

Minutes*

**Senate Committee on Faculty Affairs
Tuesday, October 14, 2003
2:15 – 4:00
238A Morrill Hall**

Present: John Fossum (chair), F. R. P. Akehurst, Carole Bland, Carol Carrier, Terence Collins, Jesse Daniels, Janet Ericksen, Patricia Frazier, Richard Goldstein, Darwin Hendel, Robert Jones, Theodor Litman, Dan Lim, Wade Savage, Charles Stech, Larry Wallace, Timothy Wiedmann, Aks Zaheer

Absent: A. Saari Csallany, Claudia Parliament, Kathleen Sellew

Guests: Jackie Singer (Employee Benefits)

[In these minutes: (1) faculty retirement plan waiting period and salary increments; (2) 03-04 salary increases; (3) privacy policy]

1. Faculty Retirement Plan Waiting Period & Salary Increments

Professor Fossum convened the meeting at 2:20, reviewed the agenda, and turned to Ms. Singer to report on waivers of the two-year waiting period for probationary faculty.

Ms. Singer began by explaining that until the first part of 2003, individuals appointed at the level of professor or associate professor participated immediately in the Faculty Retirement Plan; assistant professors had a two-year waiting period and instructors had a three-year waiting period. This past spring, colleges were given the option of waiving the waiting period for assistant professors. This change arose from a concern that the waiting period was making it more difficult to recruit assistant professors. The deans were given 60 days to decide if they wished to grant the waiver; the decision will be made by each college on an annual basis, effective July 1 of each year for the following 12 months, and the decision applies to all assistant professors hired, whether tenure-track or multi-year.

Ms. Singer distributed copies of a table listing the colleges and campuses, which had elected the waiver, the number of new hires thus far in 2003-04, and the annual cost of the waiver to the department. There have been 56 hires thus far in the year, of whom 7 have been in colleges that elected the waiver; the total cost of the waivers to the departments has been approximately \$49,000. The colleges that elected NOT to grant the waivers are Biological Sciences, Education and Human Development, Liberal Arts, Veterinary Medicine, and Duluth; the remainder of colleges hiring tenure-track or multi-year contract assistant professors so far in fiscal year 2003-04 have elected the waiver.

To obtain the waiver, the assistant professor sends a form to his or her former employer, who indicates that the person was eligible for the retirement plan at that institution. Once the form is returned, the person participates immediately in the University's faculty retirement plan. Under the rule approved

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by the administration, assistant professors must have been in a plan at a prior employer to qualify for the waiver. Some of the 56 individuals hired as assistant professors may not have been eligible for the waiver, given this rule (e.g., the Carlson School grants the waivers and hired one new assistant professor--but the individual did not receive the waiver so must not have been eligible). Professor Fossum inquired if any individual was eligible but did not elect to join the program. Ms. Singer said she had not heard of anyone who fell in that category; those colleges with recruiting problems were probably excited to get the option. The one other possibility (in the case of the individual in the Carlson School, for example) is that the person cannot get the former employer to send the form back, Ms. Singer added.

Ms. Singer confirmed, in response to a question from Professor Bland, that only those individuals hired as tenure-track or multiple-year faculty qualify for the waiver; those hired on annually-renewable contracts do not.

If the college has elected the waiver and someone is hired with prior service, he or she qualifies, Professor Akehurst confirmed. What about an individual with prior service hired in a college that does not grant the waiver? That person does not get into the retirement plan until after the two-year waiting period, Ms. Singer said; the University's rule is not a service credit. What about the case of someone fresh out of graduate school who is a top prospect but who has not participated in a plan before, Professor Zaheer asked? If the new hire has not received employer contributions in a plan immediately preceding his or her employment at the University, it does not matter if the college has opted for the waiver; the person will still have to wait two years, Ms. Singer said.

Professor Fossum noted that the 7 waivers granted cost about \$50,000; presumably if all of the new hires had been granted waivers the cost would have been about \$400,000. Ms. Singer said she did not know but the range of salaries (which is the base for calculating the waiver cost) was \$39,000 to \$105,000. Those doing the hiring cover the cost, Professor Fossum said. But those units doing the most hiring did not elect the waiver, Professor Bland pointed out. And some colleges elected the waiver but did no hiring in the category, Ms. Singer added. Or they are hiring outside the class so they don't have to provide retirement benefits, Professor Bland said.

