Minutes[*]

Senate Committee on Faculty Affairs
Tuesday, April 13, 2010
2:30 – 4:15
238A Morrill Hall

Present: Kathryn Hanna (chair), Ben Bornsztein, Marilyn Bruin, Arlene Carney, Carol Carrier, Vladimir Cherkassky, Randy Croce, Valerie Khominich, Morris Kleiner, Frank Kulacki, Holly Littlefield, Theodor Litman, Rebecca Ropers-Huilman, George Sheets, Geoffrey Sirc, Roderick Squires, James Wojtaszek

Absent: Dann Chapman, Barbara Elliott, Jayne Fulkerson, Karen Miksch, Jason Shaw

Guests: Vice President Kathryn Brown, Lynn Zentner (Director, Office of Compliance); Professors Stephen Ostrow, Gil Rodman, Karen-Sue Taussig

Other: Jackie Singer (Director, Retirement Benefits); Kathryn Stuckert (Office of the President)

[In these minutes: (1) administrative conflict-of-interest policy; (2) alternative salary-reduction proposals]

1. Administrative Conflict-of-Interest Policy

Professor Hanna convened the meeting at 2:30 and welcomed Vice President Brown and Ms. Zentner to discuss the revised administrative conflict-of-interest policy. She recalled that the Committee had looked at a draft in the fall; the administration revised it after also revising the Board of Regents' policy, from which the administrative policy derives.

Vice President Brown reported that the Regents passed their revised policy in March (and this Committee reviewed it beforehand). The Regents' policy established broad principles; the next step is adoption of the administrative policy. The version before the Committee today is a substantial revision of the earlier draft; they had a great deal of feedback on that earlier draft and have reshaped it with these guiding principles: (1) The ethical standards apply to everyone, and (2) there are certain groups whose activities are higher risk and which are thus subject to more monitoring and oversight. The revised draft divides covered individuals into two groups, individuals whose University expertise and responsibilities involve high-risk activities (Group A) and all others (Group B). Group A includes individuals involved in five areas of activities: "involved in human subjects research subject to review of the Institutional Review Board (IRB); involved in the clinical care of humans; involved in technology commercialization; in a position to influence the content of medical education; or in a position to take action on behalf of the University that could benefit the commercial interest of a business entity." Drawing the distinction between high-risk activities and those that are lower-risk helped to sort out many of the ideas and suggestions that were made in response to the earlier draft.

[*] 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.

Ms. Zentner next reviewed the consultation process that followed the release of the earlier draft, which included multiple groups on campus as well about 150 suggestions made via the web. The key issues were definition of a business entity, how the policy applies to adjunct faculty, reporting income, written consultation agreements, fair market value, events sponsored by business organizations, governing the presence of business entities on campus, gift standards, prohibited activities, the need for additional definitions and greater clarity around others, and the need for more discretion to manage matters locally. They took all the comments and restructured the policy along the risk-based approach, something that Vice President Mulcahy suggested. Even if one is not involved in the activities identified as high-risk, in Group A, however, one is still obligated to abide by the ethical standard established by the policy; there simply will be less monitoring and oversight of the lower-risk activities. The revised draft also delegates considerable responsibility to the deans.

Ms. Zenter reviewed the organization of the new policy and pointed out that several sections that were in the earlier draft will now be procedures rather than policy (because they are more "how to do things" than policy).

There are now two levels of reporting for financial interests. Those in Group A must report any financial interests of $5,000 or more; those not in Group A must report financial interests of $10,000 or more. The latter figure comes from NIH regulations and is not new to the University. The former figure comes from a communication from the Association of American Medical Schools and the Association of American Universities in response to a request for comment from NIH in connection with NIH's Advance Notice of Public Rule Making. They are aware that as NIH regulations change, the University's policy may also need to change, Ms. Zentner said. They are also aware that the Medical School may wish to adopt an appendix to the policy setting an even lower level.

There are also categories of income that need not be reported, a change from the earlier draft: "income from seminars, lectures, or teaching engagements sponsored by governmental agencies and non-profit entities organized solely for educational, religious and philanthropic purposes; income when serving as a special reviewer or review panelist for a public (governmental) or nonprofit entity; income from services provided to professional organizations; royalties received under Board of Regents Policy: *Commercialization of Intellectual Property Rights*, where the covered individual who received the royalties does not have any other relationship with the business entity paying the royalties that could result in a conflict of interest; and income from a private practice plan or private professional practice plan pursuant to Board policy."

Ms. Zentner reviewed other provisions of the policy.

-- The risk-based approach was also applied to adjunct faculty: They are exempt from the reporting requirements of the policy unless they are in Group A or unless the chair/dean determines that they should be covered because of the individual's relationship with business entities.

