

Minutes*

**Senate Committee on Faculty Affairs
Tuesday, December 9, 2003
2:30 – 4:30
238A Morrill Hall**

Present: John Fossum (chair), F. R. P. Akehurst, Carol Carrier, Terence Collins, Jesse Daniels, Janet Ericksen, Patricia Frazier, Darwin Hendel, Robert Jones, Theodor Litman, Kathleen Sellev, Charles Stech, Larry Wallace, Timothy Wiedmann

Absent: Carole Bland, A. Saari Csallany, Richard Goldstein, Claudia Parliament, Wade Savage, Takeshi Yanagiura, Aks Zaheer

Guests: Julie Sweitzer (Director of Equal Opportunity and Affirmative Action)

[In these minutes: (1) Equal Opportunity office procedures; (2) policy on nepotism and consensual relationships; (3) report from the child care subcommittee; (4) other items of business]

1. Equal Opportunity Office Procedures

Professor Fossum convened the meeting at 2:15 and welcomed Julie Sweitzer, Director of Equal Opportunity and Affirmative Action. He noted that there had been discussion at the FCC retreat about dispute resolution procedures and in particular the procedures the EOAA office uses in investigations.

Ms. Sweitzer thanked the Committee for the opportunity to speak to it and noted that she has interacted with the Judicial Committee as well as with other committees in her current role, and when she was in the Office of the General Counsel. She made the point that the office she directs is EOAA, not EEOAA; EEO is the acronym for equal employment opportunity and her office deals with more than employment. They also, for example, deal with students, and the University's policies apply to students as well as employees.

Investigations are an important part of what her office does, Ms. Sweitzer said, but it is not all they do. They also prepare the University's affirmative action plan, both the numerical reporting as well as what the University will do to put the plan into effect. They also provide consultation on discrimination, a part of which may be an investigation. They see faculty, staff, and students in their office, both to provide them assistance and to learn about concerns. They are not an advocate for any individual or office, however; they are a neutral and their interest is in long-term equal opportunity at the University. When they reach the endpoint of an investigation, they want something that works for both the individual AND the long term and want to be reasonably sure the problem will not recur.

When they are presented with a situation, they have three ways to deal with it, Ms. Sweitzer explained. First, they can talk it through with the individuals (so those individuals can deal with the situation at their individual level, such as dealing with someone who tells jokes they do not like). This

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discussion can be a reality check for the individual. Second, at the other end of the range, they can conduct an investigation, collect documents, do interviews, and assess whether University equal opportunity policies have been violated. If they believe there was a violation, they provide the information to the administrator of the unit (her office has no power to take any action involving employees, she observed) and work on solutions with the unit.

The third option they have is a broad range of dispute resolution management tools--to provide individuals and units tools to deal with the situation--although sometimes disputes are never resolved completely. They often function as an ombuds office, Ms. Sweitzer said, and the majority of the people who come to her office do not want a formal investigation. Some do; some are just angry (they may want someone fired), but what they consistently want is the problem to stop and not start again. If someone comes to their door with a problem (which may not be discrimination), they look for a resolution that works, which usually involves gathering information and working with individuals in traditional mediation. They have tried a lot of approaches, some of which have been successful and some not. They do not force people to come together over a dispute; that can be harmful.

One common question they receive is whether someone could be found "guilty" without knowing that a complaint had been filed against him or her. They always talk with individuals, Ms. Sweitzer assured the Committee, and often frame the complaint as against the University because the problem may arise due to long practices and group behavior in a unit; it is not a problem with one individual. These are also more difficult situations to deal with. They will talk with the individuals named in a complaint as well as with the administrator over the unit; they also provide the names of offices that people can go to for help, free and confidential resources.

When they are told of a problem, the University is officially on notice (the same is true for department heads--when they are informed of something, the University is officially on notice) and is obligated to take timely and appropriate action. The response depends heavily on the conduct reported, if the allegation is true (it usually is), and how they are able to respond. They tell individuals that they cannot offer 100% confidentiality but that they will protect confidentiality to the extent they are able. During an investigation her office does not share information; they do share conclusions, but not the names of the individuals with whom they spoke. If there is disciplinary action and a grievance or a lawsuit, an employee is entitled to all the information about him or her so they would learn the names of those involved in an investigation.

