Minutes*

Faculty Consultative Committee
Thursday, April 22, 2010
1:00 – 3:00
238A Morrill Hall

Present: Marti Hope Gonzales (chair), Nancy Carpenter, Shawn Curley, Janet Fitzakerley, Kathryn Hanna, Caroline Hayes, Emily Hoover, Brian Isetts, Walt Jacobs, Jeff Kahn, Russell Luepker, Jan McCulloch, Michael Oakes, Martin Sampson, Kate VandenBosch, Cathrine Wambach, Becky Yust

Absent: Melissa Anderson, Carol Chomsky, Chris Cramer

Guests: Jay Schrankler, Rebecca Gerber (Office for Technology Commercialization), Lisa Warren Carlson (Office of the Vice President for Research)

Other: none

[In these minutes: (1) election of the vice chair; (2) Faculty Senate docket review (administrative conflict-of-interest policy, bylaws changes, statement on encouraging P&A staff to participate in governance); (3) changes in the Regents policy on Commercialization of Intellectual Property Rights; (2, continued) docket review (commercialization of intellectual property, space use and costs, modifying P&A appointments in cases of financial stringency, sponsored project effort on summer and part-time appointments, Transitions Phased Retirement program)]

1. Election of the Vice Chair for 2010-11

Professor Gonzales convened the meeting at 1:00 and called for the election of the vice chair. Before proceeding to a vote, the Committee voted to amend its "Election, Vacancy, and Absence Protocols" to delete language requiring that the vice-chair election take place after the election of new Committee members. Because the election was delayed, the Committee decided to amend the protocol in order to elect the vice chair so that he or she would have time to arrange his/her schedule for 2010-11. By the usual secret ballot, Professor Cramer was elected.

2. Faculty Senate Docket Review

Professor Gonzales next asked Committee members to review the Faculty Senate docket. Several questions came up.

-- The timing of the consultation on the administrative conflict-of-interest policy. The administration would like it to take effect on July 1, but the consultation matrix calls for University Senate action on the policy. The last Senate meeting of the year is May 6, and this Committee is scheduled to review the draft that same day. Professor Hoover noted that for major policies, the usual practice is discussion at one Senate meeting and a vote at the next; the policy has enormous implications

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

for faculty and she strongly urged that the usual practice be followed because there will be a lot of questions about the policy. If the Senate is forced to vote on May 6, the policy may very well not be approved. Other Committee members expressed unease about trying to rush the policy through the Senate.

The Committee voted unanimously to recommend to the Senate Consultative Committee that it change the conflict-of-interest item on the docket from action to discussion.

-- The change in the process for identifying Twin Cities candidates for this Committee and the Committee on Committees. Professor Gonzales briefly reviewed the lengthy bylaw changes, noting that the Nominating Committee process had not worked because of serious attendance problems over many years, so the nominating body for FCC members would become the current and previous-year voting members of FCC plus the ex-officio committee chairs, a group of about 17-18 faculty from across the Twin Cities campus. The Committee on Committees would appoint its own members if the change is approved.

-- A minor change in the bylaws regarding nomination of the Senate Vice Chair. The Senate constitution provides that any faculty member eligible to serve in the Senate may be nominated; the bylaws provide that the vice chair is to come from the current members of the Senate. The proposal is to change the bylaws to be in accord with the constitution. Professor Gonzales noted that FCC, charged with the responsibility for nominating a vice chair (for approval by the Senates), has followed the constitutional language and drawn nominees from faculty eligible to serve in the Senate.

-- A resolution to encourage support for P&A staff members to serve in governance. The motion came from the Committee on Faculty Affairs; Professor Hanna explained that some P&A staff feel there can be a chilling effect if they participate in governance (there have been reports of retribution), and since many P&A staff work for faculty members, this is a statement from the Faculty Senate to the faculty encouraging participation. It was noted that many P&A staff are supported exclusively on federal funds, and would thus not be allowed time for governance activities. Professor Hanna responded that there are ways departments can provide small amounts of funding to pay for time away from grant funding; they do not want anyone to do anything illegal but they do want to encourage participation.

