

Minutes*

**Senate Committee on Faculty Affairs
Tuesday, April 29, 2003
2:30 – 4:30
238A Morrill Hall**

Present: John Fossum (chair), Kent Bales, Carole Bland, Carol Carrier, Terence Collins, A. Saari Csallany, Jesse Daniels, Patricia Frazier, Darwin Hendel, Robert Jones, Theodor Litman, Cleon Melsa, Dwight Purdy, Charles Stech, Larry Wallace, Thomas Walsh, Carol Wells, Aks Zaheer

Absent: Dann Chapman, William Garrard, Richard Goldstein, Todd Powell, Wade Savage, Kathleen Sellew, Jackie Singer, Timothy Wiedmann

Guests: Professor Laura Cooper (Chair, Grievance Advisory Committee); Professors Fred Morrison and George Sheets

[In these minutes: (1) Grievance Advisory Committee annual report and report on an ombuds proposal; (2) University use of jurisdictional issues in grievances; (3) faculty salary study]

1. Grievance Advisory Committee Report

Professor Fossum convened the meeting at 2:30 and welcomed Professor Laura Cooper, Chair of the Grievance Advisory Committee, to discuss her report as well as the report she and colleagues developed about an ombuds function at the University.

The grievance policy creates the Grievance Advisory Committee, Professor Cooper informed the Committee, and it has representatives from all employee groups except those in bargaining units. Its charge is to review operation of the Grievance Office and the policy itself. Professor Cooper provided a summary sheet of the activities of the office. She said she was concerned about the cost of the Phase 4 hearings; the employee must pay half the cost, and in one case the hearing cost \$20,000. (In faculty cases, the policy requires use of an arbitrator from outside the state to ensure neutrality, so there are travel costs, and he or she must be a faculty member or emeritus faculty member.)

The Grievance Office is only allowed to intervene in cases if a grievance falls under the policy; the grievant must allege that someone violated a specific University policy, procedure, or practice. This requirement has led to a concern that there are few opportunities to deal with disputes that are not as formal as a grievance and that there is need for a uniform dispute resolution system.

The Faculty Consultative Committee asked the Grievance Advisory Committee (GAC) to look at ombuds services, especially at peer universities. They spoke with people at other institutions and provided a report on April 10. Four issues were identified as unmet needs: a lack of clarity about what offices are to do and their jurisdictions; issues important to employees are not the responsibility of any

* 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.

office—or of two offices; there is a strong desire for a less adversarial system; and there is an absence of any central information source. The budget realities set in so there can be no new office with accompanying funding. They propose a council for dispute resolution, a central entry point and coordination of offices, and allowing volunteers to offer ombuds services. They made the proposal and now welcome responses.

Professor Fossum noted that the Committee had recently discussed protection for the University Grievance Officer, who is on year-to-year contracts. Is there a need to clarify further the role of the Grievance Office and any protections the grievance officer should have? Some are concerned that the grievance officer may be reluctant to get into an adversarial position with the administration. Professor Cooper said that GAC does a survey each year about the performance of the grievance officer, an "objectivized" evaluation, which is one protection against arbitrary employment vulnerability. In addition, Professor Cooper related, she has worked over time with the Chief of Staff on a process to handle complaints about the grievance officer, Ms. Chalmers, to be sure any complaints are not backdoor ways of putting pressure on her. Moreover, the President is obligated to consult with the GAC before taking any personnel actions affecting the grievance officer. But the concern is legitimate, Professor Cooper concluded. It is also important to recognize that the grievance officer has no power except jurisdictional decisions (which can be appealed).

Are there a variety of ombuds positions, Professor Fossum asked? They differ across offices and across universities, Professor Cooper said. They did not recommend creating an ombuds position here because there are no funds; they were not going to waste the time. If anyone is doing a survey of employees, however, it would be helpful if a question about dispute resolution could be included in the survey.

