

**1996-97 UNIVERSITY OF MINNESOTA No. 4  
FACULTY SENATE MINUTES**

**JANUARY 23, 1997**

The fourth meeting of the Faculty Senate for 1996-97 was convened in 25 Law Building, Minneapolis campus, on Thursday, January 23, 1997, at 2:00 p.m. Checking or signing the roll as present were 112 voting faculty members, 2 ex officio members, and 2 nonmembers. Professor W. Andrew Collins, Vice Chair, presided.

**I. MINUTES OF OCTOBER 24, 1996**

**Action**

The Faculty Senate minutes are available on the World Wide Web at the following URL: [usenate/faculty\\_senate/fac\\_senate.html](http://usenate/faculty_senate/fac_senate.html).

**APPROVED**

**II. TENURE SUBCOMMITTEE  
FACULTY AFFAIRS COMMITTEE  
JUDICIAL COMMITTEE**

**Regents' Policy on Faculty Tenure: Specified Units  
Discussion and Action**

**MOTION:**

To approve the following proposed amendments to the Regents' Policy on Faculty Tenure: Specified Units:

The following contains (1) proposals for amending certain sections of the Regents' Policy on Faculty Tenure: Specified Units (formerly Sullivan II), (2) proposals for interpretations of certain sections of the Regents' Policy on Faculty Tenure, and (3) description of language in the Regents' Policy on Faculty Tenure that differs in significant ways from the language endorsed by the Faculty Senate on May 30 and June 4, but as to which no recommendation for change is made. Unless otherwise stated, all three committees support the proposed language.

**ITEM 1: MOTION A -- Housekeeping Amendment to Footnotes**

*To amend the Regents' Policy on Faculty Tenure: Specified Units by deleting footnote 1: (new language is in CAPS; language to be deleted is contained in brackets)*

Footnote (1): [A "senior academic administrator" is an officer who has final review authority on academic personnel decisions, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators (vice

presidents, chancellors, provosts, etc.) to have responsibility for academic matters for all or part of the University, and will define their respective jurisdictions.]

To delete the reference to footnote 1 in section 3.3.

To change references to footnotes 2 through 12 to reflect the removal of footnote 1. (References to footnotes 2 through 12 are contained in sections 3.4(4), 5.5, 7.11, 7.2, and 14.1.)

***Comment:***

The change proposed in Motion A will delete the duplicate definition of "senior academic administrator" in footnote 1, leaving the definition of that term already contained in the Definitions section.

**DISCUSSION:**

Motion A was unanimously approved with no discussion.

**APPROVED**

**ITEM 2: MOTION B -- Housekeeping Amendment to Section 12.4**

*To amend Section 12.4 as follows: (language to be deleted is contained in brackets)*

12.4 Termination of Appointment

A faculty member who chooses not to [take or] accept a reasonable reassignment or retraining opportunity shall receive . . .

***Comment:***

The proposed amendment would remove a redundancy that appears in Section 12.4.

**DISCUSSION:**

Motion B was unanimously approved with no discussion.

**APPROVED**

**ITEM 3: MOTION C -- Amendment to Section 4.5 on financial stringency**

**ALTERNATIVE 1: As proposed by the Tenure Subcommittee and Faculty Affairs Committee**

*To amend section 4.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

#### Section 4.5 Reduction Or Postponement Of Compensation.

If the PRESIDENT DETERMINES THAT THE University [or a collegiate unit] is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a temporary reduction or postponement in compensation FOR A PREDETERMINED PERIOD NOT TO EXCEED TWO YEARS to be allocated to faculty (INCLUDING FACULTY WITH ADMINISTRATIVE APPOINTMENTS), in accordance with a mathematical formula or similar device. ANY SUCH PROPOSAL WILL BE PRESENTED TO THE FACULTY CONSULTATIVE COMMITTEE FOR ITS CONSULTATION AND ADVICE. THE PROPOSAL WILL (1) SPECIFY THE REDUCTION OR POSTPONEMENT OF COMPENSATION THAT WILL BE ALLOCATED TO NON-FACULTY ADMINISTRATORS DURING THE PERIOD FOR WHICH REDUCTIONS OR POSTPONEMENTS ARE REQUESTED FOR FACULTY AND (2) DESCRIBE OTHER MEASURES THAT WILL BE IMPLEMENTED TO RESPOND TO THE FINANCIAL STRINGENCY. THE PRESIDENT WILL RESPOND SPECIFICALLY TO ALTERNATIVE PROPOSALS TO RESPOND TO THE FINANCIAL STRINGENCY SUGGESTED BY THE FACULTY CONSULTATIVE COMMITTEE. THE FACULTY CONSULTATIVE COMMITTEE WILL REPORT TO THE FACULTY SENATE ITS RECOMMENDATION ON THE PRESIDENT'S PROPOSAL. IF THE FACULTY SENATE APPROVES THE PROPOSED ACTION (OR ANY MODIFICATION OF IT) BY A TWO-THIRDS VOTE OF THE MEMBERS PRESENT AND VOTING (A QUORUM BEING PRESENT), [If approved by the Faculty Senate and] the Board of Regents MAY IMPLEMENT THE REDUCTION AS APPROVED BY THE SENATE (OR ANY LESS STRINGENT ACTION) BY REDUCING TEMPORARILY THE REGULAR COMPENSATION [the base pay] of all faculty members in the University [or in the designated collegial units shall be reduced temporarily] in accordance with the formula or device. [The reduction may not continue for longer than two years, unless renewed by the same procedure.] THE PRESIDENT AND BOARD OF REGENTS MAY RESCIND THE TEMPORARY REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION AT ANY TIME WITHOUT SEEKING FACULTY SENATE APPROVAL.

