Minutes[*]

Senate Committee on Faculty Affairs
Tuesday, April 24, 2001
3:07 – 5:00
238A Morrill Hall

Present: Richard Goldstein (chair), Carole Bland, Carol Carrier, Robert Fahnhorst, Daniel Feeney, John Fossum, Cleon Melsa, George Seltzer, Tom Walsh, Carol Wells, Lisa Wersal

Regrets: Avner Ben-Ner, Judy Berning, Darwin Hendel, Joan Howland, Robert Jones, Dwight Purdy, Wade Savage

Absent: Josef Altholz, Larry Miller, Theodore Oegema, James Perry, Sheila Warness

Guests: Tracy Smith (Office of the General Counsel)

[In these minutes: (1) retirement subcommittee report; (2) benefits subcommittee report (retirement plan waiting period, faculty development leave policy); (3) electronic privacy at the University; (2, cont.) tuition discount plan for children of employees; (4) faculty development working group interim report]

1. Report from the Retirement Benefits Subcommittee

Professor Goldstein convened the meeting at 3:15 and turned to Professor Feeney for a report from the Retirement Benefits Subcommittee.

Professor Feeney told the Committee that the subcommittee would be recommending changes in the basic retirement plan. They subcommittee has been dealing with two issues: retiree health care, and trying to determine if it can be cost-effective; and whether or not to add or subtract investment options from the basic retirement plan. The subcommittee met with representatives of the providers over the last several months and may recommend adding a small-cap fund and an inflation-linked bond fund. The subcommittee concluded it would not recommend adding a mid-cap fund or a real estate fund to the basic plan because these can be obtained in the optional plan. The subcommittee will meet in the next week to develop its recommendations.

Each fund family was asked to analyze the University's plan and identify gaps. One company did the best job; probably the biggest gap is a dedicated small-cap fund and an inflation-linked bond fund. The cost to add these funds would be minimal, Professor Feeney said.

The subcommittee also had a very productive meeting with Minnesota Life about its status, a meeting that included many of the senior officers of Minnesota Life. It appears they have high reserves and a low level of non-performing assets. The University is about 1/13th of its annuity business, so the University is a VERY big customer that they want to keep happy. The University's concern is that there will soon no longer be a cross-guarantee of the retirement funds between Minnesota Life and

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Northwestern National Life; they asked if the University wanted a subset of the funds not tied to Minnesota Life. There is no pending insolvency or anything of the sort, so this is not urgent now.

How much would creating a subset cost, Professor Goldstein asked? Ms. Warness in Asset Management will look at that question, Professor Feeney said. If the offer is competitive, it could further diversify the basic retirement plan, Professor Feeney said.

Professor Goldstein noted that there will be a presentation by Minnesota Life on May 30 at their offices; he urged Committee members to attend.

Is there any proposal that TIAA-CREF play a bigger role in the retirement plan, Professor Bland asked? She said she is impressed by its commitment to education and its performance. All of the funds wanted to play a bigger part, Professor Feeney said; the question was what funds they have and what they charge for them. It is relatively tough to beat the mix the University currently has; Minnesota Life charges very little. The funds were asked to compare the distribution of funds in University's plan with other public and private institutions; the University is much more diversified than most other organizations. The fund representatives were pleased with and impressed by the University's plan and could not find much that was wrong with it, Professor Feeney said.

Even with the diversity there are significant amounts of money in the General Account and the General Account Limited at Minnesota Life, Professor Goldstein observed; that is why the subcommittee closely follows the health of Minnesota Life.

Professor Goldstein noted that there is a new book on retirement (dealing with Higher Education) that would be worthwhile for Committee members to look at. He also suggested that the materials provided by TIAA-CREF be circulated at the next meeting of the Committee.

2. Report from the Benefits Subcommittee

Professor Goldstein turned next to Professor Fossum for a report from the Benefits Subcommittee.

Professor Fossum reported that the subcommittee has acted on three items: (1) the difference between faculty and P&A access to the faculty retirement plan (they both have the same plan); (2) adoption of the interim faculty development leave policy as the permanent policy; and (3) revival of the tuition reduction plan.

