

Minutes\*

**Senate Committee on Faculty Affairs  
Tuesday, September 23, 2003  
2:30 – 4:30  
238A Morrill Hall**

Present: John Fossum (chair), F. R. P. Akehurst, Terence Collins, A. Saari Csallany, Jesse Daniels, Janet Ericksen, Patricia Frazier, Richard Goldstein, Darwin Hendel, Robert Jones, (Rod Loper for) Theodor Litman, Dan Lim, Kathleen Sellw, Charles Stech, Larry Wallace, Timothy Wiedmann

Absent: Carole Bland, Carol Carrier, Claudia Parliament, Wade Savage, Aks Zaheer

Guests: Susan Rafferty (Office of the General Counsel); Professor Fred Morrison (Benefits Advisory Committee); Dann Chapman, Jackie Singer (Employee Benefits)

[In these minutes: (1) audits of policy implementation; (2) charge letter, evaluation of instruction subcommittee; (3) parking; (4) anonymity in voting (promotion and tenure, administrative reviews); (5) Faculty Retirement Plan; (6) lifetime maxima on health care plan coverage]

**1. Policy Audits**

Professor Fossum convened the meeting at 2:20 and distributed copies of the table of contents of Human Resources Policies and Procedures. There is an extensive number of policies, he noted, in broad categories (academic, non-academic). The documents are at three levels, depending on who "owns" them: the Board of Regents, University policy, or for information.

There have been discussions at the Faculty Consultative Committee about human resources policies and procedures and whether they are being followed. This Committee may have an interest in auditing performance (adherence to the policies). Some have been noted as potential problems.

- Faculty Tenure (which is in the purview of the Tenure Committee)
- Grievance Process (which is in the purview of the Grievance Advisory Committee)
- Legal Defense and Indemnification: whether the University will defend or indemnify employees in a lawsuit. Generally, the University will do so as long as there has been no evidence of violation of the law by the employee.
- Stopping the Clock for Tenure-Track Probationary Faculty: there are a number of reasons faculty can ask to stop the clock, in particular for the birth of a child; there is no hard evidence, but there have been suggestions that there are different ways the policy is implemented across the campus.
- Parental Leaves for Academic Employees
- Recommended Procedures for Comprehensive Reviews for System and Campus Officers: there are two questions that have been raised. One, are the reviews regularly conducted? The policy suggests every three to five years. Two, what are the procedures being used?

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

These are areas the Committee should look into, Professor Fossum said; are there other potential problem areas?

The last item has been on the table for some time, Professor Hendel said. Two years ago, this Committee tried to collect information from the deans and chancellors to provide an overview of campus and college review procedures; there was a survey sent to administrators. About ten were returned, and then concern was expressed by deans about the review procedures; the message was "we'll get back to you"--and that is where the effort stopped. It is clear that many administrators have not been reviewed, Professor Goldstein said; it is also clear that the administration does not want the Committee involved in the subject. Professor Fossum reported that the standards and procedures call for a dean in his or her first term to be reviewed in the year before reappointment would be made. A major concern is that deans are not being reviewed. In terms of the process and timing, the Committee must go to the Provost, not the deans, Professor Goldstein said.

Why is this an issue for this Committee, Professor Akehurst asked? It is a personnel policy, Professor Fossum said, and this Committee is responsible for oversight of personnel policies. The Faculty Consultative Committee also asked this Committee to look into the policy, Professor Goldstein added. Professor Fossum said the Committee would ask for the status of reviews and if there has been any progress in implementing the policy.

He has heard concerns from faculty about the policy on stopping the tenure clock, Professor Fossum said. Professor Akehurst said he has also; as a department chair, he has dealt with probationary faculty who had a child; they applied for an extension of time and received it. Does the policy provide that the extension MAY be granted or that it MUST be granted, Professor Collins asked? Dr. Jones said he did not know; the request goes from the chair to the dean to his office; unless there is something out of line, he would normally approve such requests. If there is a sense that the extension is available unevenly across campus, Professor Collins commented, then the unevenness must be occurring at the department level. In his experience, Professor Goldstein said, it was up to the individual to request the extension; in his department, it was always granted.

There is an 8-week deadline for applying for the extension, Professor Akehurst noted. That may be the bigger problem, Dr. Jones agreed; people may not know about the policy. It may be that some junior faculty do not find out about the policy in a timely fashion.

No one seems to be able to link the parental leave policy with teaching a course, Professor Frazier said. Does one take six weeks off in the middle of the semester? The policy makes more sense for non-academic positions. Professor Fossum agreed that one question is getting parental leaves linked to the duties of a faculty member consistently across units. And, Professor Goldstein added, how to balance the time needed to take the leave (that is, when the baby is born) and the need to get one's duties fulfilled. There is a difference on this issue between University policy and federal law, Professor Fossum noted; the University compensates fathers for two weeks of leave, six weeks for adoptive parents, and six weeks for the mother; federal law does not provide for compensation.