#### ***Comment:***

Section 4.5 is a new addition to the tenure code, but it draws heavily on provisions already contained in Section 11 on Fiscal Emergency. In presenting Section 4.5 to the Regents, Dean Sullivan indicated that the intent was to move to a more sensible location those portions of Section 11 that describe steps that may be taken before declaring a Fiscal Emergency. In moving and rearranging the language, however, certain minimal procedural steps in Section 11 outlining the manner of presentation of the President's proposal were omitted from new section 4.5. Section 4.5 also changed Section 11's preliminary steps towards fiscal emergency by making them applicable to collegiate units rather than only to the University as a whole. The proposed amendment would restore Section 4.5 to make it parallel to Section 11, as apparently Dean Sullivan originally intended, while simplifying some of the language and procedures.

The proposed amendment also clarifies that the reduction or postponement of compensation would apply to faculty who hold administrative appointments and would affect their entire compensation, including the administrative augmentation. In addition, because it is believed that all members of the University community should share in the burdens imposed by financial stringency, the proposal for reduction or postponement of faculty salaries must include information on the extent to which the compensation of non-faculty administrators will be similarly affected and on other measures the president is implementing to respond to the financial stringency.

**ALTERNATIVE 2: As proposed by the Judicial Committee**

*Note:* The Judicial Committee supports the amendments proposed in Motion C, but would also allow a collegiate unit to agree, by a 2/3 majority, to temporary reduction or postponement of compensation for that college. To implement this proposal, the amendment would read as follows:

*To amend section 4.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets; language differing from alternative 1 is in italics in printed (not email) version)*

Section 4.5 Reduction Or Postponement Of Compensation.

If the PRESIDENT DETERMINES THAT THE University *or a collegiate unit* is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a temporary reduction or postponement in compensation FOR A PREDETERMINED PERIOD NOT TO EXCEED TWO YEARS to be allocated to faculty (INCLUDING FACULTY WITH ADMINISTRATIVE APPOINTMENTS), in accordance with a mathematical formula or similar device. ANY SUCH PROPOSAL WILL BE PRESENTED TO THE FACULTY CONSULTATIVE COMMITTEE FOR ITS CONSULTATION AND ADVICE. *IF THE PROPOSED ACTION INVOLVES ONLY A COLLEGIATE UNIT, THE PRESIDENT WILL ALSO PRESENT THE PROPOSAL TO THE FACULTY ASSEMBLY OF THE AFFECTED UNIT FOR ITS APPROVAL.* THE PROPOSAL WILL (1) SPECIFY THE REDUCTION OR POSTPONEMENT OF COMPENSATION THAT WILL BE ALLOCATED TO NON-FACULTY ADMINISTRATORS DURING THE PERIOD FOR WHICH REDUCTIONS OR POSTPONEMENTS ARE REQUESTED FOR FACULTY AND (2) DESCRIBE OTHER MEASURES THAT WILL BE IMPLEMENTED TO RESPOND TO THE FINANCIAL STRINGENCY. THE PRESIDENT WILL RESPOND SPECIFICALLY TO ALTERNATIVE PROPOSALS TO RESPOND TO THE FINANCIAL STRINGENCY SUGGESTED BY THE FACULTY CONSULTATIVE COMMITTEE *AND, IF APPLICABLE, BY THE FACULTY ASSEMBLY OF THE AFFECTED UNIT.* THE FACULTY CONSULTATIVE COMMITTEE WILL REPORT TO THE FACULTY SENATE ITS RECOMMENDATION ON THE PRESIDENT'S PROPOSAL. IF THE FACULTY SENATE (*AND, IF THE PROPOSAL INVOLVES ONLY A COLLEGIATE UNIT, THE FACULTY ASSEMBLY OF THE AFFECTED UNIT*) APPROVES THE PROPOSED ACTION (OR ANY MODIFICATION OF IT) BY A TWO-THIRDS VOTE OF THE MEMBERS PRESENT AND VOTING (A QUORUM BEING PRESENT), [If approved by the Faculty Senate and] the Board of Regents MAY IMPLEMENT THE REDUCTION AS APPROVED BY THE SENATE (OR ANY LESS STRINGENT ACTION) BY REDUCING TEMPORARILY THE REGULAR COMPENSATION [the base

pay] of all faculty members in the University *or in the designated collegial units* [shall be reduced temporarily] in accordance with the formula or device. [The reduction may not continue for longer than two years, unless renewed by the same procedure.] THE PRESIDENT AND BOARD OF REGENTS MAY RESCIND THE TEMPORARY REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION AT ANY TIME WITHOUT SEEKING FACULTY SENATE APPROVAL.

## **DISCUSSION:**

Professor Chomsky explained that there are two alternatives to this amendment, one by the Tenure Subcommittee and the Faculty Affairs Committee (Alternative 1) and the other by the Judicial Committee (Alternative 2).

