

Minutes\*

**Senate Committee on Faculty Affairs  
Tuesday, September 14, 2010  
2:30 – 4:15  
238A Morrill Hall**

Present: George Sheets (chair), Ben Bornshtein, Arlene Carney, Carol Carrier, Dann Chapman, Vladimir Cherkassky, Richard Cline, Randy Croce, Kathryn Hanna, Frank Kulacki, Theodor Litman, Karen Miksch, Jason Shaw, Geoffrey Sirc, Roderick Squires, Pamela Stenhjem, James Wojtaszek

Absent: Marilyn Bruin, Valerie Khominich

Guests: April Coon, William Dana, Ginny Levi, Heidi Wagner (President's Emerging Leaders Program); Carolyn Chalmers (Office for Conflict Resolution, Professor Patrick Bruch (Chair, Conflict Resolution Advisory Committee); Professor Dan Feeney (Chair, Retirement Subcommittee)

Other: Jackie Singer (Director of Retirement Benefits)

[In these minutes: (1) report on family-friendly policies; (2) amendment to the conflict-resolution policy; (3) Securian contribution to Minnesota Forward]

**1. Report on Family-Friendly Policies**

Professor Sheets convened the meeting at 2:30 and called for a round of introductions. He then turned to Vice President Carrier to introduce the report from the President's Emerging Leaders (PEL) program on family-friendly policies at the University.

Dr. Carrier began by commenting that she and Vice Provost Carney were very pleased to have the PEL group at the meeting to present its report. PEL is a program that began about a dozen years ago that identifies a cohort of about 25 P&A, civil service, and bargaining-unit staff who are selected because they have been shown to be leaders. The program builds their expertise; participants receive formal training and are put into small groups to tackle a problem, reach conclusions, and make recommendations. She and Dr. Carney wanted a "report card" on the University's family-friendly policies so asked a group to look at them. The group did a tremendous job and they intend to implement many of the group's recommendations. (The full report from the group is online at [http://www1.umn.edu/ohr/prod/groups/ohr/@pub/@ohr/documents/asset/ohr\\_asset\\_237477.pdf](http://www1.umn.edu/ohr/prod/groups/ohr/@pub/@ohr/documents/asset/ohr_asset_237477.pdf))

Vice Provost Carney echoed Vice President Carrier's comments. She said she was extremely proud of the group because it did a wonderful job. The meetings were a pleasure. The report shows explicitly where the institution should go, and the practical recommendations are very helpful.

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\* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

Mr. Dana began by saying that the group members were grateful for the opportunity to work on the project and that they learned a great deal. They met with a number of faculty members who are studying various aspects of family-friendly policies; they also looked at the University's culture and communications around it. They developed 13 key recommendations "to enhance family friendly communication and culture at the U of M." They are:

#### Communications Recommendations

1. Send key messages periodically from the University's upper administration to emphasize a culture that supports the family friendly workplace.
2. Make branding and communication of family friendly policies and programs consistent and clear throughout the University.
3. Modify the Office of Human Resources' website so that the language is easier to understand and the website is more accessible.
4. Develop a strategic OHR communications plan to provide consistency in communication of family friendly policies and programs.
5. Discuss family friendly policies and programs within the context of the wellness program.
6. Provide employees with access to family friendly policies and programs through their MyU page.
7. Communicate external family friendly services that are offered to University employees in a manner that clearly identifies them with the University.
8. Add a reference to extending the tenure clock (Section 5.5 - Tenure Code) to probationary faculty offer letters.

#### Culture Recommendations

9. Encourage management at all levels to improve their understanding of and commitment to family friendly policies and programs.
10. Assign responsibility for developing expertise in family friendly policies and programs to a single team of Central HR staff members and publicize their availability throughout the University.
11. Enhance tools for HR professionals on campus.
12. Provide training for supervisors and unit-level HR professionals that provides them with the tools necessary to refer faculty and staff to appropriate resources for consistent implementation of family friendly policies and programs.
13. Return to use of the more commonly understood term, "work/life balance" rather than "family friendly."