WAITING PERIOD FOR THE FACULTY RETIREMENT PLAN

On the first, the subcommittee looked at the potential liability for a change in the rules that would make faculty and P&A eligibility for the faculty retirement plan consistent. At present P&A staff who make $36,000 (on a nine-month appointment) or $45,000 (on an eleven-month appointment) are automatically part of the plan at time of hire. In contrast, assistant professors must wait two years; instructors must wait three years (associate and full professor appointees participate in the plan immediately upon appointment). The estimated annual cost of making eligibility for faculty the same as that for P&A staff is about $500,000 and would increase the charges for the faculty fringe pool by .07%.

If all those who are currently in the waiting period were brought into the plan, there would be a one-time cost of $1.5 million.

Professor Fossum said he believed that in terms of equity between faculty and P&A positions, making faculty positions more attractive, and making tenure-track faculty first-class citizens, this is a low-cost effort that the Committee should support. He noted that if one hires someone at age 30, at $60,000, assumes they have a 35-year career, and makes certain moderate assumptions about interest rates and investment returns, the individual foregoes between $90,000 and $100,000 at retirement because of the waiting period to enter the faculty retirement plan. That is because those first two years' contributions have the longest time to gain returns, Professor Goldstein observed.

In the Academic Health Center, Professor Feeney said, new faculty are given a choice between faculty and P&A appointments. Department heads are often recommending they take the P&A appointment, in part so they can participate immediately in the faculty retirement plan. The financial impact on the University might not be as great as expected, he said, and the last thing the University wants to do is discriminate against new faculty.

Professor Goldstein inquired if other universities have a waiting period. Mr. Fahnhorst said he knew of none that did, although some have vesting requirements. Why could the University not have a two-year vesting period, Professor Bland asked? Professor Goldstein said that could be messy with a defined contribution plan; he also said that if no other major universities have a waiting period, that puts Minnesota at a competitive disadvantage.

If this plan were in the private sector, Professor Fossum said, it would be illegal, because a plan may not discriminate on the basis of salary.

Was there any analysis of the cost of a one-year waiting period, Dr. Carrier asked? Professor Fossum said there was not. The annual recurring cost would remain the same, $500,000.

Professor Goldstein suggested the subcommittee bring a formal motion at the May 8 meeting; if the Committee approves it, the matter would then be forwarded to the Faculty Consultative Committee. He urged that information about other schools be included in the May 8 report and that any information be provided to Committee members in advance.

FACULTY DEVELOPMENT LEAVE POLICY

Professor Fossum recalled that the subcommittee had earlier in the year brought to the Committee a request that the Interim Faculty Development Leave Policy be extended for another year. The subcommittee in the meantime examined the interim policy and the administrative procedures that go with it and also had extensive discussion with Vice Provost Jones on leaves.

The subcommittee in the past made recommendations to improve the leave policy (e.g., to fund sabbaticals 100% for faculty with a certain length of service); those recommendations were not accepted and it became apparent they "would not fly."

As a result, the subcommittee is recommending that the interim policy be made permanent. The policy has not changed but the availability of supplemental funds for sabbaticals has. An individual going on leave may receive 25% of salary up to $20,000; up to now, faculty have not requested (used) all of the funds that are available for this purpose. The single semester [previously single quarter] leave is not available at most other institutions and use of it has declined slightly since the change to semesters.

Professor Fossum said the subcommittee believes the supplemental funding should continue and information about it should be broadcast as widely as possible. The current funding should be maintained and increased at the same rate as faculty salaries in order that it not shrink in real dollars. The availability of sabbatical supplement funds should be announced annually to faculty and it must be made clear that application for supplemental funds has no effect on a decision to grant a leave.

One change that should be made is in the administrative procedures, Professor Fossum explained: the section calling on departments and colleges to adopt procedures to implement the policy should be enforced; such procedures should be in place by the time of the next round of decisions on leaves in the fall. The procedures are to be subject to the approval of the president.

Professor Fossum moved approval of the recommendation. At the end of the discussion, the motion was unanimously approved.

With respect to faculty not applying for all of the supplemental funds that are available, Professor Feeney reported that he understood the CLA workload problem prevented some faculty from applying. Professor Fossum said there are wide variations in use of leaves across the campus; there are virtually none taken in the Academic Health Center. CLA use, on the other hand, is up since the change to semesters.