Professor Ed Fogelman, Chair of the Judicial Committee, explained that the Judicial Committee accepts the basic notion of the amendment, but would like to introduce an additional option to make the procedure more flexible by allowing it to apply, with appropriate safeguards, to collegiate units and not to the University as a whole. It is a recognition that the financial situation in different collegiate units may differ. In other institutions there have been instances where the faculty preferred to take a temporary reduction in salary rather than eliminate positions. A two-thirds majority approval by the college assembly would be necessary for this to occur in a collegiate unit.

There was some discussion concerning the wide disparity in salaries within some collegiate units and whether cuts should be specified for base salary rather than on salary augmentations. Professor Chomsky, however, reminded senators that the real question is whether the Faculty Senate believes cuts should be allowed to take place on the collegiate level or uniformly across-the-board on an all-University level.

At this time a senator moved to object to consideration of Motion C on the grounds that it is not appropriate to discuss it at a time when a majority of the University is under a Status Quo Order.

In response to the motion to object to consideration, Professor Gray said the reason the Faculty Senate is considering the proposal at this time is because it is important that faculty provide input on the document before it is considered further by the Regents. She reminded senators that up to this point there has been no faculty input on this particular proposal. If the Regents adopt the Faculty Senate amendments, they can go back and retroactively approve them for the campuses already under the new Tenure Code. With respect to those units covered by the Status Quo Order, the AAUP/UFA and FCC constituted a group to meet with the Regents to discuss whether the Order can be amended to allow for a discussion of the Tenure Code. They agreed that they would begin that discussion with whatever comes out of the Faculty Senate. To advance that agenda, she said, the Faculty Senate needs to take some action at this meeting.

Professor Fogelman, chair of the Senate Judicial Committee, added that the objection seems to imply that there are no costs to delay. That is not the case. Departments are losing prospective faculty because of this continuing issue and with each delay the costs to the University as a

whole are mounting. Unless there is some good reason to delay, there are very good reasons to move ahead.

Another senator asked why the Regents are planning to act on the tenure proposal for the Morris campus at their January 24 meeting if they truly are interested in the Faculty Senate's input.

**The motion to object to consideration of Motion C failed 22 to 67.**

The Faculty Senate then returned to consideration of the Judicial Committee proposal (Alternative 2).

One person voiced his opposition to the Judicial Committee alternative on the matter of principle. Faculty at the University do not consider themselves as separate units and it is important on this issue that the faculty stand together as a whole.

Professor Chomsky explained that the Faculty Affairs Committee and the Tenure Subcommittee were concerned that if it is possible to declare financial stringency at the collegiate level, despite having the approval of the faculty assembly of that unit, it would be possible for the administration to bring severe pressure on a particular unit. The committees believe this is something that should be borne across the campus.

Other senators also spoke in opposition to Alternative 2 expressing that the Faculty Senate does not want to support a situation in which individual units could be divided and pitted against one another in a case of fiscal stringency or retrenchment.

**The question was then called and the motion to substitute Alternative 2 for Alternative 1 failed on a voice vote.**

The Faculty Senate then returned to consideration of Alternative 1.

Senator Wade Savage introduced several amendments to Alternative 1 and asked for a suspension of the rules in order that they may be considered.

**A motion to suspend the rules to consider all amendments to the tenure amendments under consideration was approved.**

In the first sentence of Section 4.5, Senator Savage proposed striking "in accordance with a mathematical formula or similar device" and adding in its place "by a single, fixed percentage of salary for every faculty member in every unit of the University to be deducted from the salary of each faculty member."

**A motion to consider Senator Savage's amendment was approved.**

Professor Morrison, member of the Tenure Subcommittee, said that the words "mathematical formula" have been in the Tenure Code since 1985 to permit the possibility of a graduated

percentage cut. Professor Savage's motion is for a flat tax and, as such, he expressed opposition to it.

Another senator said that the mathematical formula could work in reverse and, therefore, levy a higher tax on lower incomes.

**At this time the question was called and the motion to amend failed.**

The Senate returned to consideration of Alternative 1 as presented in the docket.

In response to a question concerning the use of the term "salary," Professor Chomsky said it refers to regular compensation. Regular salary refers to base salary plus augmentations. The idea is that the mathematical formula could apply differently to different components.

A senator said that while the motion is considerably better than what is in the original document, the term "fiscal stringency" is still not defined and until faculty better understand the link between financial stringency and financial exigency they are going to remain uneasy about Section 4.5.

Professor Chomsky replied that the committees did discuss defining financial stringency, but felt unable to put a quantitative definition on it in part because they were comparing it to the definition for fiscal emergency from Section 11, which also is not very quantified. The committees relied on the fact that the President would have to determine these conditions and that it would then come before the Faculty Consultative Committee and the Faculty Senate.

Some concern was expressed that this places a significant amount of power in the hands of the Faculty Senate.

Professor Fogelman added that the committees wrestled with the definitions. There is one difference between the two. Under the emergency provision there can be a proposal for elimination of units, cutting of positions, and other drastic measures. For financial stringency, the response is far more moderate, such as temporary suspension of increases or possible reductions of salary for a certain period of time.

A senator noted that it would be hard to reduce total compensation for certain units, such as medicine or IT, because they have negotiated contracts with outside sources.