Number 8 came up in many of the faculty discussions, Mr. Dana commented, and it seems there are different levels of implementation. Some faculty members knew they had the right to extend the probationary period while others said they never bring up the subject for fear of retaliation. They heard both horror stories and very positive stories.

Ms. Levi explained the methodology the group used. They reviewed the literature (there is a fair amount written about faculty but little about staff), talked to a number of campus experts (including those responsible for the Pulse Survey), and were given access (anonymously) to the responses from two units that had responded to the Pulse Survey, one of which had positive responses about family-friendly policies and the other of which did not. (They did not know what the units were, and the questions they

posed were sent by Human Resources so the PEL group did not have the names of individuals, either.) They also held five focus-group discussions, divided by job classification (they held two for faculty).

One faculty member they spoke with commented that the position on extending the tenure clock is much clearer at the central level; at the department level it is more gray; another one told them that for faculty, communication of any policy relies too much on deans and department heads.

Two institutions that stand out for having family-friendly policies, Ms. Levi reported, are the University of California at Berkeley and the University of Michigan.

Professor Sheets inquired if negative comments were concentrated in one or more colleges or administrative units. Ms. Wagner observed that they did not know who the respondents were and that the responses came from only two units. They did identify class and gender issues but they cannot identify particular units. Mr. Dana added that job-class concerns were similar, some more than others. It appeared that job classification was more important than gender.

Of the 19 policies they identified as being related to family-friendly concerns, which ones are used the most, Professor Bornshtein asked? Ms. Wagner said that they asked people if they had heard of policies, used them, and knew where they were. Most staff have more experience with the sick and vacation policies than do faculty, but staff did not identify the provisions of section 5.5 of the tenure code as something they were aware of. Everyone knew about the Wellness program, Mr. Dana reported, which has been implemented wonderfully.

What policies are least-used, Professor Bornshtein asked. Relocation and child-care referral, Ms. Wagner said. There are policies that are under-used.

Is the parental-leave policy used fairly frequently across the University, Professor Shaw asked? He noted that biological parents are given six weeks of paid leave while adoptive parents are only given two weeks. There are recovery issues associated with childbirth, but there are different issues with adoptive children. It seems that the policies are friendlier to certain kinds of families. They heard a lot that "family-friendly" envisions certain kinds of families, Ms. Wagner agreed, and not those that include older parents or same-sex couples. There are also differences across employee classes. They did hear from a number of people, however, Ms. Levi reported, that the University treats same-sex partners better than many institutions.

Professor Hanna inquired, apropos of #8, if there is a template for offer letters. It would help to have certain parts of the letters standardized. There is great variation across colleges and departments, Dr. Carney responded. Some colleges have a uniform practice; others do not. University-wide standards would be different, but she agreed that there probably should be some elements identical in all letters (e.g., reference to the relocation policy and to the tenure code). Dr. Carrier said that Human Resources has language that can be inserted in parts of the letters, but "one can lead the horse to water, . . ." It seems like there are different rules for different departments, Professor Hanna commented. Dr. Carney said it would be interesting if this Committee were to recommend that the administration should provide language for offer letters that everyone should use. She could also send out a best practices guide. They do highlight, in August orientation meetings with new department chairs, the Higher Education Recruiting Consortium (HERC) and the relocation assistance program. One question is how they reach continuing chairs.

Professor Sheets asked if they had had or anticipated issues that would come to the Senate Judicial Committee because of a failure to communicate faculty-friendly policies (such as extending the probationary period) or because faculty members were discouraged from using them even though they qualified. They have not had any such issues, Dr. Carney said, and such a claim could be difficult to document. The new faculty members know about the policies, but that does not address the issues of local culture; she tells the new faculty to contact her if they feel discouraged from using a policy, and she will intervene. Approaching this on a case-by-case basis is fine, Professor Sirc said, but asked if Vice Provost Carney or Provost Sullivan had considered a blanket announcement to departments that they do not want to learn any longer that departments are discouraging use of University policy. Dr. Carney said this report gives her the impetus to go to college meetings of department chairs and tell them what she is hearing from faculty. Dr. Carrier said that faculty members have told them that the pressure can be subtle, with nothing said. Mr. Dana agreed that it is culture; they heard from faculty who know about the policy but would never think about using it. Recommendation #8 came from a faculty member; the PEL group thought it could be effective because the University is on the line when job offers are made. But she continues to receive requests each year to extend the probationary period, Dr. Carney reported, and most are automatic. The overwhelming majority are for the birth or adoption of children; a few additional ones come in for other reasons. She noted that the process for obtaining an extension of the probationary period is not an onerous one.

