

UNIVERSITY OF MINNESOTA

FACULTY SENATE

MINUTES

May 17, 1973

The thirteenth meeting of the Faculty Senate for the year 1972-73 was convened in Room 325 Science Classroom Building on Thursday, May 17, 1973. Checking or signing the roll as present were 78 voting members of the faculty, 1 member of the Administrative Committee, and 3 nonmembers.

Vice Chairman Frank J. Sorauf presided.

The following items were considered and action was taken as indicated.

**I. REPORT OF THE SENATE COMMITTEE
ON FACULTY AFFAIRS**

Reported for Information

The chairman commented that this was only a preliminary report and that a report for action would be part of the docket for the third reading on May 31, 1973. Discussed briefly were tenure rights for those employed for less than two-thirds time, fringe benefits for part-time academic employees, and how two-thirds time should be calculated. The chairman also requested recommendations from the members of the Faculty Senate.

SHIRLEY CLARK
Chairman

Accepted

II. PROPOSED RULE FOR THIRD READING

Reported for Action

The rule before the house will be to approve the entire document. Amendments must be filed with the clerk by noon, May 24, to be distributed to the membership. Maximum time for each amendment, 10 minutes.

Approved

III. AMENDMENT TO SECTION 15.26

Reported for Action

The following amendment was introduced: It will be necessary to declare a state of fiscal emergency in order to effect savings by a plan of mandatory leaves of absence.

Approved

IV. AMENDMENT TO SECTION 15.33

Reported for Action

Strike out section 15.33, page 78, lines 12-21.

Approved

V. AMENDMENT TO SECTION 15.1

Reported for Action

15. Other than as provided in section 16, no appointment with
- 15a. continuous tenure shall be terminated or suspended, and no other
- 15aa. appointment shall be terminated or suspended before the end
- 15aaa. of its term except in the case of a demonstrably bona fide financial
- 15b. emergency caused by a drastic reduction in the instructional budget of the
16. University, consisting of the general state legislative appropriation, including
17. tuition, and any other funds which have actually been relied upon
18. to support regular faculty positions ~~with continuous tenure.~~
19. This situation shall hereinafter be referred to as a "state of fiscal
20. emergency," to be invoked only in accordance with the procedures prescribed in
21. section 15.

Note. The original text of this amendment, as proposed on May 10, presumed the subsequent adoption of several amendments by Professors Green, Hurwicz, and Terrell. These amendments were rejected on May 10, so the slight change in the language suggested above is necessary. (This replaces page 74 of the blue document, lines 13-21.)

Laid over as a "no-time" item.

Section 15 was then *reported favorably.*

At this point in the discussion and in response to a question raised at the meeting of the Faculty Senate, May 10, 1973, the following communication from the President was read.

UNIVERSITY OF *Minnesota*

OFFICE OF THE PRESIDENT

202 MORRILL HALL • MINNEAPOLIS, MINNESOTA 55455

May 17, 1973

Professor Fred Morrison, Chairman
Tenure Committee

Dear Professor Morrison:

In response to your inquiry about the role of the Director of Personnel, may I state that I am in complete agreement with Section 13 of the tenure code which makes no mention of this office in the description of administrative review of recommendations for termination or continuation of probationary appointments or the granting or withholding of continuous tenure. So long as I am president this will be my position.

Sincerely yours,

Malcolm Moos
President

MM:mw

VI. AMENDMENT TO SECTION 16.1

Reported for Action

AMEND section 16.1, page 86, lines 5-12, as follows:

16.1 The termination or suspension of an appointment with continuous tenure, or of any other appointment before the end of its specified term, may be effected only for ~~either of the following causes: (a) sustained incapacity, refusal or failure to perform reasonably assigned duties adequately, or (b) repeated unreasonable conduct destructive of the academic freedom of other members of the academic community.~~

The termination or suspension of such an appointment for such causes may be effected only in accordance with the procedures set forth in section 16.