Professor Fossum said that something else that is important with respect to the retirement plan, for faculty in general, is the use of a salary increment and its implications for benefits. Ms. Singer said she did not know how they were used and did not understand them, but she could affirm that salary increments are included in the faculty retirement plan contributions and other benefits (e.g., long-term disability, life insurance, etc.).

There are two troubling things about the implementation of the policy for waiving the waiting period for the faculty retirement plan, Professor Fossum said. It is a substantially smaller initiative that the Committee was contemplating. First, the Committee felt it was not reasonable that faculty must wait two years; although the University is not covered by ERISA, it would never get away with this in the private sector. Second, he has been involved in recruiting faculty; the retirement plan is a competitive issue, even with new faculty; even with the initiative, however, there remain a lot of people waiting to get into the plan. At last count, there were 190 assistant professors waiting to enter the plan, Ms. Singer reported.

Why was the waiver policy narrowed, Professor Bland asked. Ms. Singer said she did not know; the plan was in the works when she came to the University. It may be that the University contribution is a

lot of money for departments. Drs. Cerra and Maziar signed off on the policy and they are the ones who ultimately made the decision about who would be eligible to be included. The two things that were changed--the option by college and the requirement of prior service--are big changes, Professor Bland said.

Professor Fossum distributed copies of spreadsheets illustrating the financial impact of the two-year waiting period, given certain assumptions about rates of return and salary increases. The difference between waiting two years and participating immediately is not trivial, he said.

Is it safe to say that the only reason the Committee recommendation (that the two-year waiting period for probationary faculty be dropped altogether) was altered was to save money, Professor Akehurst inquired? Eliminating the waiting period involved other considerations, Ms. Singer said. First, there are P&A employees in a similar situation. Even if the waiting period were dropped only for faculty, the cost would be about \$2 million per year; it is difficult to imagine the University could bring everyone into the plan this year, given the budget. The policy that was adopted allowed recruiting problems to be alleviated in the colleges that faced them. So the answer is yes, Professor Akehurst concluded; the decision was based on nothing but money.

Some departments PREFER to give the money to the faculty, Professor Goldstein said, and feel it belongs to the faculty member. The policy should allow departments that want to to grant waivers to faculty even without prior service. He said he thought that had been approved; whose rule is the current policy, he asked? It was a compromise position between nothing and the Committee recommendation, Dr. Carrier said. In the current financial situation it was not workable to eliminate the waiting period for everyone. The current policy narrows the option to those places where recruiting is a problem.

Is a waiting period common at research universities, Professor Frazier inquired? It is not, Dr. Carrier said; most universities allow faculty to participate in the retirement plan immediately. Some, however, have a vesting period, Ms. Singer said. They have looked at the catch-up period, which takes about 5-7 years; after that, the University's retirement benefit increases sharply compared to other plans. Once the break-even point is attained, the University's plan is better because of the contribution it makes. But base salaries are still below those of the other top 30 research universities, Professor Fossum observed, and the total compensation package reduces the difference but does not eliminate it.

What struck him about the waiting period, Professor Goldstein said, is that not having contributions the first two years is about the same as not having contributions the last seven years of employment. That is why the Committee pushed so hard; the change affects no one at this table, he pointed out.

Professor Goldstein wondered whether the numbers Professor Fossum provided might not provoke scrutiny because it appears the retirement plan may accumulate a lot of money for an individual. Professor Fossum responded that he would tell anyone concerned that the numbers represent assets owned by faculty, and these assets are at risk, while the state has no further obligation regarding their value once the contributions have been made, and thus assumes no risk in the retirement of the faculty plan, unlike its situation with state employees who are in a defined benefit plan. Recently, in a number of cases, legislatures have had to issue bonds to meet the obligations of defined benefit retirement plans for public employees due to lower-than-expected investment earnings, and state financial problems have

exacerbated the difficulties. With the University's plan, the faculty are bearing the risk--and the faculty collectively have certainly lost millions of dollars in the last few years.

Professor Fossum said he intended to revisit this issue later in the year. If so, Professor Collins said, the Committee should hear from departments that implemented the policy in a tight budget year--for example, were there hardships in the department as a result of the waiver and how was the waiver funded. As well as the effect on recruiting, Professor Fossum agreed. It would also be helpful to find out from candidates who did not come to the University if the waiting period for the retirement plan influenced their decision.

Professor Fossum next said to Vice President Carrier that while the Committee understands that benefit calculations include salary increments, it is interested in learning about increments, augmentation, and other pay arrangements and about their differences in derivation, permanence, and how the mix of pay arrangements is determined. The Committee would also like to know where the mixtures exist.