Professor Chomsky responded that it was assumed that these types of problems would be dealt with by virtue of the mathematical formula or a similar device which would have to take into account that certain portions of salary might not be controlled by the University and thus reductions might be higher in the recurring salary to make it comparable.

**Motion C, Alternative 1, as presented, was then approved.**

**APPROVED**

#### **ITEM 4: INTERPRETATION 1 -- Relating to section 4.5 on financial stringency**

*The Tenure Subcommittee proposes to add the following interpretation of Section 4.5:*

Financial stringency in Section 4.5 is understood to mean financial difficulties that are unusual in extent and require extraordinary rather than ordinary responses. Section 11 may be invoked if the Regents are "faced with the necessity of drastic reduction in the University budget," reductions so severe that they may "threaten [the] survival" of the University. It is understood that the financial difficulty that would permit the president to propose temporary reductions or postponements in compensation under Section 4.5 is less severe than the "fiscal emergency" outlined in Section 11, but it is also understood that "financial stringency" should not be invoked to respond to foreseeable fluctuations in the University's budget and finances.

#### ***Comment:***

This interpretation helps to clarify what is meant by "financial stringency," which is otherwise undefined in the document. Interpretations proposed by the Tenure Subcommittee and the Senior Vice President for Academic Affairs are reported to the Faculty Senate and take effect if adopted by the Board of Regents. This interpretation is offered to the Faculty Senate for comment before final approval by the Tenure Subcommittee.

#### ***Note:***

If the Senate adopts Motion C Alternative 2, the Tenure Subcommittee would add to the end of the last sentence of proposed Interpretation 1 the phrase "or to implement reallocation decisions and priority-setting by the administration." This language is relevant only if reductions or postponements in compensation can be applied to collegiate units.

#### **DISCUSSION:**

Professor Chomsky explained that item 4 helps to clarify what is meant by "financial stringency."

A senator said that while the committee is considering the definition of financial stringency, it would also help if it could explain why Section 11.4 is needed since Section 4.5 has been approved. Perhaps Section 11.4 should be eliminated. Professor Chomsky replied that it refers to the second stage of the fiscal emergency provisions. When Section 4.5 was first proposed, it was described as taking portions of Section 11.4 and transposing them to a better and clearer location. If the committees were writing on a clean slate, they might agree that Section 11.4 is no longer needed; however, we are dealing with a Code that already exists.

Professor Morrison added that Section 4.5 is optional while Section 11.4 says that if the University goes into financial emergency, the University must go through consideration of this step first.

#### **ITEM 5: MOTION D -- Amendment to Section 7a.5 on alternative methods of peer review**

*To amend section 7a.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

#### 7a.5. Peer Review Option.

Upon application to it by the dean AND ELECTED FACULTY ASSEMBLY [of an academic unit] OF A COLLEGIATE UNIT, the Faculty Senate may adopt a system of peer review of performance of faculty of that unit different from the system set forth in Sections 7a.1 through 7a.4 if in the Faculty Senate's judgment so proceeding is in the University's interest.

#### **Comment:**

The amendment would clarify that the adoption of different systems of peer review would occur at the level of a college rather than an academic unit, as reflected in the section's specification of the "dean" as the person proposing the change. It ensures the appropriateness and success of the alternative method by requiring approval by both the dean and the faculty assembly of the collegiate unit before the proposal is submitted to the Faculty Senate.

#### **DISCUSSION:**

Senator Savage moved for a suspension of the rules to consider a number of amendments. The motion to suspend was approved and the following motions were presented:

- **a motion to delete Section 7a.5 was not approved**
- **a motion to refer the proposed Savage amendments (labelled C1 and C2) to the Tenure Subcommittee, Faculty Affairs Committee, and Judicial Committee was not approved**
- **a motion to add the following language (amendment C1) at the end of Section 7a.2 was not approved:**

If the head of the unit and the peer merit review committee both find a faculty member's performance in meeting the goals and expectations of the unit to be significantly above the average of the unit, they may jointly request the dean or senior academic administrator to conduct a special peer review of the faculty member's qualifications for either an extraordinary merit raise or an equity merit raise.

- **a motion to add the following new section after 7a.3 and to renumber the succeeding sections accordingly was not approved:**

7a.4 Special Peer Review in Cases of Extraordinary Performance. To initiate a special peer review to reward extraordinary performance, the head of the unit shall forward a letter of recommendation to the dean or senior academic administrator together with materials documenting the candidate's performance for the past five years (including the current year). The dean or senior academic administrator will refer the recommendation to a special faculty committee charged to evaluate all such recommendations made during the current year. The committee will include one representative from each collegiate unit

within the jurisdiction of the dean or senior academic administrator. The committee will evaluate the qualifications of each candidate for an extraordinary merit raise or equity merit raise of up to 10 percent of the candidate's recurring salary based on the performance of the candidate for the past five years (including the current year). Extraordinary merit raises are granted to reward outstanding and unusually high performance by a faculty member. Equity merit raises are granted to raise a faculty member's salary to a level commensurate with comparable appointments at equivalent rank in the same field. The committee will forward its recommendations to the dean or senior academic administrator in the form of a whole number of percentages between zero and ten of the member's recurring salary. All such raises approved by the dean or senior academic administrator shall be paid from a separate fund established for the purpose and not from monies allocated to departments for ordinary merit raises.