Professor Hendel suggested hearing from the work/life group that worked last year. Professor Fossum said he would contact them.

In terms of other policies the Committee might look at, Professor Frazier said she was involved in the nepotism and consensual relations policy and would like to know how it is working. If no one hears anything, perhaps that means it is working well. Professor Goldstein suggested that Vice President Carrier be asked to report on the implementation of the policy.

## **2. Charge Letter to the Subcommittee on Evaluation of Instruction**

The Committee reviewed the draft charge letter to the joint subcommittee on evaluation of instruction (to be appointed with the Senate Committee on Educational Policy). The subcommittee would be asked to report back by the end of the year.

Professor Hendel suggested that the subcommittee should look into the use of various technologies to collect student evaluation information. That should be a specific topic for discussion (e.g., web-based collection of evaluations).

One issue from last year was who was entitled to see evaluations of instructors other than the department chair, Professor Wallace recalled. There is a concern that others in departments may also see them. Professor Akehurst commented that all tenured faculty see the evaluation results when someone is up for tenure; they see that as a "need to know." Professor Collins said that they would also see them in a post-tenure review; for most tenured faculty, the annual review is also the post-tenure review, so the merit review committee would also see the evaluation results. It was agreed that the charge to the subcommittee included the responsibility for looking at these issues.

To what extent should the subcommittee be concerned about campus-wide uniformity in the use of evaluations, Professor Fossum inquired? There is a fair amount of variation in his college, he said, about what faculty can retain as private information--they can release only the barest of information or they can allow the results to be publicized to the school. The faculty member decides. Once a decision is made, it remains in place until the faculty member affirmatively revokes it.

There should be guidelines, Professor Csallany contended, about the relative weight that should be given to student and peer reviews. In some cases, peer review is dismissed and only student evaluations are used.

Part of several items in the draft charge revolve around the amount of money available in the University to help departments understand the strengths and weaknesses of teaching evaluation data, Professor Hendel said, as well as how the uses of the results changes over time. His understanding is that the University has very good staff for processing the data but that there is little capacity in the University to help units make sense of the data, analyze them, and learn how they are being used.

There should also be a new item in the charge, Professor Akehurst suggested: Should the evaluated instructor have the opportunity to respond to student evaluations? He said he believed that student evaluations should be treated like ice skating scores: throw out the top and bottom. A disgruntled student in a small class can do harm. No one in his department responds formally to student evaluations--but they will tell him orally why they got a bad score.

Dr. Jones encouraged the Committee to ask the subcommittee to look at department practices in peer review. After years of reviewing files, he is concerned that peer review is not practiced consistently.

It would be helpful if the subcommittee could identify best practices and identify how to get the rest of the University to follow them.

The members of the subcommittee from this Committee will be Professors Daniels and Hendel and Mr. Stech. Professor Fossum said he would work within the next week with Professor Hoover, chair of the Senate Committee on Educational Policy, to finalize the subcommittee membership and its charge.

### **3. Parking**

Professor Hendel recalled that the Committee had discussed the proposed changes in contract parking; was there any response, he asked? Professor Fossum said that there was; the number of reserved contract spots will be capped (and the number to be awarded reduced substantially from the original projection), and this will be considered a pilot project for the first year. Parking is substantially easier than it has been in past years, and demand is less than supply. Does that mean, as predicted by traditional economics, Professor Akehurst asked, that the price will go down?

Professor Goldstein raised another point: Users have been told by the Parking department that hangtags cannot hang when driving. It is impractical to remove the hangtag every time one enters and leaves the lot. Contract holders need a sticker or something to paste on the back of rear-view mirrors or on the side window or any visible place on the vehicle that is legal.

### **4. Anonymity in Voting**

Professor Fossum welcomed Ms. Susan Rafferty from the Office of the General Counsel to talk about anonymity in voting in two different situations. Ms. Rafferty introduced herself and explained that she does employment law.

The Committee raised two questions, one about the legality of anonymous votes in promotion and tenure cases and the other about such votes in administrative reviews.

The more straightforward one is the first: Anonymous votes do occur in promotion and tenure cases and they are a long-standing tradition in the academy. The AAUP calls for faculty to be informed of the reasons for a decision, especially if they are not renewed, but does not call for giving the votes. One caveat is that the votes can be discoverable in litigation; there are a couple of cases so holding, one involving Macalester, and these are most common in discrimination cases. Votes are relevant to see if they are the basis for a claim; the interest in keeping votes confidential yields to the right to know about discrimination, Ms. Rafferty told the Committee.