In general, Dr. Carrier said, a base salary is offered at the point of initial hire and labelled as base salary; it increases over the years with salary increases. In many units, a large part of the base salary is paid from state funds. Augmentations are largely used for administrative assignments, duties for a temporary time, and are determined locally. Augmentations can be removed when the individual no longer carries the administrative title. Benefits are tied to augmentations, Professor Fossum asked? They are, Dr. Carrier said.

Do salary increments stay in the base salary, Professor Savage asked? Dr. Carrier said she did not know how the term was being used. It is not common in the rest of the University outside the Academic Health Center. And it is also not used throughout the AHC, only in some units. Professor Bland said that in her experience, new faculty--whether clinicians or not--were being hired initially with a base salary plus an increment, which together equals the total salary. The increment is included in the calculation of all benefits, Ms. Singer said, except life insurance, which one buys in multiples of base salary.

In many cases an increment is tied to clinical income, Dr. Carrier said, and it can go up or down based on the clinic income. And that has an impact on other benefits, Professor Bland said. Can the administration take away an increment, Professor Goldstein asked? It can. So it is like a bonus, Professor Akehurst said. An increment is normally recurring and not linked directly to a salary. Increments are not part of base salary and are not subject to the same decision making criteria used for making base salary increases. The increment can be zero to some number, Professor Fossum said, and could be based on unit performance as well as individual performance. It is often based on clinical income, Dr. Carrier repeated, and proportion of clinic work that an individual performed.

Basing it on clinical income makes sense, Professor Bland said, but she said she did not know how it was used in other situations. An increment comes when one is doing what one normally does, Professor Wiedmann said, while an augmentation is given for doing something extra. And with the augmentation, Dr. Carrier said, one knows at the outset the amount, which will not be reduced. Professor Hendel said the use of the increment with clinical income is work-related; in other cases, it is not clear how it is used, except that the individual is not provided a base salary as high as it otherwise would be. It also provides a greater opportunity to reduce salaries, Professor Bland said.

The proportion of total salary that is an increment can be high, Professor Fossum asked? It can be, Dr. Carrier said, and the proportions vary with disciplines. It makes sense with clinical income and "provides flexibility" in other situations, Professor Bland said. Senate policy does not cover this, Professor Collins asked? Senate policy only requires that faculty participate in decisions about salaries, Professor Bland said. Professor Wiedmann said he would prefer to see all increments move in concert; if increments are set for individual faculty members, that is a problem. That is exactly what happens, Professor Bland said, and presumably in departments where this occurs, the faculty have agreed to it. What they likely have not discussed nor agreed to is how much of the initial salary is increment and how much is base.

Professor Fossum told the Committee that he had spoken last week with two members of the AHC faculty; there is some interest in looking into the issue of increments and related matters, which this Committee will do if asked, inasmuch as it did not cover that in its study of salaries last year.

2. 2003-04 Salaries

Vice President Carrier said that normally her office would do analyses of salary increases about now, and they will do so, but not yet because the data are not available. There were SOME salary increases delivered (e.g., individuals who were promoted, documented retention cases, a few other categories). There is also an annual look at faculty salaries compared to the top 30 research universities that is provided to the Board of Regents. Professor Fossum asked that she also report the year-to-year total payroll cost for faculty.

There has been a steady average annual attrition rate of about 6% for faculty, Dr. Carrier reported, a number that includes retirements, resignations, and so on. That might be different this spring, when the retirement incentive was offered. Ms. Singer said that 28 faculty members took advantage of the offer.

The Committee had a brief discussion with Vice President Carrier about the possibility of a strike by the clerical employees.

Professor Fossum thanked Dr. Carrier for joining the meeting, especially given all that is going on in Human Resources at the moment.

3. Privacy Policy

Professor Fossum recalled that the Committee has had an interest in privacy issues for the last several years; the Faculty Consultative Committee again asked it to consider a privacy policy. He distributed copies of the policy from Pennsylvania State University and commented that it seems complete, well-reasoned, and deals with electronic surveillance, computers, and so on, as well as non-electronic privacy. The aims explain what privacy rights exist and identifies exceptions. He said he would like discussion of the Penn State policy today, as a model for such a policy at Minnesota, and a vote at the next meeting so the Committee's actions can be reported to the Faculty Consultative Committee.