-- REPA review and conflict management will be more centralized, a process that began in February. At the local level, the responsibility is to ensure that the REPAs are accurate; they can be approved locally if the answer to all the core questions is "no." If any of the answers to core questions are "yes," the REPA will be referred to the Conflict of Interest Program for central review.

-- High-risk consulting activities still require a written agreement; all others are encouraged to have such agreements, although a dean, chancellor, or administrative unit head may require one.

-- There is more flexibility in the "fair market value" language.

-- The provisions governing use or receipt of products developed and provided by business are largely the same, however, the requirement that samples and demonstration items be centrally received, documented, and disseminated now exempts textbooks, software, and other educational items provided in limited quantity for review for potential course adoption and lab materials provided in limited quantity to faculty for evaluation.

-- Expense reimbursement is expected to follow University policy unless an exception is granted by a dean, chancellor, or administrative unit head.

-- There are several provisions relating to attendance or participation in events sponsored by business, including education and training events, educational events on campus, and sales and marketing events.

-- Deans/chancellors/administrative unit heads are responsible for establishing policy covering the presence of business entities on campus (must be for research, education, or outreach); such representatives are not permitted in the Medical School or clinical-practice areas except as permitted by an appendix to the policy (which the Committee did not have). Local policies will be appendices to the policy.

-- There are restrictions on gifts and food for individuals in Group A. Gifts are not allowed unless accepted on behalf of the University or (subject to approval) are appropriate in an international context or unless offered to all attendees at a conference, for example tote bags. The definition of "gift" is not yet final. Individuals in Group A may not accept food/entertainment/etc. from business entities with the exception of modest meals offered to all at educational events. Exceptions are allowed with approval, if the activities further research, education, or outreach.

-- Prohibited external relationships are not changed much, except that the language of the provisions are not to restrict classroom discussions that involve comparative analysis or providing opinions based on scholarly activity or research.

Mr. Croce inquired about the definition of business entity, not included in materials provided to the Committee. It remains broad, Ms. Zentner said, and promised to provide the definitions.

Professor Squires inquired about agriculture and veterinary medicine: Cannot they be as problematic as medical education? Vice President Brown repeated that the ethical standards apply to everyone, but medical education involves patient care, so it is higher-risk than other activities. The question is the mentoring and oversight required to be sure that the policy standards are being met. The policy is premised on an honor system throughout but perhaps even more so in the lower risk areas where less oversight is required.

Professor Bornsztein had several comments: (1) every time "high-risk" is mentioned, it should refer to conflict-of-interest high risk; (2) adjunct faculty in the Medical School, by definition, are involved in medical education, and the language might be modified to reflect that fact; (3) why does the policy call for a written plan if the conclusion is that the conflict must be eliminated rather than managed?

Vice President Brown had to depart at this point but she thanked the Committee for its time and thoughtfulness in considering the policy. Professor Hanna thanked her for joining the meeting.

Ms. Zentner responded to Professor Bornsztein's points. One might argue that there is no need for a conflict-management plan if the activity that gives rise to the conflict is eliminated, however, whether the conflict is eliminated or managed, a written plan is always created and, in both circumstances, it is referred to as a "conflict management plan." It might be a good idea to title the plans differently to reflect the distinction. Ms. Zentner agreed to bring back to the review group his suggestions. In terms of the definition of business entity, it is the definition that has been in place since at least 2005, but it now excludes professional organizations and entities that are organized solely for educational, religious, or philanthropic purposes.

Professor Sheets asked if they considered exemption political advocacy organizations as well. He said he could see pros and cons to exempting them, but mostly pros. For example, if one contributed money to Moveon.org, one has a relationship with it; if one endorsed, in a committee or classroom, a position advocated by Moveon.org, one could in theory run afoul of the policy. Would one be related to such an organization because of one's University expertise or because of one's political views, Ms. Zentner inquired. Most likely the latter, Professor Sheets said, but a health professional might endorse an AARP health-care proposal, and one worries that an aggrieved student could claim a conflict of interest. Mr. Croce said he would draw a distinction between elections and political parties, on the one hand, and general social issues on the other (health care, farm workers, etc.). In the latter instances, one could testify because of one's expertise, but he would be troubled about University endorsement of political candidates. Expertise could be brought to bear to further discussion of an issue but not for a candidate or political party.

Professor Sirc inquired why the door was opened for certain categories of non-profits to be exempted from the definition of "business entity." Ms Zentner explained that, because the term “business entity” is very broadly defined, it generated a lot of questions about the inclusion of organizations where no commercial benefit is involved and involvement with such organizations likely does not raise questions about one's objectivity. For example, what if someone speaks to a church group? Or works with someone at Stanford? But they did not exempt all non-profits from the scope of the definition. Allina, for example, is a non-profit that still falls within the scope of the definition.