- **motion D as presented in the agenda was approved**

## **APPROVED**

### **ITEM 6: MOTION E -- Amendment to Section 12.1 on Programmatic Change**

*To amend section 12.1 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

#### 12.1 Programmatic Change

The University and faculty recognize that changes in academic programs are an essential part of the development and growth of the institution. These changes should reflect long-term policy and planning, **BE BASED ON EDUCATIONAL CONSIDERATIONS, AND BE UNDERTAKEN ONLY AFTER CONSULTATION WITH THE FACULTY.**

#### ***Comment:***

The proposed amendment would memorialize the kind of consultation and consideration that is undertaken with respect to changes in academic programs at the University.

#### **DISCUSSION:**

A senator expressed concern with the broad term "faculty," and asked if there were to be programmatic changes, would there be consultation with specific groups of faculty or with faculty selected by administrators, etc. Professor Chomsky replied that this was left rather vague. The thought was to memorialize that such changes should involve faculty in the discussions. It depends on the nature of the programmatic change and, therefore, is hard to clarify.

A friendly amendment was proposed to the effect that, "such consultation shall be described publicly for all faculty in that unit at least two weeks prior to any actions being taken." The amendment was not accepted as friendly.

A senator then asked for the committees' rationale for not including the existing governance structures in the consultation process. Professor Chomsky replied that programmatic change may be within a particular unit and may not require Senate committee consideration. She suggested that the Tenure Subcommittee could create an interpretation to define consultation.

**A friendly amendment was then accepted to change the final sentence in the motion to read:**

. . . These changes should reflect long-term policy and planning, should be based on educational considerations, and may be undertaken only after consultation with faculty, which, at a minimum, includes the established governance structure.

**The motion, as amended, was then unanimously approved.**

**APPROVED**

**ITEM 7: MOTION F -- Amendment to Section 12.3 on Reassignments**

*To amend section 12.3 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

12.3 Reassignments.

In cases of programmatic change THAT LEADS TO THE DISCONTINUATION OF A PROGRAM, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be reached, the University officer will assign new responsibilities after consultation with the individual. THE ASSIGNMENT WILL BE AS CLOSELY RELATED TO THE ORIGINAL APPOINTMENT AS PRACTICABLE. THE FORMAL ASSIGNMENT WILL BE IN WRITING AND WILL INDICATE THE CONTINUING NATURE OF THE FACULTY MEMBER'S TENURE.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

- \* to teach in another field in which the individual is qualified
- \* to perform professional or administrative duties, including professional practice in a field in which the individual is qualified.
- \* to transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits.

IF THE ASSIGNED RESPONSIBILITIES ARE LOCATED A SUBSTANTIAL DISTANCE AWAY FROM THE PREVIOUS WORK LOCATION, THE UNIVERSITY WILL PROVIDE FOR TRAVEL OR MOVING EXPENSES, AS APPROPRIATE TO THE CIRCUMSTANCES

OF THE FACULTY MEMBER. IF SUCH ASSIGNMENTS ARE MADE, THE UNIVERSITY WILL ENDEAVOR TO PROVIDE AN OPPORTUNITY FOR THE FACULTY MEMBER TO CONTINUE RESEARCH IN THE ORIGINAL FIELD.

A faculty member must accept any reasonable reassignment or offer of retraining. [Following the faculty member's acceptance of the assignment, any] ANY dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in Section 15. IN ANY SUCH PROCEEDING, THE UNIVERSITY MUST SHOW THAT THE REASSIGNMENT OR OFFER OF RETRAINING IS REASONABLE. IN DETERMINING REASONABLENESS, THE JUDICIAL COMMITTEE SHALL CONSIDER ALL RELEVANT CIRCUMSTANCES, INCLUDING THE FINANCIAL BURDEN ON THE FACULTY MEMBER FROM REASSIGNMENT, THE DISRUPTIVE PERSONAL AND FINANCIAL EFFECTS OF GEOGRAPHIC RELOCATION, AND THE AVAILABILITY OF OTHER REASONABLE ALTERNATIVE ASSIGNMENTS. THE FACULTY MEMBER SHOULD CARRY OUT THE REASSIGNED RESPONSIBILITIES PENDING RESOLUTION OF THE DISPUTE, UNLESS THE JUDICIAL COMMITTEE DETERMINES THAT PROVISIONAL MEASURES ARE APPROPRIATE.

***Comment:***

Section 12.3 as adopted by the Regents is based on and enacts into the Code language from a formal Interpretation of Section 12 adopted by the Tenure Subcommittee and forwarded to the Senior Vice President for Academic Affairs on June 7, 1996 after presentation to the Faculty Senate. The proposed amendments restore to Section 12.3 some additional language from the same Interpretation that further clarifies and facilitates the procedures for reassignment.

**DISCUSSION:**

An inquiry was made why the University would want to "transfer effort." Professor Fogelman explained that in certain circumstances (e.g. visiting professors), faculty find it preferable to stay on the University payroll and to charge the other University for their services. One benefit of this arrangement is continuity of medical and retirement benefits.