Professor Carpenter asked about other categories of personnel. Does this open a Pandora's Box? If someone is hired to do a job, and there is nothing about service in the contract, but individuals are encouraged to get involved in governance, how does that play into job performance? That is a good question, Professor Hanna said, but they are looking at the big picture of shared governance—one cannot have shared governance without employee participation. Professor Carpenter said she was unclear how the recommendation could be implemented and reiterated her concern about the implications for other employee groups. Professor Yust reported that service is part of the job description for fulltime P&A staff paid on O&M funds in her department; Professor Hanna pointed out that the resolution recommends that "faculty and administrators responsible for P&A annual performance reviews take steps to ensure such activities [governance] are included in P&A annual reviews and that staff willingness to serve in support of the University's governance and mission is noted." If one is a PI and hires a P&A staff member, Professor Oakes pointed out, as had Professor Hanna, funds from other sources need to be identified to support time that staff member spends in governance. Professor Luepker observed that a P&A staff member could become involved in governance and not get his or her work done as needed, something that would not sit well with PIs.

Professor Gonzales suggested that before this resolution is introduced at the Faculty Senate, there be information provided on how the recommendations would be implemented. Is this pressing? Professor Hanna said it was not and the Committee on Faculty Affairs can assess the practical implications. Professor VandenBosch asked them to consider the possibilities associated with getting hung up on effort certification.

The docket discussion continued later in the meeting.

3. Change in the Regents Policy on Commercialization of Intellectual Property Rights

Professor Gonzales now welcomed Jay Schrankler, Director of the Office for Technology Commercialization (OTC), his chief of staff, Rebecca Gerber, and Lisa Warren Carlson, chief of staff for Vice President Mulcahy. [Note: there was extended discussion of the proposal at the April 19 meeting of the Senate Research Committee; the points made and reported in the minutes of that meeting will not be repeated here; additional or new points will be.]

Mr. Schrankler thanked the Committee for the opportunity to present the proposal to change the Regents' policy on Commercialization of Intellectual Property Rights. He distributed copies of a set of PowerPoint slides and walked through the main points with the Committee.

-- He came to the University three years ago, from industry, with the goal of making OTC a world-class technology-transfer office. They now have a 3-4-week turnaround on disclosures, a significant improvement, but there are problems that remain to be fixed. They have to deal with a great many more Material Transfer Agreements, which means there is more collaborative research occurring, but they are swamped by the volume.

-- OTC is funded from royalties; the major source of the royalties (Ziagen) is declining. At the same time they had (this year) 250 disclosures that have led to 65 patent filings. Each one costs $3,000-$4,000, and the eventual cost of maintaining US and international patents can run into hundreds of thousands of dollars. Not all patents lead to "winners" and they have to cover the costs of losses. They commercialize intellectual property from every college at the University.

-- The University has received $421 million from Ziagen, money that has been split among inventors, departments/colleges, and the University. They are not talking about growing the OTC budget—they are appropriately sized—but they do want to maintain the right level of service.

-- While they propose to implement a 15% fee on gross revenues from royalties, they do not propose to cover all of the expenses of OTC; it is appropriate that they share in the risk, because doing so motivates them to do a good job. They have very aggressive goals and do not intend to back off of them. Big Ten and other peer institutions almost all have some cost-sharing in order to share the risk.

Professor Oakes summarized his understanding of the proposal. OTC is properly staffed, and receives no state or central funding, but will need more resources from other sources because the Ziagen royalties are declining, so they need to set up a plan to deal with that decline. They are receiving funding now that is going away? So this is a plan to replace that funding? It is, Mr. Schrankler said, it is forward-looking; they are trying to get ahead of the game. For a number of years the 15% will not provide a lot of revenue. Why not ask for 20% rather than 15%, Professor Oakes asked, in order to cover the entire expenses of OTC? Because they want to be sure faculty are properly rewarded and because, Mr. Schrankler repeated, it is appropriate that OTC share some of the risk.

