

Minutes*

**Faculty Consultative Committee
Thursday, May 4, 1995 (Part II)
2:00 - 3:00 (continued from 10:00 - 12:00)
Room 238 Morrill Hall**

Present: John Adams (chair), Carl Adams, Carole Bland, Victor Bloomfield, Thomas Burk, Sheila Corcoran-Perry, Lester Drewes, Dan Feeney, Virginia Gray, James Gremmels, Kenneth Heller, Roberta Humphreys, Robert Jones, Morris Kleiner, Geoffrey Maruyama, Michael Steffes, Gerhard Weiss

Regrets: Harvey Peterson

Guests: Pat Mullen (Director, EEO/AA), Professor W. Donald Spring (Senate Committee on Faculty Affairs)

Others: Martha Kvanbeck (University Senate), Maureen Smith (University Relations)

[In these minutes: Tenure code interpretations; responsibilities of the Director of Equal Opportunity and Affirmative Action]

1. Tenure Code Interpretations

After adjourning the Senate Consultative Committee, Professor Adams reconvened the Faculty Consultative Committee and welcomed Professor W. Donald Spring to discuss the interpretations of the tenure code presented at an earlier meeting by Professor Mary Dempsey.

Professor Spring reviewed the three interpretations, two of which the Committee had endorsed at the earlier meeting (adapting the promotion and tenure process to the provostal structure, for one year; interpreting the word "days" in the code). The concern had been about the third, which provided for extending the time limits for responses from faculty and administrators in cases of unrequested leaves of absence, termination, or suspension. The problem was how to decide on an extension when the mutual agreement of parties might be impossible to obtain.

FCC had suggested considering use of an impartial third party, and asked Professor Dempsey to consult with Professor Morrison. She did so; the third party chosen was the chair of the Judicial Committee. It is hoped that extensions can be agreed upon by mutual consent, and they need to be in writing and signed by both parties. If they cannot agree, either party may apply to the chair of the Judicial Committee.

-- If the faculty member fails to act within the time limits of the code, the administrator may request the chair to set a specific date by which the faculty member MUST take action; if

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not, the petition for review will be dismissed without further proceedings and the requested disciplinary action, or any lesser sanction, may be taken.

- If the responsible administrator fails to act within the time limits of the code, the faculty member may request the specific date to take action; if the administrator fails to do so, the proceedings shall be dismissed and further action could be taken only by re-initiating the entire proceedings.

One Committee member asked about the second provision, where the administrator has failed to act in a timely way; if so, the proceedings are dismissed. That sounds like an administrator could stonewall and the petition dismissed, so a petition on behalf of an aggrieved faculty member would have to be started all over again. Is that what is meant? Professor Spring said it was; how can it be prevented from happening, he asked? There is no easy way. Except, pointed out one Committee member, the last thing in the world a senior administrator wants these days is to NOT act in an appropriate manner when these things come forward, because they get more complicated the longer they last; it is not to their advantage to delay. It is to force them to act; in the absence of acting, things will get worse for the administrator.

Should not the repercussions be on the administrator, it was asked? This puts them on the faculty member. Professor Spring demurred. If the administrator does not want the faculty member to suffer the sanctions that the panel or tenure vote decided, the administrator could simply fail to act, and endorse a reinstatement of the faculty member.

In the case of a grievance, this does not change the line of appeal to the President.

On the first item (adapting the promotion and tenure process to the provostal structure for one year), one Committee member asked that it be clearly understood there was considerable debate about whether this adaptation should be in place for one, two, or three years before considering a permanent change in the code, it was concluded that the interpretation could be extended, but it is in place only for one year. During that year, Professor Spring explained, efforts would be made to inform faculty about the change, including forums for discussion.

Concern was again expressed about the possible lack of objectivity, especially in the smaller of the six units (three campuses, three provostal areas), in faculty appointments, and local administrative control will be the last word. There are times when that oversight, exercised by the Dean of the Graduate School, is needed; it appears that role is being reduced or eliminated.

Behind the general argument for the balkanization of the University into six principalities lie genuine concerns, Professor Spring pointed out. One is the issue of quality. It is possible, in smaller units, that decisions will be made that do not live up to the standards of the University as a whole. They have been assured that even though there will be six areas, a faculty member will hold tenure in the University at large, not one of those six areas. Further, those who argue for a permanent substitution of provosts and chancellors as final decision-makers on appointments point out that the removal of final decision-making from the immediate situation (i.e., the school or college) guarantees an objectivity, especially in the smaller units, that might not otherwise obtain. Both personal and political situations in small units can detract from objectivity, which in turn can lead to litigation. It might be the better part of

wisdom for smaller units to seek advice from a "second level" review body. The three-level process does not exist in some settings (department to dean to chancellor) because the dean, at least at Morris, is also the academic vice chancellor, someone who works hand in glove with the chancellor.