AMEND the following sections to conform:

16.21, p. 87, l. 6:	STRIKE OUT	"one or more of the causes"	INSERT	"the cause"
16.42 90 4	STRIKE OUT	"causes"	INSERT	"cause"
16.44 91 3	STRIKE OUT	"causes"	INSERT	"cause"
16.45 91 10	STRIKE OUT	"one of the causes"	INSERT	"the cause"
16.47 92 11	STRIKE OUT	"one of the causes"	INSERT	"the cause"
16.56 93 23	STRIKE OUT	"one of the causes"	INSERT	"the cause"
16.57 94 2	STRIKE OUT	"one of the causes"	INSERT	"the cause"
16.58 94 8	STRIKE OUT	"one of the causes"	INSERT	"the cause"

STRIKE OUT the final paragraph of section 16.45, p. 91, lines 17-20.

Disapproved

VII. AMENDMENT TO SECTION 16.1

Reported for Action

Amend section 16.1, page 86, lines 8-10 as follows:

8. or (b)
9. repeated unreasonable conduct destructive of the academic freedom or individual
10. rights of other members of the academic community.

Explanation. The University community has an obligation to protect its members against attacks on their rights, whether those attacks come from inside or outside of the academic community. Unless we add this language, the University will have no legitimate internal machinery to deal with physical violence by a faculty member against another faculty member or student. It will have no legitimate internal machinery to deal with a faculty member who intentionally discriminates against a student or another faculty member on the basis of race or sex. Other examples could be drawn.

On First Reading, it was suggested that these matters might be cases of violation of "academic freedom." A penal rule, like this one, should be construed narrowly; we have distinguished academic freedom and discrimination in previous sections; such a construction would be appropriate here, unless the amendment is adopted.

It was also suggested that there are other ways of applying "sanctions" which could be employed for lesser violations. The whole thrust of these regulations is to provide a well-defined set of procedures, rather than the informal sanctioning authority of an administrator in some vague system. Further, if some other penalty is imposed, the proposed section 17 may make that in itself a grievance.

The Judicial Committee has wide latitude in proposing appropriate penalties, but there is a maximum for first offenders. See section 16.45, page 91, lines 17-20.

Before any action could be taken, there would have to be proof both of unreasonable conduct and of the violation of particular rights.

An amendment to insert the words "repeated unreasonable conduct destructive of academic freedom and other constitutional rights" was *defeated*.

The original amendment was then *approved*.

VIII. AMENDMENT TO SECTION 16.1

Reported for Action

Amend section 16.1, page 86, line 9, by striking the word "repeated."

Explanation. We have already placed a limitation on the appropriate penalty on first offense in section 16.45, page 91, lines 17-20. By placing this restriction in the section, we are saying that even an official faculty reprimand or censure would be inappropriate and prohibited in the case of a single violation of academic freedom. The Senate itself has acted to the contrary within the past three years.

Disapproved

IX. ADDITION OF A NEW SECTION

Reported for Action

Add a new section 16.221, after line 8, page 87

- 8a. 16.221 In cases arising under section 16.1(a), after
- 8b. affording the affected faculty member an opportunity to discuss
- 8c. the proposed action and before formally instituting proceedings,
- 8d. the initiating academic administrator shall consult with the members
- 8e. of the faculty who hold continuous tenure in the academic unit involved,
- 8f. other than the faculty member directly involved.
- 8g. Except as otherwise provided in this section, the consultation
- 8h. shall be conducted in the same manner as a meeting to consider the
- 8i. recommendation of continuous tenure. The meeting shall be presided over
- 8j. by a faculty member who holds continuous tenure in some other academic
- 8k. unit, chosen and appointed by the Chairman of the Faculty Consultative
- 8l. Committee on the request of the initiating academic administrator. The
- 8m. faculty member involved shall be entitled to submit a written statement
- 8n. for consideration, but shall not be entitled to be present at the meeting
- 8o. or to vote. The question put to the faculty shall be whether it concurs
- 8p. in the initiation of the proceedings. The vote shall be taken by secret
- 8q. ballot. The ballots shall be counted by the presiding officer and two others,
- 8r. designated by him, and shall be sealed and kept by the presiding officer.
- 8s. The presiding officer shall announce the vote at the meeting and shall *certify*
- 8t. it in writing to the initiating academic administrator and the faculty member
- 8u. involved.
- 8v. The initiating academic administrator and the Vice President
- 8w. for Academic Administration, or their representatives, shall be entitled
- 8x. to attend, but shall not vote, unless they hold regular appointments with
- 8y. continuous tenure in the particular academic unit.
- 8z. This initial proceeding shall in no way discharge
- 8aa. the initiating academic administrator from the burden of proving, before
- 8bb. the Judicial Committee, by clear and convincing evidence, the elements
- 8cc. of the grounds for removal for cause.