Another person said he is affiliated with a program with only two other faculty members. Discussions are occurring with faculty in a like program at the University of Wisconsin about the possibility of offering joint classes and programs across the two campuses. Is it possible that the University might decide that the U of M program is too expensive and decide to close it and transfer the faculty to UW-Madison? Professor Morrison responded that if all the conditions were met that would permit closure of the program and reassignment of the faculty to another program within the University, that is one of the options that could be given.

"What would happen to a person being loaned to a different college if the other college decided that they wanted a 10 percent pay cut? What redress would the faculty member have?" asked a senator. Professor Morrison replied that as a U of M employee, the recourse would be here. There is a provision in the Tenure Code that says recurring salary cannot be reduced. Therefore, the University would have to cover the shortfall from other sources.

Professor Fogelman added that in the event the assignment seems unreasonable, an appeal lodged with the Judicial Committee will determine whether or not it is reasonable and in doing so shall consider all relevant circumstances such as those listed.

Professor Chomsky further noted that the term "program" as used in the Code has not been clearly defined which is something the Tenure Subcommittee may want to address.

**At this time a friendly amendment was accepted to strike the words "endeavor to" in the sixth paragraph of the motion and to reverse the two sentences in the same paragraph.**

**The motion, as amended, was overwhelmingly approved.**

**APPROVED**

**ITEM 8: MOTION G -- Amendment to Section 14.6**

*To amend section 14.6 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

14.6 Temporary Suspension During Proceedings.

The dean may temporarily suspend a faculty member during the proceedings, but only if there is clear evidence that the faculty member is likely to cause serious harm or injury or is not available for work. The suspension will be with full pay, unless the faculty member is not available for work. Before ordering such suspension, the dean must present the evidence to a special panel of the Faculty Consultative Committee and receive their written report. The faculty member must be given the opportunity to contest the suspension before the panel.

If no final decision has been rendered one year after the commencement of formal proceedings, the faculty member shall be temporarily suspended without pay, unless the parties agree otherwise, or unless the HEARING panel OF THE JUDICIAL COMMITTEE extends the time period because of undue delays in the procedure attributable to the action of the University. This provision applies only in a case in which the majority of the tenured faculty of the academic unit concurred in the recommendation to terminate the appointment. If the FACULTY MEMBER PREVAILS OR THE president determines that the temporary suspension without pay was not warranted, then the president shall order the repayment of back pay to the faculty member with interest thereon from the date it would originally have been paid.

In case of any suspension under this section, the faculty member shall continue to receive full medical insurance and disability benefits without regard to the suspension.

***Comment:***

The proposed amendment clarifies the procedure involved in a temporary suspension without pay for undue delay in the appeal proceedings.

## **DISCUSSION:**

A senator raised the point that Section 14.6 applies only in a case in which the majority of the tenured faculty of the academic unit concurred in the recommendation to terminate the appointment, and wondered if the drafters have considered the effect that this language will have on the department faculty? Professor Morrison responded that there is always a danger of unintended results. The point here is that this would take effect only if three conditions were met. First, that the faculty in the unit voted in favor of the suspension. Second, that the case has been proceeding in the Judicial Committee for longer than one year. And third, that the Judicial Committee finds that the delays were not the work of the administration. Therefore, the possibility is very remote, although it does exist.

Another senator asked how the faculty can vote to terminate employment when the case has not been heard by the Judicial Committee. Professor Morrison replied that the procedure on a termination case dictates that before the dean can start the termination proceedings, the dean must go to the departmental faculty and get their recommendation whether to proceed with the case or refuse it.

**With no further discussion, the motion, as presented, was unanimously approved.**

## **APPROVED**

### **ITEM 9: MOTION H: Amendment to Section 10.22 on Minor Disciplinary Actions**

*To amend section 10.22 as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

#### 10.22 Procedure For Minor Disciplinary Actions.

Minor sanctions, such as a letter of reprimand in the faculty member's file [or a suspension for up to three days, or the like,] OR SANCTIONS (OTHER THAN SUSPENSION OR TERMINATION) SPECIFICALLY ARTICULATED IN POLICIES ESTABLISHED BY COLLEGIATE UNITS OR BY THE UNIVERSITY may be imposed for significant acts of [unprofessional conduct] PROFESSIONAL MISCONDUCT THAT VIOLATE A UNIVERSITY OR COLLEGIATE POLICY APPROVED BY THE RELEVANT FACULTY GOVERNANCE BODY AND, WHERE APPROPRIATE, THE REGENTS. [For minor sanctions, t] The dean may PROPOSE [impose the] SUCH A sanction [after] BY providing the faculty member WRITTEN notice of the proposed action and of the reason that it has been proposed and giving the faculty member an opportunity to respond. If WITHIN 30 DAYS the faculty member files a [grievance under the University grievance policy to challenge a minor disciplinary matter] PETITION FOR REVIEW OF THE PROPOSED SANCTION WITH THE JUDICIAL COMMITTEE, the sanction shall be held in abeyance until the conclusion of the proceeding. IN THE JUDICIAL COMMITTEE PROCEEDING, THE DEAN MUST SHOW THE VIOLATION OF AN ESTABLISHED POLICY AND THE APPROPRIATENESS OF THE PROPOSED SANCTION. THE MATTER WILL BE HEARD EXPEDITIOUSLY. IF THE JUDICIAL COMMITTEE DISAPPROVES THE PROPOSED SANCTION, IT MAY

ONLY BE IMPOSED BY THE PRESIDENT IN ACCORDANCE WITH THE PROCEDURES OF SECTION 15.5. [The grievance panel shall have jurisdiction to consider all claims raised by the faculty member, and if the case goes to arbitration, the arbitrator shall be an individual with experience in academic matters. ]

***Comment:***

The proposed amendments clarify the acts for which minor sanctions are appropriate and the nature of the sanctions that may be imposed. The amendments also establish an expeditious hearing procedure if the faculty member contests the existence of a violation or the appropriateness of the sanction.