The Penn State policy reads as follows (caps indicate changes Penn State was adopting; the language the Penn State senate was deleting has been omitted from this version):

Introduction

With the rapid development of technology, it is important to define the position of the University on the use of video surveillance cameras in university spaces. The use of video surveillance plays a critical role in establishing security in public spaces and in apprehending individuals involved in criminal activity. Video surveillance can also inhibit academic freedom when it is employed in traditionally academic spaces such as classrooms, laboratories, or designated areas for assembly. Faculty Affairs, in consultation with University Legal Counsel and University Police Services, has developed the following revision of Policy AD 53 that details the University position on the privacy of its employees and students.

Rationale

The current AD 53 Privacy Policy establishes a reasonable expectation of privacy at the university and defines the process by which university authorities can initiate necessary actions to protect the security of the university and its employees and students. The revision below of AD 53 would make clear that other means of monitoring the activities of employees and students through such technologies as video and sound recording likewise may abridge privacy expectations and may not be utilized except when necessary to protect the security of the University and its employees and students. It is appropriate to extend this privacy policy to include the activity of video surveillance in order to more fully protect the academic freedom that is fundamental to the academic process in many university spaces.

PURPOSE:

To set forth the University's position regarding the privacy of its employees and students.

POLICY:

IN THE INTEREST OF PROMOTING ACADEMIC FREEDOM AND AN OPEN, COLLEGIAL ATMOSPHERE, this University recognizes its obligation not to infringe upon the REASONABLE PRIVACY EXPECTATIONS of its EMPLOYEES AND STUDENTS in their laboratories, CLASSROOMS, DESIGNATED MEETING AND CONFERENCE ROOMS, INDIVIDUALLY ASSIGNED OFFICES, and personal residences, or in relation to their personal papers, confidential records and effects, and in all communications by mail, telephone, and other electronic means, subject only to APPLICABLE STATE AND FEDERAL LAWS and University regulations.

In invoking the exception clause ("subject only to... LAWS AND University regulations"), the following principles apply:

A. Necessary Action - Exceptions to the privacy policy may be authorized only when reasonably necessary to protect the security of the University, its communications system, and the academic process, and when there is good reason to believe that the individual EMPLOYEE or student has violated law or University regulations. For example, if the computer security officer has GOOD reason to believe that a specific user of the University system is endangering the technical integrity of the system, he/she may authorize entry into the user's files for an investigation reasonably necessary to protect the security of the computer network for all users.

IN GENERAL, AUDIO RECORDING OR VIDEO SURVEILLANCE OF LABORATORIES, CLASSROOMS, DESIGNATED MEETING AND CONFERENCE ROOMS, INDIVIDUALLY ASSIGNED OFFICES, AND PERSONAL RESIDENCES SHALL NOT BE PERMITTED WITHOUT THE CONSENT OF THE EMPLOYEE OR STUDENT TO WHICH THE FACILITY IS ASSIGNED. Blanket searches of faculty offices or random monitoring of written or electronic communications shall not be acceptable.

B. CONSULTATION AND Authorization - THE EXCEPTION CLAUSE MAY BE INVOKED ONLY BY PERSONS WITH RESPONSIBILITY AND AUTHORITY FOR ADMINISTERING THE LAW OR REGULATIONS WITHIN THE UNIVERSITY (E.G., COMPUTER SECURITY OFFICER, UNIVERSITY POLICE) AND ONLY AFTER CONSULTATION WITH THE APPROPRIATE ADMINISTRATOR (E.G., DEAN OR UNIT HEAD).

C. Accountability – NORMALLY, IN ANY APPLICATION OF THE EXCEPTION CLAUSE THE AFFECTED INDIVIDUAL SHALL BE NOTIFIED IN ADVANCE, unless conditions necessitate immediate access OR NOTIFICATION WOULD COMPROMISE AN ON-GOING CRIMINAL INVESTIGATION. Records of any exception should be kept; THE RECORDS SHOULD BE made accessible to the affected individual, UNLESS SUCH ACCESS WOULD COMPROMISE AN ON-GOING CRIMINAL INVESTIGATION. INFORMATION COLLECTED SHOULD BE KEPT SECURE AND BE USED ONLY FOR THE INTENDED PURPOSE

Professor Hendel said that given the list of exclusions for surveillance, does that mean surveillance is acceptable in locations not on the list? Is that where it currently occurs? It makes sense to have surveillance in certain places, Professor Goldstein said, such as parking ramps, hallways (for preventing theft), and so on. In public-use spaces, Professor Fossum said.