Professor Sheets inquired of the Committee if it wished to consider the 13 recommendations at a future meeting and take action on them. It was agreed it would do so. Professor Sheets thanked the members of the PEL group for joining the meeting and presenting their report.

## **2. Amendment to the Conflict Resolution Policy**

Professor Sheets now welcomed Ms. Chalmers and Professor Bruch to the meeting to present the proposed changes in the conflict-resolution policy.

Ms. Chalmers recalled that she presented proposed changes to the Committee last May; since then there have been additional discussions. The policy is reviewed every five years, and this time they tried to tackle the problems with the arbitration process that the policy provides. One can use an outside arbitrator if one is unhappy with the Provost's decision; they have about one arbitration per year. The policy has provided that the arbitration fees would be split between the University and the petitioner. Of the cases that went to arbitration from 2001-09, seven of ten were about termination, so some petitioners did not pay their part of the arbitrator's fee, which made the arbitrators unhappy with the process.

The proposal she brought to the Committee in May provided that the first \$3500 in arbitrator costs would be split evenly between the University and the petitioner but that any amount in excess of \$3500 would be paid by the University. The Committee received the proposal favorably. When the proposal came to the President's Policy Committee in June, there were concerns expressed about the open-ended University obligation. She took the policy back to the Conflict Resolution Advisory Committee, chaired by Professor Bruch, and the discussion led to a revision in the language: "The University will pay the arbitrator fees over \$3,500 up to \$5,000. Exceptions for arbitrator fees exceeding \$5,000 will be made at the discretion of the Senior Vice President for Academic Affairs and only upon a showing of good cause by the arbitrator." This is a cost-containment measure, Ms. Chalmers said. The policy also contains revised language encouraging arbitrators and attorneys to be efficient, such as

suggesting 1-2-day hearings and short written decisions. The purpose of all of these changes in the arbitration process is to make it more affordable and to add predictability about what a petitioner's financial obligation will be. Ms. Chalmers also noted a few other technical changes in the policy, such as the addition of the definition of retaliation, and said that they are trying to address concerns about how long the process takes.

The intent is that that \$5,000 will be the usual limit, Ms. Chalmers said; that amount buys five days of a local arbitrator's time, which should be adequate, since the arbitration panel does not start from scratch. It has the record of the panel hearing and the decisions of the panel and of the Provost. Does the proposed change give arbitrators the green light to charge \$5,000, Professor Squires asked? Is there a concern that with the language change, what might have taken four days before will now be stretched to five, Professor Sheets inquired? That is a possibility, Ms. Chalmers said.

Professor Kulacki inquired about the number of arbitrations that have gone past the spending limit. There have been several, Ms. Chalmers said. Most of those have involved arbitrators from the National Academy of Arbitrators. Those arbitrators are located around the country, have national reputations, and set fees based on the national market. They are heavily booked, fly in for the arbitration, and are very expensive. Under the current policy, faculty members are directed to arbitrators from the National Academy of Arbitrators. Proposed revisions in the policy provide the new arbitrator fee-sharing provisions only if a petitioner chooses a BMS arbitrator. Faculty and P&A staff may still choose an arbitrator from the National Academy of Arbitrators, but if so, the arbitrator's fees are split equally with no cap.

Professor Sheets inquired of Committee members their views on the change. Ms. Chalmers reported that the Senior Vice Presidents' offices had been consulted and appeared comfortable with the language. As for comparisons among arbitrator rates, there are so few cases, the proceedings are private, and the fees are private, so they are unlikely.