**DISCUSSION:**

Professor Morrison moved to suspend the rules to consider a substitute motion. The motion to suspend the rules was seconded and approved. He then presented a motion to substitute the following language for Section 10.22 (Procedure for Minor Disciplinary Actions):

Penalties less severe than termination or suspension of appointment may be imposed only as provided in this section. Such penalties may be imposed for violations of section 10.21 not warranting termination or suspension or for significant acts of professional misconduct in violation of other specific written University or collegiate policies approved by the Senate or the appropriate collegiate assembly. They may involve a written reprimand or any other sanction specifically authorized by the policy. Before imposing such a penalty, the dean or senior academic administrator must inform the faculty member in writing of the alleged violation and the potential penalty and must give the faculty member an opportunity for a hearing before an impartial body. If the faculty member requests such a hearing, the dean or senior academic administrator must show the violation of policy and the appropriateness of the penalty. The penalty will not exceed that recommended by the hearing body. The faculty member may appeal the decision to the Judicial Committee only for failure to follow the provisions of this section, for violation of academic freedom, or for denial of due process.

**The motion to substitute was unanimously approved.**

Professor Morrison explained that the purpose of the new language was to provide greater clarity to the section.

**Several senators spoke in favor of the substitute motion, after which it was unanimously approved.**

## **SUBSTITUTE MOTION APPROVED**

### **ITEM 10: MOTION I -- Definition of Regular Compensation**

*To amend Section 4.4, as follows: (new language is in CAPS; language to be deleted is contained in brackets)*

#### Section 4.4 Faculty Compensation

Each faculty member shall receive a [base] RECURRING salary, which will not be decreased except by action expressly authorized in this section or in Sections 7a, 10, 11, or 14 of these regulations or with the agreement of the faculty member. If a faculty member's [base] RECURRING salary is decreased, the amount of the decrease and the reason therefor shall be set forth in a written notice and provided to the faculty member. No decrease in [base] RECURRING salary shall occur in violation of the academic freedom of the faculty member.

The University may also from time to time provide a faculty member with additional compensation that is not part of [base] RECURRING salary. The additional compensation may be for special awards or for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching and summer research support and similar activities. **THE TOTAL OF RECURRING SALARY AND ADDITIONAL COMPENSATION, AS DEFINED IN THIS SECTION, WILL TOGETHER CONSTITUTE THE REGULAR COMPENSATION OF THE FACULTY MEMBER.**

At the time an appointment is made, the offer and written notice of appointment shall separately state the [base] RECURRING salary and any additional compensation, as described above, that the faculty member will receive. In each subsequent year, the faculty member shall be provided with a written notice separately stating any changes in [base] RECURRING salary and any changes in additional compensation for the following academic year. A faculty member's [base] RECURRING salary shall consist of the initial [base] RECURRING salary adjusted by any subsequent increase or decrease in [base] RECURRING salary provided for in a subsequent written notice. Increases will be presumed to be in [base] RECURRING salary unless otherwise identified. For a faculty member employed when this section takes effect, the initial [base] RECURRING salary will be the faculty member's [base] RECURRING salary at the time this section takes effect, exclusive of any ADDITIONAL compensation designated as special awards or designated as being for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching, summer research support and similar activities.

*To amend Section 3.5 as follows:*

#### Section 3.5 Administrators' Appointments

Academic administrators may hold regular or term faculty appointments. Administrative titles and duties are distinct and severable from such individuals' faculty appointments. Removal from an administrative position does not impair any rights the individual holds as a faculty member. Upon leaving an administrative position, the individual returns to faculty status, with [salary] REGULAR COMPENSATION and term of appointment reduced by the amount of the administrative augmentation, if any.

*To amend Section 4.1 as follows:*

#### Section 4.1 Written Notice of Appointment

Each faculty appointment or change of status is specified in a written notice of appointment issued by or on behalf of the Board of Regents. The notice must include the following:

1. Whether the appointment is regular or term;
2. Whether it is full or part-time and the percentage of time involved;
3. If for a fixed term, its expiration date;
4. If regular, whether it is probationary or with indefinite tenure;
5. Whether it is on a twelve-month, academic year or other specified annual basis;
6. The rank of appointment;
7. The academic unit or units to which the individual is being appointed;
8. The [base] RECURRING salary; and
9. Additional compensation as described in Section 4.4.

The notice is only evidence of the appointment .....