Comment. In cases in which the charge is sustained incapacity, refusal or failure to perform assigned duties adequately, the initiating academic administrator must seek the advice of the tenured faculty in the department (or other unit) concerned. The faculty

recommendation is advice, based upon their knowledge of what adequate performance would be in the case. The ultimate decision, to institute formal proceedings or not, rests with the academic administrator. He bears the burden of proving the elements of the charge before the Judicial Committee.

This initial proceeding is not a formal hearing. It is rather advice, given to the administrator, on whether to begin a formal hearing. For this reason, the presence and participation of the faculty member is not required. For the same reason, this initial proceeding in no way discharges the burden on the administrator before the Judicial Committee, where formal hearing processes require the opportunity for presence and participation of the faculty member and his counsel. We have afforded the faculty member an opportunity to make a written statement, just as a probationary faculty member may submit a written statement to the tenured faculty considering his case.

Because of the seriousness of the matters involved, we have adopted by reference the procedural guarantees of section 13.1 and 13.3. To avoid any suspicion of "command influence" by the presiding officer of the meeting, we have required that a senior faculty member from another unit (preferably from another college) be selected to preside over the meeting. The voting is by secret ballot.

Approved

Section 16 was then *reported favorably*.

X. SECTION 17

Reported for Action

The Tenure Committee reported section 17 for action as printed in the blue document, except for the first sentence of section 17.1, page 95, lines 17-19, which is amended to read:

17. This section shall apply only to complaints by faculty members against the
18. University or its Academic Administrators regarding matters affecting ~~them~~
19. their employment other than those relating to the termination or suspension
20. of appointments.

Comment. This amendment is intended to clarify the jurisdiction of this set of committees, particularly in contrast to the committees under the Academic Freedom and Responsibility Statement. The Complaints Committees are intended to deal with the jurisdiction previously held by the Judicial Committee under section 14 of the old Tenure Code, which relates to "any action which, without his written consent, affects his rights or status under these Regulations."

Complaints committees will hear cases which involve the rights of faculty members, as employees. The text provides some examples: rank, salary, office or laboratory space, assignment of duties. Other examples might include, assignment of committee duties, allocation of research funds, provision of fringe benefits, such as insurance and retirement, provision of University facilities, such as parking or admission to public events. The complaining party claims some violation of his rights as a faculty employee of the University (not just a violation of his rights in general). The defending party is an individual or unit which is exercising authority on behalf of the University (e.g., a chairman or dean, or a committee which assigns space or funds, or a faculty which recommends rank, or an administrative agency of the University which provides some service to employees (such as the Insurance and Retirement Office or the Parking Office)). Complaints may not be brought before the Complaints Committee against individual faculty members or others, unless it is alleged that they were exercising some authority with respect to the complaining party as a faculty employee of the University.

Academic Freedom and Responsibility Grievance Committees hear grievances by any party against any other party involving infringement of academic freedom or dereliction of academic responsibility. They make recommendations to the appropriate action unit (either a faculty or an administrative officer) for resolution of the dispute. If the action unit takes action against a faculty employee, which affects his employment rights, this may occasion a further complaint by that faculty member before the Complaints Committee structure. His claims, in such circumstances, would be severely limited, for he has already been given a full hearing on the matter.