Retaliation is also a common concern on the part of most who come to her office, Ms. Sweitzer said. That is true even for those who may only be witnesses. In terms of protecting individuals, they tell people that the University has a strong position on retaliation and will take a strong stand on it. They will take prompt action if they learn of retaliation (even if the result of an action by their office resulted in a finding of no discrimination). Most retaliation concerns, however, are greater than the reality; they do not often see retaliation. A complaint or investigation can make for a chilly work climate, but they cannot make people be nice to each other. What they can require is that people be civil.

Her office receives about 350 contacts a year. Not all are complaints; some are questions from administrators or managers. About 20-25% are from students, about 10% from faculty, and the larger number are from P&A or Civil Service employees, many of which are about "who's in charge?" For faculty, that's not a problem because no one is in charge, she quipped. The majority of the complaints they hear are about treatment in the workplace. About 25-30% are about gender, about 25-30% are about

race. The number of complaints about disabilities is growing slowly (but the University has far fewer in this category than the state and federal governments because it provides strong support for those with disabilities). Complaints about age discrimination have not increased as much as they expected (especially with the budget cuts), although that category is also growing at the state and national level.

Professor Fossum asked if they had noticed, over time, a REDUCTION in any area of complaints. Sexual harassment is the best example, Ms. Sweitzer said. In the last decade the number has not declined, but the incidents are simpler and easier to manage. There is less blatant conduct, but they still do hear the range, from bad jokes to sexual assault. It is easier to get people to take sexual harassment seriously if they confront the problem. They have a CD Rom on sexual harassment that they want all University employees to view because it is a common issue. It can be very simple things that make for a difficult work environment.

What do they do to get people to understand what retaliation is, Dr. Jones asked? If there is a charge of retaliation, Ms. Sweitzer said, they look at the long-term patterns of behavior to determine if there has been a sudden change in how employees are treated, or if they are treated consistently. Just because someone files a complaint, she pointed out, does not mean they cannot be held to doing their job. They ask the supervisor to explain why a particular response is appropriate. One kind of retaliation that is difficult to deal with and hard to measure is when someone decides that they just will not talk to an individual any more. They cannot force people to be charming with each other.

What do they do in a situation where it is "he says, she says" and there is no other evidence available, Professor Fossum asked? It is not uncommon that any alleged discrimination occurs without other people around, Ms. Sweitzer said. When they conduct interviews, they ask what happened and what the explanation for the action was. They can usually find other things that provide corroborating evidence that makes one person more credible. They need a preponderance of the evidence, and if they have two plausible stories without more, they can't do anything about an allegation; they say they cannot find discrimination. (They may, however, find other information that the department head is unaware of about disagreements or staff conflict, which may not be issues that her office deals with, but they will try to help the unit deal with the problems.)

Professor Fossum thanked Ms. Sweitzer for her report.

2. Nepotism and Consensual Relationships Policy

Professor Fossum now turned to Vice President Carrier to lead a discussion of the policy on nepotism and consensual relationships.

The Board of Regents has had a policy since 1971, Dr. Carrier explained, but in the late 1990s it was significantly revamped because it did not address workplace issues that the University faced. There was a task force that looked at whether the University could do better and what a policy should address; the result was a better policy that responds to the complexities of the workplace.

The task force thought a lot about whether the University should prohibit romantic relationships where people are working together; they decided a prohibition would not work. The University now occasionally finds itself recruiting a department head whose spouse will work in the same unit. When people spend many hours together, relationships can develop and the University must deal with them.

One thing they had to focus on was the meaning of "relationship": it could be marriage, a committed relationship, or a romantic involvement (that could be "below the screen" and not even admitted by the participants). The University chose not to prohibit relationships but adopted two rules. One, some ACTIVITIES are prohibited. If one is in a relationship, for example, one cannot supervise, evaluate, recommend raises for, and so on, the other individual in the relationship. Two, if the relationships are allowed, there must be formal consultation to be sure that the structure addresses the issues raised in point one. Often this occurs at the unit level; the unit head works out arrangements that are acceptable to both the individuals and the University. One hopes that the unit heads will seek the advice of Ms. Sweitzer's office in doing so.