Professor Hanna asked for an example of a covered individual "in a position to take action on behalf of the University that could benefit the commercial interests of a business entity." Ms. Zentner said the easiest one if someone who can affect purchasing in a way that would benefit a commercial enterprise. Professor Hanna suggested that the provisions also covered those who have purchasing cards.

Professor Ropers-Huilman suggested deleting "modest" from the language about meals offered to all attendees at a conference. That does not mean anything, she said, and asked if an employee would be expected to call his or her superior to ask whether a meal is modest.

Professor Wojtaszek asked if "central review" of REPAs included those from the coordinate campuses. Ms. Zentner affirmed that central review covers the entire system.

Professor Hanna commented that this is a more streamlined version that takes into account risk; it is a better model than the previous draft. What happens next? Ms. Zentner explained that this revision would be brought back to a wide array of groups for review and that she hopes it can go to the President's Policy Committee for approval in June. The Faculty Senate will also review it. They would like it to be effective on July 1 of this year.

Professor Hanna thanked Ms. Zentner for presenting the policy to the Committee.

2. Alternative Salary-Reduction Proposals

Professor Hanna next welcomed Professors Ostrow, Rodman, and Taussig to the meeting to discuss salary-reduction proposals. She noted that this item is on the agenda because the Faculty Consultative Committee (FCC) asked that alternative salary-reduction proposals be revisited after the last Faculty Senate meeting, and she also thought such plans could be needed for future reference because one does not know where the University will stand when it approaches the "budget cliff" on July 1, 2011.

Professor Taussig began by explaining that there was a group of faculty who were concerned about how to meet the University's financial challenges in as equitable a way as possible. They did not believe the President's plan was as equitable as possible, so they put forward a plan and asked the administration to develop a more progressive model. Their proposal was defeated at the March 25 Faculty Senate meeting but they are pleased that FCC wanted to explore the idea further. There are a number of faculty members, in a number of colleges, including supportive faculty in the Medical School and IT who said they supported the proposal but who would support the President's proposal if the alternative progressive proposal failed. One problem is that the Faculty Senate does not represent the staff, and they wanted to say that the faculty would be willing to take larger salary cuts; they provided examples but did not want to establish the progressive plan—they just wanted to show that such a plan could be adopted.

Professor Ostrow said that he came a little later to the discussion and found the proposal for progressive salary cuts to be compelling on moral and ethical grounds. He said he believed there must be cuts but that across-the-board cuts are not moral, because a 1.15% cut hurts someone making $30,000 more than it hurts someone making a lot more than that. There are cuts that can achieve the same end and they should be progressive. He also commented, in response to the allegation that progressive cuts would lead to brain drain, that he did not believe it. Those faculty members who would leave because of a 3-4% salary reduction would leave anyway, and in any event the University cannot compete with private institutions.

Professor Sheets responded that he would also imagine that those who might otherwise be tempted to leave because of a 3-4% salary cut would be less likely to do so if the cut were seen as part of a communal effort to ameliorate the situation for everyone. He asked where things stand in the deliberative process: The 3-day furloughs/1.15% salary reduction/2.3% reduction for administrators has been adopted, so is this discussion directed at next year rather than revisiting the current plan? It is, both Professors Hanna and Taussig affirmed.

It is their understanding, Professor Ostrow said, that things could be worse in 2011, and if there need to be salary cuts again, they hope that a progressive plan could be discussed. Professor Hanna said the goal is to look at the philosophy; a number of senators who voted for the President's plan supported the progressive plan, but it was not a viable option at the Senate meeting.

Did the President respond to the proposal, Professor Sirc asked? He did not, Professor Ostrow said. The President said he would only accept his plan and that they modeled a progressive plan but worried about brain drain and cherry-picking of Minnesota faculty by other institutions, and that there could be problems around the cutoff points in a progressive plan. The last point can be addressed by developing an algorithm that imposes a cut only on the fraction of salary above a certain point. Professor Sirc said it would be helpful to know the President's thinking because perhaps his concerns could be addressed if the issue arises again.

Part of the President's thinking was also "shared sacrifice," Professor Hanna recalled.

Another objection to the progressive plan, Professor Ostrow said, was that it would send the wrong message to the public, that the faculty were not willing to sacrifice. But the University of California implemented a progressive plan and the faculty are sacrificing. It is a false premise that such a plan would send the wrong message. Especially because it means the faculty would take steeper cuts than the President proposed, Professor Rodman added. No one is happy with pay cuts, but many of us are willing to live with them if we are not taking larger cuts than those who are making more than we are, and many of us are willing to take greater cuts than those who are making less than we are. He said he makes enough but there are staff members with families who are struggling.

Professor Hanna asked what the average and median faculty salaries are at the University. Vice President Carrier said she could provide the number, and reported that the civil-service average is over $52,000 and the bargaining-unit average is just over $39,000.