The supplemental funds total $1.5 million per year, which will pay for 75 individuals at $20,000 per year, Professor Goldstein noted. The policy does not make provision for the funds (which is normal practice). The reasons faculty have not applied for the funds may be because they do not know about them or because they believe (mistakenly) that applying for them will affect their chances of having a leave approved.

Professor Bland said there is a problem with the use of the term "base salary" in the Academic Health Center, where the base salary may be nowhere near the total salary. Must the policy say "base salary," she asked? Professor Goldstein said the Committee must be realistic; if an individual has a $50,000 base salary and a total salary of $100,000, the half-salary supplement from the University would be $25,000; where would the rest of the funds come from? Not from University O&M sources. This can be addressed in the procedures, Professor Fossum suggested; Professor Bland requested that the issue not be dropped.

This is something the Academic Health Center needs to talk about, Professor Goldstein said. If it wants to encourage faculty to take leaves, it may need to be prepared to contribute money. Is that under discussion, Professor Bland asked? It has not, Professor Feeney responded. If an individual has a $175,000 total salary and a $15,000 base salary, the practice plan is not going to pick up 50% of $160,000 in leave cost, he said, when the individual will not be available to generate practice plan revenue. There is no money in the practice plans to cover such costs. Why is that different from the rest of the University, when a faculty member is not available to teach classes but is still paid while on leave, Professor Bland asked? If this happened in CLA, everyone would say it is a problem; it must be looked at. Professor Goldstein reiterated his point: the Academic Health Center needs to look at the problem first.

Professor Feeney reported that the AHC Finance and Planning Committee is preparing a report to educate people north of Washington Avenue as well as to help the AHC understand its own finances. There would be no Medical School if there were no practice plan, he pointed out; neither the University nor the state could afford it. The report will provide information and insight.

3. Privacy Policy

Professor Goldstein now welcomed Ms. Tracy Smith from the Office of the General Counsel to provide answers to questions the Committee had raised about electronic privacy at the University.

Ms. Smith said that she was not an expert on technology but would respond to questions forwarded from the committee.

One question was whether the University would sell database information to other organizations or companies. If the information is private (under the law), the University would not share it. If the information is public, the University cannot decline to provide it if requested to do so. There is no policy on lists per se; if someone asks for a list and the information requested is public data, the University must provide it. Salaries and positions are among the data that are public.

The President wants a list-sharing policy, Ms. Smith told the Committee. In looking at University practices, they found few units that share lists (among them the Weisman and Northrop, which share lists in the arts community). They are developing a policy that will include a provision that information will not be shared without the individual's consent. Public information, however, cannot be withheld if requested, Ms. Smith noted. If someone asks for a list of contributors to the Weisman or of season ticket holders in men's athletics, there is nothing in the law that makes such information private so it must be released if requested.

Professor Wells said she had received a request for a list of students; that information is public unless the student requests it not be. How would one know? The Registrar knows, Ms. Smith said, and if a student graduates from a program is public information. The Regents' policy outlines what is public information, she said.

Professor Goldstein commented that a subcommittee of this Committee dealing with salaries could not get salary information and could not gain access to the data. Ms. Smith said she did know why that would have been so. The information should have been available.

A second question posed by the Committee was whether the University invisibly tracks keyboard use patterns by employees. Ms. Smith said she has been told there are programs that can do this; the University has not bought them and does not do this.

A third question was whether the University monitors employee email or Internet use beyond what might be required by a court order. It does not, Ms. Smith said, but there is an "acceptable use" policy concerning University resources. The policy provides:

> "The University assigns responsibility for protecting its resources and data to system administrators and data custodians, who treat the contents of individually assigned accounts and personal communications as private and does not examine or disclose the contents except:
> 1. as required for system maintenance including security measures;
> 2. when there exists reason to believe an individual is violating the law or University policy; and/or
> 3. as permitted by applicable policy or law."

In her experience, Ms. Smith said, the Office of Information Technology is very careful not to look at email and department staff are not to look at email unless there is a violation of policy. She noted that only about half the University's email goes through the central system.

Professor Walsh said he had nothing to add to Ms. Smith's comments. His point, which he made when this was last discussed, is that there is a need for principles around which one defines a privacy policy, rather than trying to develop a policy out of thin air.