There was a lot of concern about the relationship between faculty and students; the policy STRONGLY discourages such relationships but it does not prohibit them because that would not work. The policy directs what is to happen if a faculty member and a graduate student, for example, are in a relationship or are in love.

The third provision of the policy is that disciplinary action can be taken if the consultation called for does not occur. The policy tries to handle these issues in a way that is discreet and practical, Dr. Carrier said, and she believes it has worked well.

Ms. Sweitzer noted that the descriptive language attached to the policy came from a 1988 Senate report advising the administration on consensual relationships. It took the faculty another several years to develop a policy in order for everyone to be sure that the policy said what everyone meant. In the end the focus was on the conflict of interest. Her office has had 52 consultations about the policy since it was passed by the Regents in 1998; the number has declined, and they now expect 7-10 consultations per year. Most people come on their own, and it may be an administrator asking about how to handle a situation to be sure that it is "clean." It does help to have a third party (e.g., her office) help prepare a written agreement. They observe confidentiality as tightly as they can, but often a lot of people know about a relationship. One way to avoid a conflict of interest in a relationship is to put it on the table so that all know about it. Some, however, do not want to do that, which her office will respect. In a few cases they will receive a report from someone outside the relationship; sometimes the report that a relationship exists is true and sometimes it is vehemently denied (in the latter case, her office will leave it at that).

There have been all sorts of relationships to deal with, Ms. Sweitzer related: parent-child, spousal, dating, aunt/uncle, or a faculty member thinking about asking a student on a date. Her office does not get into the details of a relationship; if they are told a relationship exists, they take the individuals' word for it.

They emphasize that they want reasonable arrangements, Dr. Carrier said. Some still believe the relationships will lead to unfair results, but the University has gone as far as it can to avoid direct problems. The policy talks about direct influence, Ms. Sweitzer added, but there could be indirect effects (which is why there was discussion about simply banning such relationships); could a political science professor affect outcomes for a graduate student in biology? Not usually, but the faculty member could be friends with the dean, for example, and that would need to be covered.

What are the consequences of violating the policy, Professor Litman asked? Most of the arrangements have been worked out, Ms. Sweitzer said, so there have been no consequences. Sometimes the report of the relationship comes a little late, in their judgment, and they had to look back at decisions

that had been made. The biggest faculty concern is that there was a benefit or harm to the student in a personal relationship with a faculty member, or that an individual was unwarrantedly hired or promoted. That has not happened yet, although they keep an eye out for the problem.

She talked about an affirmative need to consult, Professor Fossum said. With her office or at the unit level, Ms. Sweitzer affirmed. What consequence if they do not consult, he asked? There have not been any such situations, Ms. Sweitzer said. One could imagine a letter to the file if the relationship was not handled properly, Dr. Carrier said, and there could be more extreme steps taken, but fortunately they have not encountered that situation.

If an agreement is negotiated, is it time-specific, Professor Collins asked? They do try to check back, Ms. Sweitzer said, monthly or annually, depending on the relationship. There might be little concern if a faculty member takes an administrative position (e.g., associate dean) with a spouse in the college; there would be more concern about the faculty-student relationship.

Professor Fossum thanked Dr. Carrier and Ms. Sweitzer for their report.

3. Report from the Child Care Subcommittee

Professor Frazier next reported for the ad hoc committee on child care, appointed after the discussion of work/life issues. Professor Frazier noted that the subcommittee was charged to add the Committee's voice about child care at the University; she said that Professor Wiedmann did much of the work for the report. There is no debate about the issue, she said; child care facilities at the University are inadequate. She highlighted the key issues in the report (a copy of which is appended to these minutes), and noted that there was not complete consensus among subcommittee members on all issues.

Is this translatable into a University-wide position, Professor Ericksen asked? There are no child care facilities at the Morris campus, for example, and she said she would like to see acknowledgement that this is a problem at the other campuses as well. Professor Fossum said he believed the Committee agreed. One point of the report is that there is one facility that does not accommodate demand; there are certainly problems on other campuses as well.