The Comments originally written to section 17 should be read in this light. In particular the second paragraph of the comment to section 17.1 (on page 96) and the tenth paragraph of the comments to section 17.24 (the third paragraph on page 99) will be amended to indicate that the Complaints Committee consider only matters relating to the employment of faculty members.

The amendment was *approved* after which the entire section was *reported favorably*.

XI. SECTION 18.012

Reported for Information

The Tenure Committee reports a typographical error. On lines 2 and 4 on page 106, the reference should be to "section 18." Sections 18, 19, 20, and 21 were *reported favorably*.

Accepted

A proposed amendment to section 4.3, line 13, page 13 of the blue document was *withdrawn*.

The *Foreword* was *approved* with the suggestion that the Tenure Committee might wish to re-word the Comments.

The Faculty Senate adjourned.

W. DONALD BEATTY
Clerk of the Faculty Senate

Appendix

ABSTRACT OF DISCUSSION

The meeting was called to order at 3:00 p.m. by Frank Sorauf, professor of political science and vice chairman of the Senate, to continue the second reading of the proposed tenure regulations. Shirley Clark, associate professor of history and the philosophy of education and chairman of the Faculty Affairs Committee, presented for information her committee's report on tenure rights of part-time faculty and a progress report on the fringe benefit status of part-time faculty. She said the committee's recommendations would be presented for action at the May 31 meeting and urged that comments be transmitted to her committee as soon as possible. She indicated that her committee recommended not decreasing the minimum of appointed time below two-thirds for purposes of tenure, but that other regular appointments under the Special Contracts section of the proposed tenure regulations could be made with discretion for those working less than two-thirds time. The progress report on the fringe benefit status of part-time faculty included a tabulation of faculty members, by rank, and per cent time, together with estimates of the annual cost of extending the benefits to them. She noted that the data lacked refinement and the cost calculations were imperfect, and said the committee would seek Senate support to generate the necessary data. Sally Jorgensen, assistant professor of veterinary physiology and pharmacology, asked that the committee consider allowing part-time faculty members on 12-month appointments to be eligible for the same benefits as those on full-time 9-month appointments.

The motion to approve a rule for the third reading to take place on May 31 with amendments to be filed by May 24 was presented for action. Leonid Hurwicz, professor of economics, suggested that a special meeting might be required, and he proposed that the motion should apply only to May 31, with a provision that other amendments be filed with the Clerk a week before the meeting at which voting on the third reading would take place. Eleanor Fenton, acting associate dean of continuing education, felt that all amendments

should be submitted by May 24. Russell Hobbie, professor of physics, pointed out that the rules could be suspended by a two-thirds vote on May 31, if necessary. John Dahler, professor of chemical engineering and materials science, moved to amend the motion to make the rule specific to the next meeting only. His motion was defeated and the original motion was approved.

Leon Green, professor of mathematics, proposed an addition to the section on procedures for determining the financial necessity for terminating appointments. It was a statement that a fiscal emergency would have to be declared in order to effect savings through a plan of mandatory leaves, which he said would provide a safeguard against unauthorized lay-offs. Herbert Johnson, professor and head of agronomy and plant genetics, favored the motion but suggested placing it after the section outlining procedures for terminating appointments. The Green motion was then approved with the understanding that the Tenure Committee would insert it in the appropriate section of the regulations.

Morton Hamermesh, professor and head of physics and astronomy, moved to strike out the section entitling a displaced tenured faculty member, if he were judged qualified, to a position held by someone on a non-regular or regular probationary appointment. He pointed to the difficulty of evaluating qualifications as well as deciding who should make such determinations. A motion to refer the section back to the Tenure Committee for clarification was defeated and the motion to delete the section was approved.

In the absence of Fred Morrison, professor of law, Mr. Green presented their joint amendment to the section on premature termination because of financial exigency. It provided that, except in cases where fitness of the faculty member was the issue, an appointment could not be terminated or suspended before the end of its term except where a financial emergency had been caused by drastic reduction in the instructional budget for supporting regular faculty positions. It was suggested that the amendment be laid over until the next meeting, when Mr. Morrison would be present.

