by a University standard automobile liability insurance policy; property damage is also covered. Your personal car is covered by your insurance, he said, even if doing University

business. If there is an accident while you are doing University business, your personal insurance is primary. To the extent your insurance does not cover the liability (damages, lawsuits, etc.), the University coverage is secondary and provides insurance protection for the employee. There is no personal liability for one's own net worth, Professor Goldstein asked? There is not, Mr. Donohue affirmed.

What if one rents a car on University business and does not take certain insurance policies (on recommendation of the University); does the University cover an accident, Professor Goldstein asked? It does, Mr. Donohue said, after one's personal insurance coverage.

Mr. Donohue said there were two principles involved. First, personal policies are primary and University coverage is secondary. Second, when someone drives their own car on University business, they are reimbursed for mileage, which is intended to cover gas, mileage, AND INSURANCE. Mr. Jones, prior to this meeting, had inquired of the State, 3M, and a large insurance agency what they do; in all cases, the personal policies provide the primary coverage.

These are nearly always unreported activities, Professor Altholz commented; they are customary academic procedures (such as driving candidates around); if one uses up his or her own policy, can they still fall back on the University even if the activity was not recorded ahead of time? They can, Mr. Donohue said, if they are on legitimate University business. If the University is notified, and it is required, it will provide an attorney or work with the attorney provided by the insurance company.

Is there a limit on the University's policy, Professor Walsh asked? \$1 million per occurrence, Mr. Donohue said. What happens with a \$30-million case, Professor Walsh asked? The University has a statutory limit which is not allowed to be exceeded. That limit has been held to be constitutional by the courts.

And what about the furnace blowing up or someone slipping on ice, Professor Goldstein asked? Again, Mr. Donohue said, he believed the homeowner's policy is primary and the University provides secondary coverage. If one is doing University business, he or she should be covered. Car insurance is quirky, Mr. Donohue commented; the state requires one have it and the insurance follows the car.

In response to a question from Professor Csallany, Mr. Donohue said one does not have to request mileage reimbursement to be covered by the University in the event of a car accident.

The coverage extends to what is customary, Professor Altholz asked? If it is in the course and scope of one's work; whatever the dean or department head would see as normal, Mr. Donohue said.

What about libel protection, Professor Altholz asked? What if one publishes something and is sued for libel, will the University defend the faculty member, Mr. Donohue asked? The University would defend and indemnify a libel claim arising from a faculty member's work on behalf of the University. The General Counsel's office is occasionally asked if the University would cover the activities of a faculty member in a consulting role; he said the General Counsel will try to help but faculty are largely on their own if problems arise with respect to their consulting.

Professor Feeney said the Committee should have a letter from the Office of the General Counsel that outlines what Mr. Donohue has told the Committee, so faculty understand that in the case of a

disaster in their home or auto they can fall back on the University after their own insurance has been exhausted. He said he has been telling faculty members to get a University car and not drive their own, in order to stay out of harm's way. The information from Mr. Donohue was very helpful.

Mr. Donohue said that he and Mr. Jones could prepare a letter. For people to use their own vehicles saves the University money, Professor Goldstein pointed out; Mr. Donohue agreed.

Professor Goldstein thanked Mr. Donohue for the information.

7. Extra Meeting

The Committee agreed it would have an extra meeting, May 14, noon-1:30.

Professor Goldstein adjourned the meeting at 5:10.

-- Gary Engstrand

University of Minnesota