What are they proposing, Professor Bland asked? That all University offices that have something to do with dispute resolution—the EEO office, the Judicial Committee, the University Grievance Office, and so on—constitute a dispute resolution coordinating council that meets on a regular basis to talk about disputes and identify a better way to respond to them. They should also identify if possible volunteers to provide an ombuds service. That seems weak, Professor Bland said. She said she recognizes that there are no funds available, but in the exit survey they did of faculty who left to go to other academic institutions, the most common reason was the management in the department. They did not feel valued. While there may be no funds for an ombuds office, losing good faculty costs the University money, too.

Some universities have a website where anyone with a problem can go; it will identify someone central in the institution that the individual can call, Professor Cooper reported. She agreed that the recommendations of the report are modest but they did not believe anyone would take seriously a more expensive proposal.

Professor Bland recalled that she had also surveyed faculty who had used the Judicial Committee; both the faculty winners and losers felt damaged. Administrators, however, did not; they felt it was a good learning experience that helped them to improve their performance. There need to be additional ways to help people reach a resolution so they can continue to live in the University when the dispute is over. Professor Cooper said she believed informal procedures are more effective in the long-term so they have recommended the council; they have also asked if the power of the University Grievance Officer should be expanded to include informal dispute resolution.

Professor Fossum thanked Professor Cooper for her report.

2. Jurisdictional Issues in Grievances

Professor Fossum turned next to Professor Morrison, who related that he was bringing an issue related to the ones Professor Cooper had discussed. His concern is about jurisdictional issues in grievances. In the last couple of years, in Phase 3 hearings, the University has argued that the case cannot be heard. What started as an informal process when it was created, the grievance process has become a highly technical process, pressed to that state by the General Counsel because they do not want to hear the grievances.

Professor Morrison said he very much supported an ombuds approach to disputes. There are no jurisdictional issues; if you have a problem, you talk with someone about it. The ombuds function is a way to short-circuit a top-down administrative approach. Second, once a case has been resolved, the University has increasingly not been fulfilling its obligations and has raised jurisdictional questions in court claiming there should have been no jurisdiction. Professor Morrison said he has seen this happen more than once. In addition, under the 11th Amendment, the University is immune from suit in federal court, and it has asserted that right. There is no problem with the University asserting its claims, but to claim that a dispute does not belong in the grievance process and then claim immunity in court means the University will not talk about disputes. It also means the University will not address the underlying problem.

Professor Sheets recalled that in one case the University persuaded the Judicial Committee that a matter should go to the grievance process instead of the Judicial Committee—and then the University contested the grievance officer's jurisdiction! Professor Sheets said he agreed with Professor Morrison that the trend appears to be that the University, through the General Counsel's office, contests vigorously grievance processes on technical and jurisdictional grounds. Professor Cooper agreed that the grievance office is seeing persistent jurisdictional challenges to the filing of grievances. She repeated that one must be an employee and must allege a violation of a specific University policy, procedure, etc., on a matter that is not supposed to be discretionary with one's supervisor. She noted that she does not know the facts of any cases because her committee does not see individual files.

Has there been any problem with arbitration, Professor Fossum asked? In the last few months there have been two cases that have gone through arbitration, Professor Morrison said, after which the University has taken the position that it need not enforce the arbitration awards because they are University decisions subject to certiorari petitions. The difference is that in the latter, the decision of the University's chief officer is upheld unless there is strong reason not to do so. That is a step back from wanting to resolve a problem to a view that the President's decision is final or nearly so. There is a concern that the whole process is advisory to the President, who can do what he wants; the arguments of the General Counsel reinforce that view.

In the policy, arbitration is to be binding with only a few exceptions, Professor Cooper said. The GAC believes the University should not be eager to seek out exceptions when the employee believes the result is final--and pays half the cost of the arbitration--and then go to court afterwards to contest the arbitration.

So it appears the University Grievance Office functions well now, Professor Fossum said, but it could be better if there were more information for people about where to go? Professor Cooper agreed and added that there needs to be an informal dispute resolution function so people can resolve disagreements that are not formal grievances or to assist people who do not want to file a grievance because the system is too adversarial.

Mr. Stech inquired about the Duluth faculty. Professor Cooper said those in the bargaining unit are outside the grievance system and the Judicial Committee.