Ms. Smith commented that email is covered by the public records law and must be made available on request. There is no inherent privacy in communication, she said; in the law, the medium is irrelevant. Because this is a state institution, Professor Goldstein asked? Yes, Ms. Smith said.

The revelation about email came as a surprise to Committee members. "Wow" was one reaction. So electronic data transmission, email, and Internet use are not private, Professor Walsh inquired? The University does not monitor them, Ms. Smith said; it is legal to do so but the University does not. There was a request for all emails related to light rail transit, she said, and a court ruled that a department had to spend $50,000 to reconstruct them. So the University cannot have a policy that says emails are private.

So an outside law firm could request copies of emails, Professor Walsh asked? It could, Ms. Smith affirmed; it would have to pay the cost of producing them.

What if one is working on confidential matters with a company, perhaps on something that might be patented or copyrighted, Professor Goldstein asked? Everything is public unless the law makes an exception for it, Ms. Smith said, and there is an exception for trademarks; research results are also protected.

Is this provision in the law because emails are not evanescent, like telephone calls? Ms. Smith said that was correct. Is there a way to ensure that emails are erased, Professor Walsh asked? One could, Ms. Smith said. There is no consistency in practice; some emails are kept for two weeks, some are kept longer.

There is a policy on web sites, Ms. Smith told the Committee. There is a policy governing on-line privacy if departments collect information about people. The web site must inform people if it is asking for information and that the University cannot promise more privacy than the law allows.

Professor Melsa observed that a lot of evaluations are conducted on-line: student evaluations of faculty, faculty evaluations of administrators. Faculty must use a PIN number but students may remain anonymous. What possibility is there that student evaluations would be more easily identified on line than they would with the paper and pencil version? Ms. Smith said that evaluations are private data, by law. But they are still on the server, Professor Melsa pointed out. As a matter of law they are private, Ms. Smith repeated; the question is one of security of the system. The evaluations are discoverable in a lawsuit, she added, but a newspaper cannot request and receive them.

Who can request grant applications, Professor Wells asked? Anyone can, Ms. Smith said. The University routinely provides the information through Sponsored Projects Administration (or it may be obtained from the federal agency sponsoring the research). When there is a request, researchers are asked to identify trade secrets, but the University does not allow secrecy in research. Unfunded research could be private for the same reason as a trade secret. All requests for information go through Sponsored Projects Administration and she said she would be shocked if SPA just turned over information without notifying a researcher.

Information and data are public unless there is a reason to make them private, Professor Walsh said. Ms. Smith that only the LAW can make them private, not the University. There are provisions making student records and medical records private. The legislature could ask for emails if they exist, Professor Walsh said; what if provisions were made to ensure that they did not? Would that break the law? It would not, Ms. Smith said, because the University is not subject to the records retention laws, but there is a University policy covering retention of records. What about emails on servers, Professor Goldstein asked? (This query went unanswered.)

There was concern that people in the University might look at emails; the policy needs to be clear that they cannot. But there are exceptions in the policy, Ms. Smith reiterated (as noted in the quote above). Someone should not intercept students playing games, Professor Goldstein said. But that would not be making appropriate use of University equipment, Professor Bland observed, and could be a cause for intervention. Someone could intervene if they reasonable belief that University policy is being violated, Ms. Smith said.

Professor Bland said she has heard faculty express concern that administrators are looking at their email. Others on the Committee reported hearing the same concerns expressed. Is that possible without help from the Office of Information Technology, Ms. Smith asked? There is the potential, Professor Walsh said, that people would as individuals read email, believing they are on the side of right, and begin circulating materials that should be not be circulated. What would be the attitude of the administration if that occurred, he asked?

There are two different issues at hand, Professor Melsa said: privacy and security. It appears there is not very much privacy. Must an administrator notify someone if his or her files will be checked? No, Ms. Smith said. Nor must they consult with the General Counsel's office.

"This is scary," Professor Goldstein said. The Committee agreed that it wished to hear more about this matter and that Ms. Smith should be invited to return to a later meeting.

Professor Goldstein thanked Ms. Smith for joining the Committee.