Mr. Chapman said it is not clear how the changes fix the problem of a petitioner who is out of work with no money. Agreed, but this helps by giving the petitioner an idea of what arbitration will cost, Ms. Chalmers explained. Previously there were no efficiency guidelines for arbitrators or attorneys. Now she can say that an arbitration will cost \$1750 and the arbitrators can think about an advance payment. The idea is that the petitioner must make an investment in the process but must understand the cost, in order to allow more use of the process. This should be a more orderly process.

Professor Squires asked if Ms. Chalmers envisioned any claims from arbitrators because of a failure to pay excess charges. It would be possible, Ms. Chalmers said, but arbitrators will be informed of these provisions and agree to them when they take on the work. What ameliorates that possibility, Professor Burch said, is that BMS records show that it is difficult to incur costs greater than \$5000. They are leaving open the possibility that it could cost more, but the message to the arbitrators is that this is a limited engagement. If someone elects to use an arbitrator from the National Academy of Arbitrators, the cost is split evenly with no cap. One could view that as a denial of the best services available to the petitioner when his or her career is on the line, Professor Kulacki said. Ms. Chalmers said she did not see it that way. There are excellent arbitrators on the BMS list who have experience with higher education. The exception clause provides protection if the case requires more attention. There is a benefit to having someone who will pay attention and get the case done in a month, compared to someone who flies in,

flies out, and takes several months to complete the process. And faculty and P&A petitioners may still choose an arbitrator from the Academy.

Professor Bornshtein said the policy appears to be directing petitioners toward one pool of arbitrators when both are equally qualified. Ms. Chalmers explained that BMS has a roster of 25-30 names of people with higher-education experience who are not University employees. It might help to understand how the arbitrator selection process works. The BMS gets notice from the Office that an arbitrator is needed. BMS staff selects five names randomly from the roster of about 25 qualified arbitrators and provides these to the University and petitioner; the petitioner and University take turns striking names, and the last person left is the arbitrator. The Office does not select the arbitrator names. It will always be true that the University is a "repeat player"—while the petitioner is a "one-time" player. This can distort an arbitrator's neutrality—but they often operate in this context and work to avoid this distortion.

The concern makes sense, Professor Bruch said, and for the other side, the little guy with no money, it eliminates an expandable gap. Now the individual knows it will cost \$1750, which is still not cheap. People still have the option to choose members of the National Academy and the cost remains the same as it does under the current policy: the University and petitioner split the cost 50/50. The policy does say that if one goes this way (use of the BMS), the University will help; if one goes that way (use of the National Academy), you are on your own. Before, everyone went into arbitration at his or her own risk.

Professor Litman inquired under what circumstances the policy applies to emeriti/ae faculty. Faculty emeriti/ae who are currently employed on a contract have the same rights as other employees, Ms. Chalmers said. If one is not a current employee, one has the right to file a petition with her office if the subject of the petition is an event that occurred before the individual left the University or if it relates to a contract signed during the time of employment (e.g., a patent agreement or a phased-retirement agreement).

The Committee unanimously approved the proposed policy change with the proviso that Ms. Chalmers report back on the results of arbitrations under the new provisions.

Professor Sheets thanked Ms. Chalmers for joining the meeting.

### **3. Discussion of Securian Contribution to Minnesota Forward**

Professor Sheets welcomed Professor Feeney to the meeting to report on the Retirement Subcommittee discussion of the contribution by Securian to Minnesota Forward. He noted that he, Professor Feeney, and FCC members have received messages from faculty members objecting to the fact that Securian (who is the record-keeper for the University's Faculty Retirement Plan and one of the vendors for both the Optional Retirement Plan and Section 457 Deferred Compensation Plan) made a sizeable contribution to a PAC which is actively promoting the candidacy of Mr. Emmer for governor. The PAC exists to promote business-friendly policies, but some individuals feel that in supporting Mr. Emmer, it supports his platform, which does not support any non-traditional families and calls for a constitutional amendment to declare that marriage is between a man and a woman. Those stances are directly contrary to University policy, which recognizes same-sex couples as far as possible within the limits of the law. The protest from the faculty members is that they are compelled to have their

retirement funds administered by an organization that supports candidates who takes positions that they find unacceptable. The discussion today is to learn the views of Committee members on this issue and to hear about the discussion at the Retirement Subcommittee.