Of the Judicial Committee cases decided for or against the administration, Professor Wells observed, presumably the administration does not challenge those in its favor. How many times has the University accepted or challenged those which are against the administration? In his nine years on the Judicial Committee, Professor Sheets said, there have been two cases in which the President has not accepted the Judicial Committee recommendation. Those were thought to be unprecedented at the time, they were very sensitive cases, and seemed to be exceptional. There have been no instances recently when the President did not accept the recommendations--but there have also been fewer cases in recent years.

Professor Fossum said the Committee would keep the ombuds issue on its agenda.

It would be useful if the Committee would press the administration to be VERY hesitant to seek outside review of decisions made in grievance processes, Professor Morrison said. By seeking outside review the University repudiates the process and undermines confidence in it. Judicial challenges are very negative, declaring an unwillingness to settle disputes except in court.

What will done with her proposal, Professor Bland asked Professor Cooper? It will be brought to the Faculty Consultative Committee, because it was FCC that requested the report. Will SCFA support the report, Professor Bland asked? It will, Professor Fossum affirmed.

Professor Fossum recalled that there has been a long-standing concern about the lack of an ombuds function at the University, which is why the Grievance Advisory Committee was asked to look into the matter. This is not a good financial climate in which to make a proposal for an office but the question has been raised with Vice President Carrier about whether it is in the interest of University employees AND in the University's financial interest to establish such a function. This is something that the administration and the FCC need to consider, he said, and FCC would be well-advised to go on record supporting the function.

His remarks go further than what Professor Cooper has recommended, Professor Bland told Professor Fossum. She agreed with his comments; how many retention offers will it take before the cost of an ombuds office would be paid, she asked? The report suggests using retired faculty for free, Professor Wells observed. Professor Fossum said there are a lot of models; they gathered information from other research universities that use a variety of systems. Two or three programs that are quite successful use retired faculty; the suggestion from Professor Cooper is that the effort start on a shoestring budget. That could be considered here. The University is likely to have a lot more problems than in the past because of the budget situation but it will be difficult for many people to allege violation of a specific policy or procedure and disputes could take a year or two to get resolved. He concluded that it would

definitely be to the benefit of the University to explore the possibility of implementing an ombuds program.

Tiny things can go a long way to alleviate grievances, Professor Wells said. Administrators frequently violate University policies (e.g., faculty participation in compensation decisions in departments). But many faculty are afraid to complain; they keep their heads down when a department head has complete charge of their salary. It is difficult to get people to bring something to the fore. It would be very helpful if there were an office one could call and provide the facts, so someone could then send an email to remind administrators of University policy. Then faculty would not always have to be calling attention to themselves. This kind of function would also help avoid grievances down the road.

His department started teaching this about 55 years ago, Professor Fossum said. Organizations need to audit their human resources function, in addition to conducting financial audits: Is the organization implementing its own policies, in a regular manner? Does the policy have a positive effect on the organization when it is implemented? That is what she is asking for, Professor Fossum told Professor Wells: If there is a policy, it should be applied uniformly across the institution and it supposedly will have a positive effect on the organization.

The policies are known, Professor Bland said; some people choose to thumb their noses at them. The administration needs to enforce the policies. What usually happens after a human resources audit, Professor Fossum said, is that a problem is identified--and then someone says to the responsible administrator, "you fix this or YOU have a problem." The problem is that there is no chain of communication, Professor Wells opined. Judicial Committee cases are largely the result of people not following policy, Professor Bland added. There are human resources practices, Professor Fossum responded. The University is a complex organization--but not that much more complex than other organizations with policies. Other organizations look at their policies and evaluate whether they are good for the organization. This is not rocket science, he commented; the University could benefit from such audits.

A whole set of issues have been raised here, Professor Fossum observed. With the Committee's permission, he will develop a summary and circulate it to the Committee for comments and then identify a position to forward to FCC, particularly with respect to an ombuds function and policy issues. It is clear that different policies have been implemented in different fashions in different parts of the University and certain problems that get to the grievance process could be settled earlier. There may also be too many processes that are too adversarial. Professor Fossum said he was a member of the GAC this year and observed that the grievance officer is in a difficult position; she must first advise a potential grievant that she is the officer in charge of the process and cannot in any official way advocate, that she only moves the process forward.