How can the results be discoverable if the original vote was anonymous, Professor Goldstein asked? Do they ask people later how they voted? They could, Ms. Rafferty said, perhaps through a deposition. Anonymity usually means secret ballots, Professor Akehurst said. Ms. Rafferty said the courts see them as the same thing.

In administrative reviews, during a comprehensive review of an administrator, no voting is required and there is no tradition of anonymous votes. Current University policy charges a committee to assess leadership, skills, etc., but there is no 7.12 statement or the like by which to judge an administrator. These reviews are a little more subjective. The committee does an assessment, reaches conclusions from

the data (that could include surveys), and then a report comes out. There is nothing anonymous in the process.

The surveys can be anonymous, Dr. Jones pointed out, especially in the case of those individuals who report directly to the administrator being reviewed. They can, where it occurs, Ms. Rafferty agreed. There is no problem with that under the Minnesota Data Practices Act. No data are kept about individual responses; the summary results are included, so there is nothing discoverable in legal proceedings.

Voting is not required but often done in administrative reviews, Professor Goldstein said. If a vote is taken, can it be anonymous? Is it truly anonymous, Ms. Rafferty asked? To the person being reviewed it is, Professor Goldstein said. It is not anonymous if there is a lawsuit or a challenge, Ms. Rafferty said. A committee is making a recommendation; it could come to votes but the report still goes to the appointing authority. The Minnesota Data Practices Act provides that anyone can see information or data about them, so if there is information in the report, it would be discoverable.

With respect to promotion and tenure, Professor Fossum said, the situation is pretty clear: Votes can be anonymous. With respect to administrative reviews, there may or may not be votes; people are solicited for opinions about the administrator and the committee synthesizes the results and presents a report. There are probably few situations where someone being reviewed would take legal steps, but one infers that if one is running a review committee, the last thing to be done is shred the information collected.

When all the data are brought together, individual comments are not attributable, Ms. Rafferty said. The raw data came from various sources, Professor Fossum pointed out; some comments could be specific enough that they could be used to identify the person who made them. There is a concern that people will be hesitant to be too specific because they will be identified, Ms. Rafferty agreed, which is why many try to generalize their concerns.

What advice does she have for review committees (1) to protect the confidentiality of those who supply information and (2) nonetheless write a report that will stand up to the accusation that the conclusions were made up of whole cloth, Professor Fossum asked? A review committee faces both perils. How would she advise them on the best way to protect confidentiality? Ms. Rafferty said that current practice seems to protect anonymity. In litigation, a review committee should not keep all its notes but only the final report--but that needs to be a standard practice. The policy contemplates what information should be destroyed and what should be part of the final report. Should there be advice that a review committee destroy information as it goes along, Professor Fossum asked? Yes, Ms. Rafferty said, but it must be sure that all in the information is encompassed in the final report, both positive and negative. Professor Fossum related that he has had experience as an expert witness--and everything on his C drive and all his notes was demanded. It is dangerous to assume that one's notes during the process are not discoverable.

Since many surveys are on-line, is there a way to track back to see who filled them out, Dr. Jones asked? It is her understanding that they are not tracked, Ms. Rafferty said, but perhaps the technical possibility exists.

Professor Fossum thanked Ms. Rafferty for joining the meeting.

## **5. Faculty Retirement Plan**

Professor Fossum asked Ms. Singer about the status of units that have opted to waive the waiting period for the Faculty Retirement Plan for probationary faculty in their first two years of service. Ms. Singer reported that seven individuals have received waivers. Thirteen colleges/campuses have elected to permit early participation in the plan; she said she did not know the total number of eligible faculty within the units. The University has hired about 70 faculty since July 1; of those, seven have received the waivers. She will have data next month broken down by college.

## **6. Lifetime Maxima on Health Insurance Plans**

Professor Fossum now welcomed Professor Fred Morrison, chair of the Benefits Advisory Committee, to discuss health care policy lifetime coverage maxima. Professor Morrison said that health insurance issues are taken up by the Benefits Advisory Committee (BAC), which includes representatives from all four employee groups (faculty, civil service, P&A, and bargaining units).

This year the administration brought a proposal to set lifetime maxima on all health benefits. Up to this year, the situation had been unusual: Of the four options, two had no limit, one had a limit of \$500,000 on out-of-network coverage, and one had a \$2 million maximum for all benefits. That did not make sense. When health care contracts were negotiated, this was the last issue and each company did what was usual for it. Now the differences need to be ironed out.

The "counter" toward the lifetime maximum would start when the University shifted to the U Plan--so no one has a big lifetime expenditure yet (the "counter" only started running January 2, 2002). The BAC discussed various maxima; the question was how much the University could reinsure for or what it could obtain on stop-loss policies. The maxima were \$2-3 million; now the highest they can find is \$5 million.