How does this policy relate to the discussion the Committee had last year about the accessibility of computers used by public employees, Professor Bland asked? This provides that there will not be random searches and that computers ordinarily will be private. Can the Senate pass a policy that overrides state law, Professor Bland asked? It cannot, it was said; this policy sets out what THE UNIVERSITY will do.

Nothing in the policy says the legal process will be invoked, Professor Savage said, if files are going to be searched. There are quasi-legal provisions, that persons with responsibility for administering the law or regulations, but they can be invoked by anyone in authority. It would be preferable that legal action had to be taken--there had to be a request by the attorney general or the police. Anyone with authority to administer the law or University regulations can act, Professor Fossum said, and unless there are criminal proceedings involved, they must provide advance notice. Who are those people, Professor Savage asked? It will vary, Professor Fossum said; it could be a principal investigator or a police officer, for example. Or a department chair if he or she believed there is a security risk, Professor Bland said.

This policy seems weaker than what the Committee was striving for, Professor Savage said. Professor Wallace agreed. From the faculty standpoint, where are privacy rights with respect to willful, wanton searches of offices and labs? Labs are monitored frequently, for safety. Offices, however, have a lot of documents, some of which will be personal. Where does a faculty member have protection, he

asked? There isn't any protection, Professor Fossum said, and there cannot be a bright line; it will depend on individual situations.

There are a couple of points to keep in mind about the Penn State policy, Professor Fossum said. The first sentence indicates that the intent is to promote "academic freedom and an open, collegial atmosphere" and so the "University recognizes its obligation not to infringe upon the reasonable privacy expectations" of faculty, staff, and students. The policy does not set out a legal standard, Professor Fossum said; it is a set of expectations between faculty, students, and the administration. Second, audio and visual surveillance in labs is not done without consent; in the classroom, people would know ahead of time if there is to be surveillance.

It was also pointed out that Minnesota state law does not compel an affidavit; anyone can request information and, through the General Counsel's office, it generally must be provided. There has to be a documented reason, Professor Savage thought; there does not, he was told. What about personal items, Professor Zaheer asked? If one has ten years of research data, anyone can see much more than one might think, Professor Akehurst said, and he added that a University policy cannot override state law.

At the least the University should not aid in the implementation of state law, which this policy does, Professor Savage argued. Searches would not come up often, only in extreme cases, Professor Akehurst responded. And if they are conducted, they would have legal protection.

Why would this policy be developed by this Committee rather than adopted as Regents' policy, Professor Hendel asked? It was noted that a number of Regents' policies started in Senate committees.

Professor Savage said he was not sure why he and Professor Walsh started last year to work on a recommendation for a privacy policy, but most thought this policy was too weak and open-ended. He said he was not sure the Committee should develop a policy; the institution could then be complicit in violating the right to privacy if it gives department chairs or others the right to look at files. He also said he would like to see state law changed.

Are there incidents that led to presentation of the policy, Professor Bland asked? There were not.

Professor Savage said the Committee should be informed about how the state law is administered, something the Committee discussed last year.

Professor Akehurst said the policy was carefully worded and talks about reasonable expectations. The right to privacy is not in the U.S. Constitution, he said; it started out with a famous article written at the turn of the 19th Century by two authors, one of whom was the future Justice Louis Brandeis. The Penn State policy, he noted, does not say "right to privacy," it says reasonable privacy expectation. He cautioned the Committee about calling for a policy that would bar infringements on the right to privacy because there isn't such a right. There was a common-law right that the Minnesota Supreme Court adopted, and it may be that there are certain privacy rights that would affect this policy.

It would be helpful to know if other research universities have these kinds of policies, Professor Lim said. He also noted that at the Crookston campus there may be a particular problem with downloading music, because all students have computers, which might have implications for this policy. It may also be necessary to make students buy the computers, rather than rent them from the University,

to avoid liability. Professor Fossum said that in his judgment, if a student's actions exposed the University to liability, that would constitute an exception as covered by the policy.

Professor Fossum said he did not disagree with Professor Savage that the policy did not create what one might like, but state law leaves the University in a weak position. This policy lays out expectations about how people will behave and it provides greater notice than is provided in the law. He also indicated that the committee would return to the consideration of this policy in its first meeting in November.

Professor Fossum adjourned the meeting at 4:00.

-- Gary Engstrand

University of Minnesota