Would the fee apply to equity interests that are sold, Professor Kahn asked? It would, Mr. Schrankler said—all the transactions are treated the same. That is true for peer institutions as well.

The fee structure seems reasonable, Professor Luepker said, pushed by the disappearance of the Ziagen royalties. Is the underlying problem the need to get more business? Every university in the country that is involved in research is doing this; is the activity viable? It unquestionably is, Mr. Schrankler responded. Deals like Ziagen only come along in perhaps every 10,000 discoveries/inventions, and there are only a handful of such examples around the country. They are supporting early-stage technology and usually will not see significant returns on the investment for ten years. Vice President Mulcahy charged him with re-tooling OTC; there has already been an improvement in that royalty income (apart from Ziagen) has increased from $5 million to about $8.5 million in the last three years (the income had been pretty flat at about $5 million for a number of years). They will work to make the University one of the top ones in the game. There is no blockbuster likely, Professor Luepker concluded, so they need a lot of medium-sized deals.

Professor Hoover observed, apropos of the 15% fee, that there will be less money to divide among the inventor, college/department, and University. It is not a revenue-neutral proposal because the Office of the Vice President for Research will receive more money and the pie to divide up will be smaller. They need to get to the point that the 15% fee will cover all the administrative costs, Mr. Schrankler explained. But the upshot, Professor Hoover pointed out, is that faculty and colleges will receive a smaller share and the Vice President's office will receive more. There will be 5% less to each group, Mr. Schrankler agreed. OTC is a part of the Vice President for Research office, Professor Hoover responded, so it will receive more. Professor Hoover said the reduction in dollars to support OTC is fine but he needs to be clearer in his arguments.

There was also a choice not to use some of the Ziagen dollars to create an endowment for OTC, Professor Hoover commented. That decision preceded the arrival of Vice President Mulcahy, Mr. Schrankler said; that was an institutional decision by the President at the time to start scholarship funds. It was a large amount of money that it was thought better used in other ways. Professor Hoover suggested that it would be very helpful if his office would identify where all the Ziagen money has gone (in broad categories). Most faculty members do not understand the impact of that money on the entire institution. The impact of the loss of that revenue goes far beyond OTC, she said; much of that money was used for the greater good and everyone loses when that money goes away. Ms. Carlson said they are working on gathering that information and will provide it to the Committee.

Would this change in policy only apply to new agreements, Professor Hanna asked? It would, Mr. Schrankler said.

Professor Oakes commented that it is worth paying the 15% fee in order to increase the probability that the University can hit another "home run" like Ziagen.

Professor Isetts reported that there is a movement afoot to repeal Bayh-Dole [the federal legislation granting institutions ownership of discoveries made with federal funding and requiring them to commercialize such intellectual property]. What would that mean for the University? Would OTC cease to exist? That would change everything, Mr. Schrankler said, and would have wide-ranging implications. The state could wonder if it should put more funding into the University in its land-grant capacity. Patents are very important because no one will develop intellectual property without a patent. What would be the benefits of repeal, Professor Isetts asked? Mr. Schrankler said there would dire implications if universities could not own technology they developed. He also said that repeal of Bayh-Dole would run against the tide, he thought the likelihood of that happening about zero, and noted that the Obama administration is seeking ways to improve technology transfer. ARPA-E grants provide funding that includes money to help pay patent costs.

Professor Yust said that in thinking about such a major change in policy, it is critical that faculty understand what it means when the money goes to the Vice President for Research office. Must the Regents' policy have a specific number? Could it be "up to 15%"? And what does OTC spend money on once they have patented something? They pay for a provisional patent, then a permanent patent, and then international patents, Mr. Schrankler explained. The Patent Office looks at claims made about an invention and may contest some of them, so they have to have attorneys help in defending the claims. The goal of OTC is to get intellectual property licensed as quickly as possible so that these burdens fall to the licensee, not the University. Professor Yust said that there is a need for a clear explanation of OTC overhead costs.