What are the major priorities in the report, Dr. Carrier asked? What is most critical? The work/life task force put in a lot of work, Professor Frazier said, and called for funding for referral, partnerships with local centers, and back-up child care. Is part of the thinking about ways to expand the number of sites with trained individuals, Dr. Jones asked? There are a lot of child care sites but they may not have staff who are adequately trained, which makes people at the University uncomfortable. There are foundation funds to support that kind of partnership and training. Someone is planning to write a grant to obtain funds to do so, Professor Frazier said.

Professor Fossum suggested that Vice President Carrier could address the points about changing University policy to make it more flexible. It might, for example, not require a new mother to take six weeks in a single block of time. What are the possibilities, he inquired? Dr. Carrier said she thought they were pretty good.

Professor Wiedmann reported that he had spoken with an assistant professor who was required to take the six weeks in a block--but who also had to keep a lab going. In some cases the individual might

want (or need) to teach a class. A department could gain if the individual could come in for 25% time to teach a course. One has the sense that some departments have made such arrangements under the table. Dr. Carrier concurred but said that such arrangements are not satisfactory to the people involved in them.

Professor Fossum recalled a recent article in the CHRONICLE OF HIGHER EDUCATION about the effect of child-bearing on women getting tenure. The difference between mothers and others in getting tenure was about 20%, which one can view as a lost investment both for the individual and the university.

How difficult would it be for the administration to change the policy, Professor Wallace asked, to make it more lenient and flexible, without having to go through a lot of red tape? Dr. Carrier said she would look at it. They will need to evaluate what must be addressed, but she said that policies must adapt to a changing workplace. One recommendation in the work/life report was to create a task force to investigate ways to make policies better accommodate semesters, Professor Frazier said.

Another issue was the need to train supervisors and human resources people about the different options, Professor Frazier commented. They get a lot of training now, Dr. Carrier said, and they have more trouble getting faculty supervisors to attend; they are trying to improve the situation. Professor Fossum noted that the Committee has on its agenda spring semester a report on programmatic training for department chairs.

The Board of Regents has suggested it look at all its policies, Dr. Jones said, and they have been divided among central administrators for review. He did not know who had responsibility for the policies that the Committee is concerned about today. He said he worried about another task force that would meet for several months, and wondered if the problem might not be addressed by other mechanisms. The administration could decide what makes sense, consult with the deans, and then bring to the governance system a proposal.

One telling point, Professor Fossum said, is that any steps taken need to ensure that there is less than a 4-month wait for child care; the current 18 months does not work. He said the report of the subcommittee would be placed on the docket of the Senate for information and would also be brought to the Faculty Consultative Committee. It was agreed that the report would be modified to include the coordinate campuses; Professor Fossum suggested that the language about eldercare should refer to the work/life report.

What will be the timeline for a change in the policy concerning parental leave, Professor Collins asked? An interpretation will not be difficult to prepare, Dr. Carrier said; they need to be sure the right groups are involved. She said it could most likely be effective for the next academic year. The change should stress that both individuals and departments (and the University) can benefit if the policy is written and implemented well, Professor Fossum said.

Professor Fossum thanked the subcommittee members for their work.

4. Information Items

Professor Fossum reported on several items for the future.

-- At a meeting of the retirement subcommittee, there was discussion about how Minnesota Life would report the performance of retirement fund assets. There will be a clearer report in the future.

-- The Regents will take up retirement soon; they do not propose to change the retirement plan but only to review and revise the policy. There are no planned reductions in benefits, Ms. Singer assured the Committee. The proposed revisions will be brought to the Committee in January.

-- Professor Bland was one of the individuals involved with a survey of faculty over 50. The Faculty Consultative Committee was very interested in it and asked that he would help to get the response rates up by having this Committee urge faculty to participate, Professor Fossum said. Professor Akehurst noted that he had 3 emails from the President on the subject and finally responded; could the Committee do more than that? Professor Fossum said that Professor Bland would like the Committee to make the attempt.

Professor Fossum then adjourned the meeting at 3:30.