Professor Feeney began with a disclaimer: About every 8-10 weeks, he has lunch with the Securian Vice President for Retirement Products, Mr. Richard Manke, to work on various elements of the University's retirement plans. He had one very recently, scheduled a long time ago, and they discussed the matter of the contribution to Minnesota Forward among other topics.

People might take away various views of the discussion at the Retirement Subcommittee Meeting held 9/14/10, Professor Feeney said, but they did have two attorneys present, Professor Fred Morrison from the Law School and Ms. Rosalie O'Brien from the Office of the General Counsel. Both of the attorneys said that University administration must, by law and consistent with the principles of fiduciary duty, choose vendors according to the quality of their services, not for political reasons. Professor Morrison said that the University of Minnesota as a public institution which may not punish any entity for its exercise of freedom of expression. The Subcommittee will craft a letter to Securian to inform it that the contribution upset some faculty members. But the Retirement Subcommittee was cautioned about the need to separate fiduciary responsibility from political issues.

Minnesota Life, an affiliate of Securian, is a mutual company, Professor Feeney noted, and the Committee might need to identify who votes the University shares. This is another option for the institution to share its concerns with Securian should it become necessary.

Professor Feeney reported that Mr. Manke told him that they intended the donation to be pro-business and did not manage the use of the money by Minnesota Forward; he also told Professor Feeney that the effects of contributions such as that to Minnesota Forward are evaluated before any further commitments are made.

The Retirement Subcommittee will draft a letter expressing the concern of a number of faculty members, Professor Feeney said. The Retirement Subcommittee meets regularly with representatives from Securian; if any other Senate committee wishes to meet with them, they have indicated they will be glad to attend. Professor Feeney noted that the University has done a lot of work with Securian, has dropped TIAA-CREF because of contribution tracking and disbursement issues, and has looked for other vendors it could consider for retirement options similar to Securian's General Accounts and TIAA-CREF's Traditional Account but has found none.

Professor Feeney noted that the University does not require participants to invest in Securian investment funds. Securian is only a record-keeper for the University's retirement plans; employees can go through Securian to other investment organizations (e.g., Vanguard, Fidelity) if they wish to do so. There have been a number of agreements with Securian about cost-containment that would be difficult to replicate if the University community recommends that this was such an egregious action that it should look for other vendors. Doing so would not be in the interests of the participants in the Faculty Retirement Plan.

Professor Feeney said that because of fiduciary considerations, the Retirement Subcommittee cannot recommend action that would endanger the retirement plans. If other Senate committees recommend action that the administration cannot legally take, that would be embarrassing for faculty

governance. The Retirement Subcommittee decided to take a position that is not overly-confrontational. The letter was not his idea and others are drafting it. If members of this Committee wish to weigh in on it, the Retirement Subcommittee would welcome contributions. The letter will be very short. There could also perhaps be a carefully-worded statement for the faculty and staff to let them know that they do not give money to Securian when they invest in another firm except for some trivial fees. Professor Sheets said it is important that the minutes reflect the fact that contributions to retirement accounts only pass through Securian (depending on the participant's choice of funds).

Professor Litman asked if Securian has received any response from retirees. Professor Feeney said he did not know; Ms. Singer said her office had not heard from any of them.

Professor Hanna, who serves on the Retirement Subcommittee, related that she had been ready to send a comment to Securian. She said "corporations are being really stupid" if they give money to political entities that antagonize half their customers. She also emphasized that as individuals, faculty and staff can choose not to direct money to options offered by Securian. She also indicated that Professor Morrison mentioned that if one is age 59 and 1/2 or older (age 55 in the Faculty Retirement Plan), one can roll over Optional Retirement Plan assets from Securian to another company.