*To amend Section 7a.4 as follows:*

#### Section 7a.4 Salary Reductions

If the special review panel recommends that the faculty member's performance is so inadequate as to justify limited reductions of [base] RECURRING salary, the head of the academic unit, with the approval of the dean, may reduce the faculty member's [base] RECURRING pay, subject to the following limitations:

- **(a)** the amount of the decrease will not exceed 10% of the faculty member's [base] RECURRING salary on the basis of any one special review;
- **(b)** [base] RECURRING salary may not be reduced by more than 25% from the highest level of [base] RECURRING pay ever held by the faculty member;
- **(c)** at least six month's notice of the decrease must be given;
- **(d)** any decrease in RECURRING salary may be restored by the annual review process provided in Section 7a.2.

Within 30 work days of notice of the decrease, the faculty member may appeal this action to the Judicial Committee, which shall review the action and the recommendation leading to it in a manner analogous to the review of tenure decisions (see Section 7.7). This review may not

reconsider matters already decided by the Judicial Committee under Section 7a.3. Any decrease in [base] RECURRING pay beyond the limits specified in this subsection can only be imposed pursuant to Sections 4.5, 10, 11, and 14.

***Comment:***

Faculty members in the Academic Health Center have raised concerns about the impact of Section 4.4's definition of base salary on the computation of charges that may be recovered under NIH grants. The governing federal document, OMB Circular A-21, says that "charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period." Thus both the Regents' Policy on Faculty Tenure and the OMB Circular use the term "base salary," although with different meanings. If the Regents' Policy-defined "base salary" were to be used in NIH grant proposals as the equivalent of the OMB-defined "base salary," the AHC would face the loss of very substantial amounts of cost recovery.

The proposed language will help to clarify that the University considers the faculty member's total or "regular" compensation to include what is expressly called "additional compensation" in the Regents' Policy, including clinical income.

**DISCUSSION:**

Several amendments to the first two paragraphs of the motion and the section title were introduced with the intent to improve clarity. The Tenure Subcommittee accepted them as "friendly amendments." The amended language reads:

Section 4.4 Regular Compensation for Faculty

Each faculty member shall receive as regular compensation a recurring salary, and additional compensation which may be for special awards or for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching and summer research support and similar activities.

Recurring salary will not be decreased except by action expressly authorized in this section or in Sections 7a, 10, 11, or 14 of these regulations or with the agreement of the faculty member. If a faculty member's recurring salary is decreased, the amount of the decrease and the reason therefor shall be set forth in a written notice and provided to the faculty member.

No

decrease in recurring salary shall occur in violation of the academic freedom of the faculty member.

. . . .

Several senators encouraged the Tenure Subcommittee to consider the issue of recurring versus non-recurring salary, particularly as it pertains to the AHC.

**The question was then called and the motion, as amended, was unanimously approved.**

**APPROVED**

**ITEM 11: INTERPRETATION 2 -- Regarding Section 4.4 definition of recurring salaries**

*The Tenure Subcommittee proposes to add the following interpretation of Section 4.4:*

It is expected that any salary increases normally will be added to recurring salary if recurring funds are available for that purpose. Section 4.4 does not give any specific faculty member a legal entitlement or right to an increase in recurring salary.

***Comment:***

This interpretation was approved both by the Senior Vice President for Academic Affairs and by the Tenure Subcommittee (on July 3, 1996), after final Faculty Senate action regarding the tenure regulation proposals. (The wording has been changed slightly for reasons of clarity, but the substance is identical.) Although all other interpretations approved by the Tenure Subcommittee were incorporated into the Sullivan II proposal, and hence into the Regents' policy on Faculty Tenure: Selected Units, this interpretation was omitted. It is a clarification both of the expectation that salary increases will be allocated to recurring salary when recurring funds are available and a recognition that faculty members do not have a legal right to have salary increases be included in recurring salary.

**DISCUSSION:**

In response to a request for clarification of the interpretation, Professor Chomsky explained that it is expected that if recurring funds are available they will be designated for recurring salary. It does not mean that just because funds are available, a person is entitled to an increase in recurring salary.

Professor Morrison added that the use of the word "recurring" is used in a technical sense, such as state money which the University is willing to commit on a recurring basis, not in a predictive sense. Additional compensation is clearly defined, such as clinical income, which the University may be committing, but is not part of what we used to call base salary. The total of those two is the total compensation, which is what we want as the amount to drive the NIH grants. Appointment documents should identify which portion of a faculty member's salary is recurring.

## **ITEM 12: DISCUSSION -- New Ground for Dismissal or Suspension**

The Senate committees wish to note for the Faculty Senate one additional significant change to the prior regulations respecting tenure, although the committees do not propose to modify the provisions as adopted by the Regents or as proposed for further adoption. In Section 10.21, which specifies the causes that may be cited for termination or suspension of a faculty member, the Regents added a new Section 10.21(e), which permits such action for "other grave misconduct manifestly inconsistent with continued faculty appointment." The aim of subsection (e) apparently is to provide some additional flexibility to seek these serious sanctions against faculty members whose misconduct, though severe, does not fall within the parameters of the more narrowly defined provisions in subsections (a) through (d). The Subcommittee believes new subsection (e) is acceptable, but believes the Faculty Senate should be aware of the change as it deliberates on its response to Sullivan II.

### **DISCUSSION:**

There was no discussion of this item.

### **III. OLD BUSINESS**

**NONE**

### **IV. NEW BUSINESS**

**NONE**

### **V. ADJOURNMENT**

The meeting adjourned at 5:05 p.m.

**Martha Kvanbeck**  
**Abstractor**