The administration contends that the Senior Vice President will have technical oversight, and if things periodically go wrong procedurally they will reconsider the chancellor's or provost's tenure, but by the time they act the unit may have already tenured in faculty who should not have been. There will be no technical insertion or quality control by the Senior Vice President, Professor Spring observed; after the chancellor or provost decision, there is only the advice of the Dean of the Graduate School, and that is restricted to procedural matters.

This issue has been raised and discussed at least ten times in the last year, observed one Committee member; the answer that comes back is "that's right; the chancellor is going to be responsible for the quality performance of the people in the unit." If the job is not being done well, the President should fire the chancellor. It may be that mistakes will be made that the University will have to live with for a long time; that follows from the structure. This may require different behavior on the part of the chancellors, and they could choose to seek advice from other sources as they make decisions; they are free to do that and use the information for quality control.

Not only is there a problem with the administrators perhaps being too close, there is also a problem at the level two committee with annoying or angering faculty in other divisions. Professor Spring recalled that the SCFA Subcommittee on Tenure shared these reservations; this is a stopgap measure, he said. The reorganization went forward without realization, until the last moment, of how the changes would affect the tenure code. There is an impasse; the University is restructured, so the Subcommittee concluded the change should only be for a year while faculty make themselves aware of it. It is concerned, however, and the issue can be argued on grounds of both principle and practice.

This interpretation ONLY applies to the promotion and tenure process, it was pointed out, and not to any other part of the tenure code.

Professor Adams thanked Professor Spring for joining the meeting on behalf of the Tenure Subcommittee.

2. Discussion with Ms. Mullen

As the final item of a five-hour meeting, Professor Adams welcomed back Ms. Mullen to discuss her position. Her presence at this meeting was triggered by a letter from the Committee on Equal Employment Opportunity for Women (EEO) that raised questions about the change in the job description for her position from the time she was hired to the present search. There are significant differences.

She said she was not party to shaping the job description when she was hired, but recalled that the University was in the midst of the Rajender consent decree at the time. One statement in the position was that "the director exercises authority to prevent, prohibit, or modify any personnel or other administrative action deemed not in compliance with appropriate governmental or University regulations." That is strong; it is absent from the current job description.

This statement became an issue; people were alarmed at how much power it placed in the director's hands. That alarm arises, in turn, because there is a much larger complaint business than there was then, and there is a much more formal process for handling those complaints than before.

There is also the issue that she reported directly to the President, Ms. Mullen commented; in the new arrangement, the director will report jointly to the Senior Vice President for Academic Affairs for day-to-day business and to the President for policy matters. EEOC felt that was a weakening of the position; her own view is that it is simply difficult to report to two people. (The position reported to two positions when she took it, and she insisted that she report to only one person.)

What does it mean when the director reports to the President, asked one Committee member? The President is the arbiter of policy? Her guess is that if the director proposes a policy change, he or she would talk to the President; people define policy variously, so it is not clear what that means. Once established, however, the person would carry out the policy, Ms. Mullen affirmed.

In the matter of handling complaints, the office will prepare investigation reports and make recommendations to the appropriate administrator and the Senior Vice President. That is a departure. The office has never claimed the authority to discipline anyone; there have always been recommendations to the appropriate individuals. In the case of practices and procedures, however, they have directed units to do or not do things; now they will only recommend. This will mean that more ends up in the lap of the Senior Vice President, she said. He wants to be sure--and the principle is sound--that things do not slip between the cracks; he wants a simultaneous reporting, so that if the administrator does not act, someone else will know. The theory is good, but it will be burdensome.

Some years ago personnel was split between two offices; now it is consolidated in one office under Carol Carrier. Will that continue under the new structure, or might it change? She reports to Academic Affairs, but personnel administration is handled in another part of the administration. That is another challenge, Ms. Mullen agreed. Her understanding is that there will be a central personnel office, but that there will also be personnel teams who report directly to the provosts.

One concern is about the weakening of the authority of the position to make people comply, said one Committee member. It would be troubling if her successor simply investigates a complaint and reports higher up, leaving it up to the person higher up to enforce the recommendation. That additional level of decision-making has always been there in the case of disciplinary action, Ms. Mullen said; they recommend discipline, the supervisor can impose it, and the individual can grieve. That is appropriate. Now there will be the potential for a second decision on the merits, and the appropriate activity, which can be grieved. Either someone who is competent should be hired, or the individual should be fired. Or the position should be eliminated.

These extra steps are costly, it was said. The changes also affect the effectiveness of the position and the seriousness with which faculty and staff will take it. The argument on the other side, Ms. Mullen said--and it is a legitimate argument--is that unless the chain of command, people with authority, really take this business seriously, it will always be an activity on the periphery. The argument is a good one, but it assumes a lot of knowledge about a complex organization. It was a challenge to communicate through the entire organization, for example, how to do a search without jeopardy. This is not as easy as

it sounds, and every administrator has a million other things to do.