Professor Luepker said the 15% fee should stand on its merits for the services provided and there is no question that OTC does important work. There are also hidden costs: For example, the Biomedical Discovery District is set up to make basic science discoveries, some of the will be patentable and some of which will come to fruition as commercial successes. However, there is a substantial investment cost to build and maintain high-technology laboratories. Universities do not look at all of the costs in the way a private company would, where the costs of the research are known to the last dollar. Mr. Schrankler agreed but said it would be safe to say that the return would be in proportion to the rest of the commercialized technology at the University at large. He observed that the legislature funded the BDD because it expected jobs to be created. From the Governor's perspective, that meant private-sector jobs, Professor Luepker said, and that means patenting.

Professor Sampson said that the proposed changes would reduce the compensation for the faculty inventor from 33% of gross revenue to about 28% of gross revenue. That appears to be lower than some of the University's peer institutions; does the University need to be concerned about the competitiveness of this policy? Mr. Schrankler said the University would remain very competitive, probably about in the middle of the pack. The concern, Professor Oakes said, is that successful inventing professors would go to a place that paid more. The attraction of Minnesota is not the number, Mr. Schrankler said (although it may be for a few); what they are seeing as the greater problem is the University's restrictions on equity ownership—that is becoming a competitive issue. He said, however, that he would not recommend going below the 28% in the proposal.

Professor Gonzales thanked Mr. Schrankler, Ms. Gerber, and Ms. Carlson for joining the meeting.

Following the departure of the guests, Committee members deliberated on how the proposed policy change should be moved forward; the administration has proposed taking it to the Board of Regents in June. It was noted that the consultation matrix developed to guide consultation on policy matters calls for changes to the Commercialization of Intellectual Property policy to go to the University Senate for action.

Since there seem to be two major issues on which proposed policy changes need faculty discussion and a Senate vote, Professor Sampson wondered if an additional Senate meeting this spring would not be appropriate. It was noted that faculty members are on contract through May 30; perhaps this policy change should be on the May 6 docket for information and for action later. There was concern about the number of faculty who would be available for a meeting late in May. Committee members again expressed unease at the speed at which major policy changes were being made. Professor Oakes commented that this spring seems to be a little worse than normal in that regard, but with the President retiring in a year, the upcoming budget difficulties, and the enormous amount of time that light-rail transit has taken, the administration would like to see some of these major policy matters settled before the new academic year begins in the fall. It is in the interest of the faculty to have an additional Senate meeting. It would only make sense to do so if the administration is ready with proposals that can be reviewed, Professor Wambach pointed out. Thus far no one has seen any policy language related to the OTC change; the presentations have all been PowerPoint slides. Professor Hoover remarked that this happens every year—everyone wants to get things done at the end of spring semester. They could have proposed weekly Senate meetings earlier in the year and most of them would have been cancelled, but now there is more business than the Senate can handle.

Professor Wambach asked if the Committee supported the change that Mr. Schrankler proposed. She noted that both Professors Hoover and Oakes have raised questions about the policy. Professor Hoover pointed out again that this change means money will be taken off the top before any distributions are made.

Professor Gonzales suggested that the proposed change—if there is policy language to review—be placed on the May 6 docket for discussion. Professor Oakes agreed that if there is no policy language available, there is no way this Committee or the Senate is going to approve the change.

Professor Oakes said there is a closer connection than most may realize between the OTC policy change and the conflict-of-interest policy. They should be presented together. The people who have been receiving royalty money will have the most to contribute to the OTC discussion, Professor Hoover said, while others may think the change is fine. Professor Isetts noted that the Academic Health Center "has a lot of skin in this game."

Committee members deliberated for some while about whether to try to schedule an additional Senate meeting in May (at which attendance would be light, especially if it were a meeting of the University Senate, because the students will all be gone by May 20), or if it would be possible to delay action on the policies until a meeting in September. Professor Isetts emphasized that it is important to have the discussion, and that the Committee needs to tell the administration if these policies are not ready for prime time. The discussion also needs to focus on more than just who gets fewer dollars, Professor Yust said, because the revenue is used for infrastructure as well.