-- Gary Engstrand

University of Minnesota

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To: SCFA
From: SCFA Subcommittee: Childcare
Date: 12/9/03

In today's market place, employers must consider the availability of childcare in relationship to the overall compensation and quality of life of their employees. The reality is that employees will virtually always place their childcare responsibilities above their responsibilities in the workplace. Thus, the University will benefit from ensuring the availability of childcare that will minimize the impact of childcare responsibilities on employee productivity.

To this goal, the following question can be raised. What are the necessary and sufficient aspects of childcare that will minimize the negative impact on work place productivity?

First and foremost, childcare must be available. The gestational period in humans is nine months, which includes as many as three or four months of uncertainty of the existing condition. Thus, childcare must be made available with no more than a four-month wait.

Second, the childcare must be of sufficient quality to allay the natural guardian/parental concern for the child's safety and welfare. Although state licensure provides a modicum of assurance, most parents/guardians demand much higher standards.

Third, the care must be affordable. Current costs at the University childcare center range from \$8,320 to \$13,520 per year for fulltime care, with costs depending on family income and age of the child. Even the lowest fee of \$8,320 is quite high for many members of the University community.

Fourth, the childcare facility must be conveniently located. A facility close to the workplace is desirable and on-site care is preferred. It is important to note that this factor has less to do with commuting time, parking, etc., than it has to do with the concern for the child. That is, guardian/ parental proximity to the child is critically important in reducing the anxiety of leaving a child with hired caretakers. This factor lessens with age of the child.

Fifth, the very nature of the problem requires flexibility/understanding. Children inherently defy regimented scheduling. There will be common occurrences when extra time is needed. Illnesses are particularly problematic, which are unpredictable and often occur at the worst times. They can be long term (e.g. one to two weeks for chicken pox). They can occur during working times or when classes must be taught. They create a great deal of stress and often are responsible for sleep deprivation of both child and parent/guardian. Probably the greatest negative impact is that virtually no childcare facility will allow a sick child to remain on site. One recommendation by the work-life task force was that we provide backup childcare, which has been shown to have a high return on investment (see p. 22 of report). It would be very helpful if this backup childcare included care for sick children.

Another issue related to flexibility is the disconnect between the schedule of primary school and the work environment. Whereas it is anticipated that children in primary school and middle school will need supervision for the summer, there are also a great number of days that they do not have to attend during the school year. The length of the school year is deceptive in that many of the 'days' are actually two half days, which requires innovative scheduling by the parent-particularly if they are responsible for transportation

In addressing these important aspects of child care (availability, quality, cost, convenience, and flexibility), the university has succeeded to a varying extent. We do have an on-site childcare facility, which has an excellent reputation for quality. They have a structured fee system that attempts to minimize the high cost on those least able to afford it. However, in the Twin Cities, the East Bank, West Bank, and St Paul campuses represent three locations with only one day care. The wait list appears to range from 1 ½ to over 2 years, which is unsatisfactory

The U should receive a long-term benefit in employee satisfaction and productivity by investing in additional infrastructure to increase the capacity of the day care facility (see report, pp. 5 and 51). Although the work-life task force concluded that building another child care center is not realistic at this point for budgetary reasons, it may be possible to secure additional funds for expanding the current childcare facilities by fundraising. Because this is an important issue for faculty and staff, foundations and corporations may contribute to this cause. Whether or not we can build a new facility, we support the recommendations of the work-life task force with regard to continued funding for child care referral resources, forming partnerships with area child care providers, and developing back-up child care services (see p. 22 of report).

The U also could enhance satisfaction by adopting policies that specifically grant additional flexibility with no central cost and minimal peripheral unit cost. For example, the six week maternity leave must be taken as a single block of full time leave. Whereas some units may allow part time leave, the policy can be rewritten to have this at the option of the employee. Providing more flexible hours so that parents can attend to the days off for children in primary school is another possibility. Increasing the number of family emergency days perhaps at the expense of sick days may be of benefit.

Although certainly outside of the charge of this subcommittee (but yet not completely unrelated perhaps in their solutions), the U would be ahead of the curve to address the problems encountered by employees that become responsible for the care of elderly parents.