This question arose earlier with respect to searches, one Committee member pointed out. There has been so much "ad hockery" in searches that perhaps it would be better to professionalize searches, and staff them properly, so that knowledgeable people do what they are supposed to every step of the way. This is another chapter in figuring out how to do things appropriately while the rules are changing. This seems to be an attempt to change several things simultaneously to get the University into a new way of doing things; Dr. Carrier's response will get the University farther down the road, if things are done right every time so that many of the institutional headaches will go away. It would mean not treating every hire as though "it is the first time since the dawn of creation that this has occurred." Maybe it is time to routinize these procedures.

One thing worth an experiment, Ms. Mullen said, would be to take the money for outside search firms, which are very expensive, and use it instead for two or three faculty members, on a part-time basis, and let them serve as the search firm. There are creative things that could be done; there could be a pool of people who customarily chair searches. The Medical School does that now; they have one person who is consistently involved in their searches. It does cost money, but it should be tried. She said she has a stake in seeing searches continue, rather than going back to some other system, but she would experiment widely with the "how to do it" part.

The person in the Medical School saves a lot of faculty time, observed another Committee member. That isn't money in the pocket, because faculty time saved cannot be seen, but it really does. One never sees the benefits from jobs done right, added another; one DOES see the cost associated with them being done wrong.

Will the Committee recommend that the job description be modified because of its concerns? The Committee asked Ms. Mullen to join it to explain what was going on, Professor Adams said, since questions had been raised by colleagues. This is the opportunity to find out. There is no intent to ask for changes; the search is underway.

While not in favor of concentrating power in one position, reflected one Committee member, there is a concern about the future status of women, new hires, promotions, and so on, across the institution. The Commission on Women serves an important role, although may not be widely known. It may not be wise to weaken the office that is one of the defenses against arbitrary decisions. To dilute its effectiveness may be sending an additional message to the women and minorities of the campus, that things are OK and not to be worried about any more.

Putting it that way makes an assertion rather than asks a question, responded another Committee member. It says the University has given up, or thrown up its hands, or has concluded that all the issues have been dealt with. Most do not assume that. In view of inquiries that were made about the Commission on Women, it became clear that some of the commissioners were unaware of the fact that people did not know what the Commission has been doing--and they were surprised to find that out. That it has done a great deal is not well known, but it should be. The exchange of messages about it has provided an opportunity to publicize things that should be publicized. This is different from the redefinition of the job, in the face of a lot of other changes. It is helpful to talk about the office in the context of other things, rather than say the position has been diluted.

This is a matter of opinion, Ms. Mullen said. She is less concerned about the reporting relationship "demotion"; that is mainly image. Of greater concern is the recasting of the authority of the office; it is weakened. But that does not mean her successor could not do the job. She rarely appealed to her authority; it only arose in the case of an impasse. In general, if they make reasonable findings and provide them to a supervisor, the findings are credited. But on occasion the authority has to be used, and it is the only thing that prevents a unit from ignoring the office.

Several Committee members expressed concern for the dilution of the authority of the office. One supported the oversight but voiced dismay at the paperwork required, and the possibility that it has caused the University to lose candidates.

The fact that the director does not report to the President on a daily basis is not disturbing, said one; the athletic directors will not do so any longer, and it is a good general principle not to have too many officials reporting to the President. The effort should be concentrated on getting another good person in the job; that will take care of many of the concerns. The person will have to have the support of the President and central officers.

In terms of searches, one thing good about the office has been that it could not only identify things that were wrong and needed fixing or to be redone, it also had the authority to say everything was acceptable. It has been as much the positive stamp of approval as the negative authority that gave searches legitimacy and credibility. If a person has the authority to say "no," but says "yes," that adds much more credibility than if the person had no authority to say "no."

One can reach the opposite conclusion, maintained another Committee member. By putting the authority in the University structure, it takes on the responsibility for the decisions. This means the University must be more committed, because there is no place to hide; no one can say, in a search, that they didn't get any minority candidates but the office said they did everything right because they could have stopped it. Now the process is exposed all the way to the end; this is positive, because it puts the University at risk for charges of discrimination.

The problem is that decision is at the level that does not include the task of finding out, said one Committee member. Another asked why anyone would believe the administrator who said that all procedures have been followed? The person making the choice will be suspect if he or she must also defend the integrity of the search. The last provost search is an example; having the neutral person say the evidence had been considered and things were done correctly is VERY different from having the President make that assertion. So, it was rejoined, the President would have a more difficult time defending the search.

One Committee member inquired of Ms. Mullen what the Committee should do to ensure that the position stays strong and effective. She said their concerns should be communicated to the President and Senior Vice President Infante.

Committee members thanked Ms. Mullen for her effective service in her position and wished her well.

Professor Adams then adjourned the meeting at 3:00.

-- Gary Engstrand

University of Minnesota