Burnham Terrell, professor of philosophy, took issue with what he termed using a lack of resources as an excuse for separating those judged unworthy of continuing on the faculty but whose terminations could not be handled by legal means. He said the Faculty Senate should have an opportunity to vote on the principles underlying the regulations. He deplored the procedure which would permit determination of those to be displaced to be made without defining qualifications. Mr. Hurwicz expressed fears that a vote against the apparent principles would be interpreted as a move to give up tenure. Section 15 as amended was then approved.

In response to a charge to the Tenure Committee to inquire of the President the relationship of the Director of Personnel to the tenure code, Mr. Sorauf read a letter from the President indicating his agreement with the proposed tenure document, which he said omitted mention of that office in its description of administrative review of recommendations concerning tenure and termination.

Proceeding to Section 16, Adrien Dorenfeld, associate professor of civil and mineral engineering, proposed deletion of repeated unreasonable conduct destructive of academic freedom of other members of the academic community as a cause for termination or suspension. He held that such actions should best be handled in the courts. Sue Bobrow, assistant professor of sociology, opposed the motion, indicating that the University should retain the right of action in such cases for two reasons. First, some cases would not be criminally actionable, and second, court standards would be different from those of the

academic community. Other senators were concerned that academic freedom would not receive the interpretation intended by the academic community and held that the University's Judicial Committee was the appropriate panel to make such decisions. The Dorenfeld amendment was then defeated.

Ms. Bobrow introduced a Morrison amendment to add destruction of individual rights of other members of the academic community to the causes of termination or suspension. She said the amendment was intended as a protection against attacks involving other than academic freedom violations from inside or outside the academic community. Donald Gillmor, professor of journalism and mass communication, inserted the words "other constitutional" to describe individual rights, after indicating that the section should be capable of very precise definitions and that the Judicial Committee should have a body of law which would serve as a reference point. Charles McLaughlin, professor of political science, explained that the Morrison amendment referred to legal rights, after which the Gillmor amendment was defeated and the Morrison amendment approved. Another Morrison proposal called for deletion of the word "repeated" in the same statement. It was explained that a limitation on the appropriate penalty on first offense was contained in a later section and that there was now no provision for any kind of official censure or reprimand for a single violation. Mr. Green pointed out that the Faculty Senate earlier had acted to specify that such conduct must be of a continuing nature, and he urged that the wording be unchanged. There seemed to be some confusion as to Mr. Morrison's intent, and his amendment was defeated. Another Morrison proposal added a new section to codify the decisions made by the Faculty Senate during the first reading on consultative mechanisms. The addition was approved, and Section 16 as amended was also approved.

The next amendment was presented by the Tenure Committee. It provided a description of the jurisdiction of the complaints committees as being those cases which involved the rights of faculty members as employees and the conditions of their employment. There was some discussion as to whether the tenure document was the appropriate place for such complaints committees and procedures. The committee amendment was then approved, and Section 17, as amended, also approved.

There was no further discussion of Sections 18, 19, 20, and 21, and all were approved.

Harley Otto, professor of agronomy, proposed that the list of appointments which were defined as non-regular in Section 4 should show that those federally funded where appropriations were on a formula basis were not included. His intention, he said, was to ensure that those who were thus funded would be considered regular appointments. He withdrew his amendment when it was pointed out that the appropriate mechanism for ensuring that consideration was under the Written Statement portion of Section 5.

The Faculty Senate then turned to the Foreword. Mr. Hurwicz and Mr. Terrell urged reexamination of its wording, indicating that much of it was either confusing or misleading. Mr. Terrell felt there was a definite weakening of the protection to faculty members under the guise of protection, that faculty appointments at the University would have a status inferior to those at other institutions, and that the regulations would be compromising the faculty. The Foreword was then approved and the meeting adjourned at 5:15 p.m.

JEANNE T. LUPTON
Abstractor