2. Report from the Benefits Subcommittee, continued

TUITION REDUCTION PROGRAM

Professor Goldstein turned back to Professor Fossum to complete his report, on the third item the subcommittee had taken up.

Last year the Committee and the Senate called for 100% tuition remission for undergraduate programs for four years for children of University employees with 10 years of service if those children are regularly admitted to the University (any campus). The analysis suggested that the program would serve as an employee retention benefit and the benefits would exceed the program cost. The administration refused to approve the program but did not refute the analysis or provide an alternative.

The subcommittee has now conducted a cost-only analysis of a 50% tuition reduction program (it did not look at the corresponding benefits to the University). The cost would be about $2.3 million, or 1/3 of 1% of the fringe benefit pool. Professor Fossum said he believed this would be an attractive benefit to employee groups, especially those in P&A, Civil Service, and bargaining unit categories. Such a benefit would also move the University away from an uncompetitive position in the Big Ten and in comparison with MnSCU (which offers a tuition benefit). Asked if the benefit analysis from the earlier report would still apply, Professor Fossum said it would and that reduction of employee turnover would absolutely save the University money.

Professor Goldstein noted the Committee discussed this proposal a year ago; he received more email about this than anything else during the time he has been chair of the Committee. He said he knew there was concern about the cost; this proposal reduces the cost by half and could be more palatable.

Is there a way to look at the impact on retention more empirically, Dr. Carrier asked? That is the part of the report that people may not accept, she said, in part because the attrition rate for staff at the University is low, below the national average. This benefit also must be measured against other benefits that might be offered. An empirical analysis could be conducted, Professor Fossum agreed; the subcommittee, however, could not obtain the data it needed when doing the study.

This proposal would have more of an impact on recruitment, Professor Bland suggested. Professor Fossum agreed. And the effect on retention would compound over time. The analysis was based on a variety of assumptions concerning workforce behavior consistent with most organizations; the subcommittee had no University data because it could not obtain them. It needs more than just gross attrition rates to identify whether the benefit will likely have an impact at important points. He related that he personally knows of three administrators, valued employees, who left for St. Thomas because their children could attend St. Thomas free.

Tuition benefits are an important retention and recruiting tool for private institutions, Professor Goldstein observed; it is also a bigger dollar amount and it costs them more. But it is an extremely important retention tool for faculty as well. A significant number of Big Ten schools have this benefit, he said; Professor Fossum added that some of those schools have increased the amount they put in it because they view it as an important part of community-building within employee ranks.

Professor Wells asked if the administration would find the proposal more palatable if there were a 3-5 year trial period. Professor Goldstein said he thought that would be difficult because it is hard to take something back once it has been given; he surmised that the University would never initiate the single-semester leave policy today if it were not already in place.

Dr. Carrier said the administration is interested in the policy; the problem is the cost. She said she also did not know how this benefit would stack up against other concerns and wondered if the arguments about retention and recruitment could be made stronger. Professor Fossum said they could and that Dr. Carrier's office had the information needed.

It was moved that the Committee approve the recommendation; the motion was approved unanimously.

4. Report from the Faculty Development Leave Working Group

Professor Bland reported that she had positive news. She recalled that she is the chair of a joint committee on faculty development, appointed by the Senate and the administration, to identify ways to increase scholarly productivity. The working group decided to identify what departments that are highly productive do.

The working group prepared a plan that Vice Provost Jones has indicated he would fund. The deans have identified the three most research-productive departments in their colleges; working group members and an intern hired for the working group will interview the department heads. The departments were also sent a survey; 79% of the department heads returned it and have indicated they are eager to be interviewed. There will be about 60 interviews; they hope to be done by the end of the summer.

Dr. Carrier is conducting another part of the work of the group; she is surveying active faculty who left the University. There were 118 such faculty in the last three year, Dr. Carrier reported, and they have had 31 responses to the survey that was sent out. In reviewing the responses, she said it is clear that unit leadership (deans and department heads) has a big impact on climate and department practices. That is not a surprise, Professor Goldstein observed. They need more support, Professor Bland said; it is not only a matter of money, Professor Goldstein responded. The report from Dr. Carrier will be included in the report from the working group.

Professor Goldstein thanked Professor Bland for her report and adjourned the meeting at 4:50.

-- Gary Engstrand

University of Minnesota