There has been a lot of discussion about whether there should be any lifetime maxima or if the University should cover bills to infinity if someone had a totally catastrophic situation. \$5 million is the figure they came up with: It is the equivalent to 1250 times the annual premium, a very big number that means something highly unusual is happening. Then the question is whether that situation should cost the rest of the University's employees (shifted to them via premium costs) or be covered by the broader state. If a catastrophic situation were not covered by the University, it would certainly be covered by medical assistance from the state. To protect against catastrophic costs, the BAC will recommend putting a \$5 million cap in place.

The highest number on any claim thus far is about \$300,000, so the \$5 million cap is more than 10 times any claim thus far. The state has had a \$1 million cap and no one has bumped into it. The \$5 million cap protects the University against the unimaginable. Will it be indexed to inflation, Professor Wiedmann asked? The BAC asked that question; the administration said it would be too complicated but that they would bring the policy back every two years for review.

What is the estimated cost of a heart or liver or kidney transplant, Professor Csallany asked? There is a statistical probability that someone at the University will need one of them. It is probably in the neighborhood of \$300,000, Professor Morrison said. The health plans have covered a number of transplants and they have not pushed against a limit. What worries him, he told the Committee, is that

society is rapidly coming to the point at which vegetative life can be maintained for a very long time--at very high cost. If it is essentially free, it could make people willing to say "keep spending the money." If there is limited coverage, however, at some point people will begin to think about the cost.

This is, Professor Morrison clarified, a PER PERSON \$5 million limit, not per family.

It is a large number, beyond what anyone would ever hope to incur, but there must be data on who took a hit because of the limit, Professor Goldstein speculated. One person in ten million? Mr. Chapman said they would be able to provide that information. Professor Morrison said they looked at the anecdotal side; the state never hit the \$1 million limit across three employee groups over a long period of time. This would be a very rare exception. What does "very rare" mean, Professor Goldstein asked? Mr. Chapman agreed with Professor Morrison: No single event would get anyone anywhere near the limit; there would have to be a chronic and hugely expensive illness to begin to approach the limit.

Would there be a difference in cost to the University, or to employees, if the limit were \$1 million rather than \$5 million, Professor Akehurst asked? Why was that amount chosen? The BAC wanted the limit as high as possible, Professor Morrison said; Mr. Chapman said a lower limit would be cheaper because \$1 million is a lower risk than \$5 million, but the savings would be negligible.

What is the logic of making the maximum retroactive for two years, Professor Collins asked? The University has a plan and is accumulating data; it makes the coverage easier to buy, Professor Morrison said.

Professor Morrison then explained to the Committee how stop-loss insurance functions. The University is actually buying administrative services from health care providers, not insurance. The University is self-insured: If the employees are healthier, the University pays less; if not, it pays more. But the University DOES buy insurance, from reinsurance carriers, so that if any individual claim exceeds \$350,000, the stop-loss insurance picks up the excess, up to a maximum. If University coverage goes beyond that maximum, the liability goes back to the University. So the University is insured against big losses. Companies have a table and charge for stop-loss insurance; they look at the risk. Someone has done an analysis; the companies are putting their money on the line, betting they will not see claims in excess of \$5 million.

About the vegetative state, Professor Csallany asked what the MOST expensive problem is. A burn patient? A burn patient with rehabilitation or hemophilia, Professor Morrison surmised. Are there data, Professor Csallany asked? There are.

Does the limit apply to Worker's Compensation coverage, Professor Fossum asked? It does not, Professor Morrison said; Worker's Compensation has its own rules.

He also said that once one retires, the counter is reset to zero. Some retirement health care plans have limits, some do not. Is the University offering retiree health care plans, Professor Goldstein asked? It is ARRANGING them, Professor Morrison said, but they are not in the self-insurance pool. They are different from the state plan as well. The University offers some plans the state does not have. Is the University locked into the current plans, Professor Goldstein asked? The BAC is looking at general issues this year and will issue a Request for Proposals in 2004-05, so there will be new plans in January, 2006. After that the plans will probably be re-bid on a six-year cycle. They will not redo them every

year--that is too much work and will not result in good rates. As a result, they have to do them every 4 or 6 years so they are synchronized with bargaining unit contracts.

Professors Fossum and Morrison explained some of the intricacies of Worker's Compensation coverage. Professor Akehurst then directed recognition and gratitude to Professor Morrison for taking on the responsibility of chairing BAC, a terribly onerous responsibility--a sentiment with which all concurred. Professor Morrison thanked the Committee for the support; he said it has been an interesting experience and he has learned a great deal about the law while serving in the role.

Professor Fossum adjourned the meeting at 3:45.

-- Gary Engstrand

University of Minnesota