Professor Hendel pointed out that in the last few years there has been a significant effort to collect all policies in the policy library; no one can say they cannot find a policy. Pat Spellacy has led this effort.

3. Faculty Salary Study

Professor Fossum next distributed copies of the results of the faculty salary study that had been conducted over the last year. [Note: the full discussion of the results will not be repeated here; this report was also presented to the Senate Committee on Finance and Planning on April 22, 2003, and can be found

on the web at <http://www1.umn.edu/usenate/scfp/03-04-22.html>. Reported here will be the discussions held at this meeting.]

Apropos the average 5% salary increase delivered to the faculty in 2001-02, Professor Bland pointed out that 800 faculty in the Medical School received salary CUTS, not 5% increases. The increases were on the O&M base, of which there is very little in the Medical School. The Medical School is structurally different from the rest of the University and the faculty cannot be compared with other faculty. Professor Bland said she was concerned that a newspaper headline would say that the faculty received an increase and people would not see the problem in the Medical School, even though it has lost hundreds of faculty. What the average salary increase was at the University has no meaning in the Medical School, Professor Wells agreed.

How is the report to be used, Professor Zaheer asked? It will be presented to the Faculty Consultative Committee, Professor Fossum said. The most important parts of the report are that (1) in terms of competition, the University is definitely behind its peers, and most behind for full professors, and probably is not capable of responding to retention offers, and (2) there is probably a need to audit some units that are not meeting the salary plan. There was good compliance with the 2001-02 salary plan but there was variance.

In terms of the plan itself, which called for 2% of the 5% to be allocated to the 20-25% of the most meritorious faculty and the 3% to all other faculty, it may have seemed radical but it was not different from what had been going on for a number of years, Professor Fossum commented. It may not be a bad policy, given the salary compression vis-à-vis other universities, since it does not lead to a two-tiered faculty and does not lead to serial large salary increases for the same individuals.

In terms of competitiveness, it is not clear how much of a disadvantage the University suffers from because the data do not take into account the WHOLE salary of some faculty (e.g., clinical income in the Medical School). It may be that faculty salaries in the Carlson School are more competitive than the report might suggest because Carlson faculty also receive money from other sources, Professor Bland said. The report is amazing and it also yields more questions. But the Medical School is different, she emphasized; the state, by comparison with other universities, puts very little money in its medical school.

Another interesting question relates to population, Professor Fossum said: Is the tenured/tenure-track faculty a smaller proportion of the faculty than in the past? This report only looks at the tenured and tenure-track faculty, and the numbers are in the report: During the 1990s there was a consistent drop in the number of tenured/tenure-track faculty, with a slight upturn at the end. Total COMPENSATION costs for the University over the decade studied did not rise as much as it might have because of the decline in the number of faculty. And there are more faculty-like individuals performing faculty work, Professor Bland added.

How does clinical faculty income fit in, Professor Litman asked? The funds go into the practice plan; from there, some go to salaries and some to other things. The allocations can vary by quarter, Professor Bland said. Only the faculty member's base salary is guaranteed. If the University decides to pull University of Minnesota Physicians (UMP) out of the basic health plan, that will mean about 3000 patients who are not available for training--and providing income, Professor Litman observed. Professor Bland said such a decision would be a mistake; it would remove (in her opinion) the best physicians from faculty and staff and send premium dollars to other providers. But UMP is the most expensive provider,

Professor Litman said. That is because it also serves a teaching function, Professor Bland responded. What she hears from the doctors is that they must work harder and harder to maintain their salaries, Professor Wells said. HMOs negotiate cuts in the charges; one result is that doctors retire. Professor Bland agreed that it costs more to go to UMP unless the state subsidizes physician education, but it would be a good investment of premium dollars in the University.

Following continued discussion of the situation in the Medical School and UMP, Professor Fossum adjourned the meeting at 4:30.

-- Gary Engstrand

University of Minnesota