Professor VandenBosch suggested that Professors Gonzales and Oakes speak with the appropriate central officers to determine if it is imperative these policies be adopted this spring. Professor Gonzales commented that pushing the policies through this spring may not be a good idea, but next year may be worse in terms of time pressure, and the Committee may lose the confidence of the faculty, and be no use to it, if it responds too quickly and without adequate consultation or Senate discussion in response to administrative pressure to move expeditiously to have policies adopted. Professor Hoover, however, complimented the administrators because the consultation process is a complicated one and they are trying hard to follow it. Professor Gonzales agreed but said they should not increase the challenges by accelerating the rate at which they expect Senate action. The OTC policy is an important one, Professor Hanna said, because it affects faculty income. Professor Hoover repeated Professor Yust's point: It is not just income for PIs, it is a lot of funding for research.

2. Faculty Senate Docket Review, Continued

-- The Committee voted unanimously to add the proposed changes to the Commercialization of Intellectual Property Rights to the Faculty Senate docket for discussion, on the condition that there is actual policy language to discuss. [NOTE: This item was subsequently removed from the docket because the administration determined it is not ready to move forward with a proposal.]

-- The Committee endorsed putting the resolution from the Committee on Finance and Planning on "Space Use and Cost" on the University Senate agenda for action. Professor Luepker commented that the Committee on Finance and Planning asked Vice President O'Brien what it would be helpful for the Committee to do to improve space and energy costs. Vice President O'Brien's office identified several issues; the committee said that in tough times, the University community needed to think more about them, and took a position on energy costs and space utilization, in the following statement:

> The Senate Committee on Finance and Planning received from Vice President for University Services Kathleen O'Brien and Associate Vice President Michael Berthelsen (Facilities Management) a set of questions related to space use and cost planning. The Committee is very aware of environmental and financial reasons to optimize space utilization on campus. In this time of fiscal constraints, it is critical for the University community to make efficient use of our resources. The Committee strongly supports these efforts and recommends to the University/Faculty Senate that it adopt the following principals.
>
> **1. To maximize energy savings, the U would need to be willing to set operational boundaries for space use. The largest drivers of energy are hours of operation and being able to predictably *turn buildings down* when unoccupied. To do so would impact the environment or possible operation of select buildings with one or a few users. Is the U ready to implement such changes?**
>
> The University should identify which buildings can be closed, locked, and "turned down" outside of normal business hours, or outside of business plus evening hours, those which can only be closed after business plus evening/Saturday hours and those which must remain open 24/7 because of unique requirements. The Committee invites University Services to draft standards, for Committee consultation, by which to make decisions about building hours.
>
> **2. We know that single purpose buildings (examples: labs, classrooms, offices) are both cheaper to build and to operate. However, this would require some adjustments to current practice. Is the U ready for such changes?**

Buildings that are composed entirely of large lecture classrooms are desirable for their efficiency. Buildings that house graduate students, labs, faculty offices, and small classrooms/seminar rooms will still be required.

3. If the U has less space with the same program, it would need to schedule its classes and events more intensely. With the advantage of technology to see all spaces, it is possible to centrally schedule. This would mean giving up some control of space assignments. Is the U ready for such a change?

The Committee invites Facilities Management and the Office of Classroom Management to collect and present information/data on the usage rates for common use classrooms, departmental classrooms, and other spaces it deems pertinent to the discussion. The current classroom management system should be reviewed for flexibility and responsiveness to teaching needs. The Committee will review these data and proposed management plans.

The University should consider adding a summer semester to improve space utilization.

4. Technology advancements have made it possible to change space assignments and utilization. Is the U ready to reduce its fixed office space and move toward more remote office work and generic office space for faculty and staff while on campus?

Flexible office space is becoming the norm throughout the country in industry and elsewhere. Cubicles with movable partitions are already the norm in many University facilities. As remodeling and new construction is planned, this approach should dominate. Traditional offices with doors should be the default position for faculty members, given their role and responsibilities.