Mr. Croce said he was concerned about gay rights but equally concerned about the attitude of the Republican Party toward the University. In the past the Republicans produced champions for the University, such as Elmer Anderson and Arne Carlson, but the current governor and party do not champion it. He said he was personally upset by the positions espoused by the Republican party of late and personally believed some of these policies have harmed the University. However, the University cannot penalize a company for its political leanings. The University has already set the precedent of naming the stadium for TCF Bank, the CEO of which chaired the Republican Party; it cannot punish another company for contributing to the same party. He supports personal actions by University employees and would support a letter from the Retirement Subcommittee expressing concern that Securian would give funds to *any* political party. But the University cannot dictate which party it does or does not support.

The point has arisen because of the United States Supreme Court decision last summer that allows corporations to make political contributions, Professor Hanna observed. [For a brief summary of the case holding, see Wikipedia: [http://en.wikipedia.org/wiki/Citizens\\_United\\_v.\\_Federal\\_Election\\_Commission](http://en.wikipedia.org/wiki/Citizens_United_v._Federal_Election_Commission).] There is an additional question, she said: If a corporation that is one of University's service providers is giving money to a political party, is that money being well spent? Or could it have saved money for the University? Corporate giving is the issue.

Do corporations give to both parties, Professor Kulacki asked? Professor Feeney said that Mr. Manke indicated that Securian also gives money to PACs with ties to the Democratic Party, although he [Professor Feeney] said he did not know how much. Most corporations play both sides of the aisle. Corporations have free-speech rights, Professor Kulacki said, so the University must be careful about what it does. Professor Feeney said the Retirement Subcommittee believes it can do its duty to the faculty members who raised the concern by sending a judiciously-worked letter to Securian. He said he has told Mr. Manke that some faculty members are very angry. He said that the Retirement Subcommittee and other faculty governance entities are walking a tightrope, because they face certain legal restraints but at

the same time want to do their duty to their colleagues as a faculty-governance body. Others can also write letters or they can leave it up to the Retirement Subcommittee.

Professor Sheets inquired of his colleagues their views. Should the Committee let the Retirement Subcommittee handle the matter, co-author a letter, or send its own letter?

Professor Kulacki said that the Retirement Subcommittee has the responsibility for overseeing the organizations that play a role in the financial future of the faculty and staff. This Committee deals with policies; the political issue here is outside the Committee's purview. He argued that faculty governance should not be dragged into the issue.

Mr. Croce said there is a distinction between an entity that supports a candidate or party and one that has policies different from the University's. The latter would be a policy issue on which the Committee could take a stand (e.g., if a corporation would not hire women or discriminated against some group). That is different from supporting a candidate.

Professor Bornshtein urged leaving the matter to the Retirement Subcommittee.

The consensus was that the Committee would leave the matter in the hands of the Retirement Subcommittee. Professor Sheets asked if the Committee should speak with representatives from Securian.

What would that accomplish, Professor Kulacki asked? It might provide a good show. He said the Retirement Subcommittee has handled the matter.

Professor Bornshtein asked what the brief letter might say. Professor Feeney said it would be concise: Because of the political environment surrounding the contribution, a number of faculty members are concerned about participating in a retirement plan partly managed by the organization. Securian should be aware of that. If the letter can be stronger, it will be, depending on what the attorneys say. The University of Minnesota is about 10-15% of their business and Securian wants to keep the University happy. Professor Sheets suggested a stronger term than "concerned," such as "deeply disappointed." What were they concerned about, Professor Bornshtein asked? They were offended by the policies advocated by the individual to whom the contribution went, Professor Feeney said. According to Professor Feeney, Mr. Manke said they gave the money to Minnesota Forward and had no control after that. Professor Feeney said he did not want to be so strong in the letter that they gain 3% in meaning and lose 50% in the rapport the University has with Securian.

Professor Sheets thanked Professor Feeney for joining the meeting and adjourned it at 4:05.

-- Gary Engstrand