5. What suggestions do you have on how we can reduce recurring and necessary costs to maintain buildings so that more funding is available for programs?

The items described above are aimed at more efficient utilization of current space and reduction of energy costs. These efficiencies should enable taking buildings ‘off line’ and closing space, furthering reduction in costs and reducing the environmental impact.

-- The Committee voted to place on the docket of the University Senate, subject to approval by the Senate Consultative Committee, the proposed new policy "Modifying Appointments of Academic Professional and Administrative Employees for Financial Stringency":

POLICY STATEMENT

The University reserves the right to modify the appointment terms of Academic Professional and Academic Administrative (P&A) employees in order to address financial stringency. Specifically, the University may: 1) reduce P&A salaries or percentages of appointment during the term of an employee’s appointment; 2) impose unpaid furloughs or other mandatory unpaid absences; 3) postpone compensation; or 4) take other actions as determined by the University in its sole discretion. All P&A appointments are made subject to this right, effective ______ 2010.

Authority

The President will determine whether a financial stringency exists. The authority to modify terms of appointment under this policy will reside with the Vice President for Human Resources.

Professor Luepker reported that the Committee on Finance and Planning saw the proposed policy two days earlier and had a lot of questions that were not resolved. The intent is to be able to address the 1.15% salary reduction but the policy language goes well beyond that. Professor Hanna agreed and said that the actual language permits the administration to do whatever it wants to. That is the case in any event, Professor Oakes commented. Professor Carpenter said it was less a matter of the content than the delivery—that is what should be discussed. Professor Hanna concurred and said that the policy should have been brought to the Committee on Faculty Affairs without her asking for it; it is disturbing that such a policy would be circulated without notice.

The proposed policy can also be found here:

http://policy.umn.edu/Policies/hr/Contracts/MODIFYAPPOINTPA.html

[Note: Subsequent to the meeting, the Office of Human Resources released the following notice:

It is important to understand that the reason this policy has been brought forward at this time is to enable implementation of the Temporary Reduction in Pay of 1.15% previously announced for 2010-2011 for P&As. There are no further compensation adjustments anticipated under this policy in this fiscal year.

Based on the most frequently raised concerns, the following aspects of the policy will be clarified or eliminated:

1) This policy grants the President and Vice President for Human Resources the ability to implement certain responses to a declared Financial Stringency, but does not allow for individual units or colleges to undertake such actions with respect to P&A employees in an individual unit or college.

2) Notification in a "timely manner" will be further defined in relation to actions taken under this policy.

3) Item #4 ("take other actions as determined by the University in its sole discretion") will be eliminated.

Your comments continue to be invited on this draft through the end of the review period (5/12/10).]

-- The Committee voted to place the proposed policy "Sponsored Project Effort on Summer and Part-Time Appointments" on the docket of the Faculty Senate for information. Professor Oakes observed that if one is on a 100%-time appointment (in this case, during the summer) and paid 100% on sponsored research funds, one can do nothing else but work on the project(s) that sponsor the research; some part of someone's salary must come from non-sponsored funds or the person cannot write other grant proposals. Professor VandenBosch repeated the comments made by one Committee member in an email message: It's not hours, it's effort. One can work 40 hours in a week on a grant and then have a barbeque with friends on the weekend, but one cannot work 40 hours in a week and then write a grant proposal for a different project. In the second case, one is devoting effort to research not sponsored by the grant. Professor Oakes said he was not sure the University could do anything about the situation because it is an NIH rule that one cannot be 100% time on sponsored funds and do other research-related work.

The proposed policy can be found here:

http://policy.umn.edu/Policies/Research/SUMMEREFFORT.html

-- The Committee voted to put the "Transitions Phased Retirement" on the University Senate docket for information, pending approval of the Senate Consultative Committee.

Professor Gonzales adjourned the meeting at 3:15.

-- Gary Engstrand

University of Minnesota