There is historical precedent from the 1930s for a progressive plan, Professor Taussig observed. The University adopted salary reductions but protected those with salaries less than $1100.

There were two amendments to the President's proposal on the floor of the Faculty Senate, Professor Ostrow reported. One called for a public audit of expenditures and the other was their proposal. The problem was that there was a short time for debate and people saw the two amendments as linked. He said he wanted to be clear that they are separate; he said that the finances of the University are transparent if one knows where to look. They want this proposal considered by itself.

What about the need for simplicity, Professor Kulacki asked? Their proposal flies in the face of simplicity and ability to explain it to the constituents who pay the salaries. Professor Rodman said the proposal is simple; it is not terrible difficult to say, for example, that people making over $100,000 will have a salary reduction of 5% and those making $50,000 - $100,000 will have a 4% reduction. As for the concern about pecking order, part of him understands and is sympathetic to the problem of a drop in rankings, but if someone falls from #1205 to #1206, that is less of an injustice than imposing greater hardships on those who must already struggle to buy groceries and health care.

Professor Ostrow agreed that a pithy and simple presentation is easy to understand, and theirs is more difficult, but if one conveys the idea that if someone makes more, he or she will see a larger cut, that is a powerful message to the public and says that this is an ethical institution.

Dr. Littlefield said she agreed with and supported the progressive proposal but recalled that one question that came up earlier was that it was too complicated at the cut-off points (e.g., someone making $100,000 versus someone making $99,000). That problem can be addressed, Professor Ostrow said, if the reduction is only on the salary above the threshold. Mr. Croce agreed but wondered if such a plan would garner enough savings. Professor Rodman commented that it is a sound-bite issue: If the cut is 12% on that portion of a salary greater than $130,000, and someone is making $140,000, the cut would be 12% of $10,000.

Professor Squires said he would like a sense of the Committee to see if it supports the progressive plan. Professor Hanna said she would like to see models of possible plans. Professor Kleiner said he would like to see a response from the administration on how such a plan would fit with other University goals (e.g., being among the top public research universities), and if moving away from market conditions in this manner would have on these stated priorities. Professor Litman observed that a lot of other universities have adopted more draconian plans than the progressive plan that has been proposed here. Professor Kulacki agreed and said that for 2012-13, in addition to sacrifice, there will need to be changes in a number of programs and University structure and the Committee needs to know what the institution will look like in 2-3 years before it could support a progressive salary-reduction plan.

Professor Ostrow observed that in his college, CLA, even if programs are cut, the faculty are not, so they must be moved, unless there is a declaration of fiscal emergency. Even if the size is reduced, they could still face salary reductions.

Professor Kulacki said that the administration could include accelerated retirements and buyouts. Many faculty are in the top tier of income and such plans would not be draconian if the benefits were good enough. Has that been considered? They have not done so, although CLA has, Professor Ostrow said.

Professor Sheets said that the points made by Professors Kleiner and Kulacki were good ones but they are not relevant to the proposal before the Committee. The issue is not whether to use salary cuts to solve the financial problem; it is, rather, IF salary cuts are part of the mix, should they be progressive? One hopes that buyouts and strategic planning and so on would solve the problem, but if there must be recourse to salary reductions, should the principle of progressivity be adopted—with details to be worked out.

Neither of the models provided to the Committee include the idea of shared sacrifice, Professor Hanna observed, because there are no cuts below a certain salary level. What would they think about a minimal cut at lower salaries? Professor Taussig said she would like to protect all salaries below a certain point, those who are the most vulnerable, but if that is not possible, she could support a .001% cut on lower salaries. But there are other ways that employees at lower salary levels are already stressed. Professor Rodman said one can construct a grid in a number of different ways and piece together different versions, but if one stipulates that no salary reduction can be more than 3%, for example, then one must make cuts lower on the salary scale in order to achieve the savings that could be needed. Professor Hanna pointed out that civil-service and bargaining-unit employees will see a 2% salary increase on July 1, so they will have a net salary increase even with the 1.15% reduction.

Professor Taussig said that in terms of shared sacrifice, there is little sacrifice for people making over $100,000 if they must take a 1.15% salary reduction. They can still take a summer vacation on Martha's Vineyard. It is not accurate to say that an across-the-board cut is shared sacrifice.

The progressive option was defeated because there was not enough time, Professor Bornsztein asked? It was defeated because the President said he would accept no other option, Professor Ostrow said, and because both the Faculty Consultative Committee and the Finance and Planning Committee endorsed the President's proposal. Professor Bornsztein noted that the President's plan did include some progressivity, for administrators; he asked if completion of the process this year would prevent consideration of a progressive plan in the future. It was noted that the Faculty Consultative Committee has asked this Committee to provide advice on a progressive salary-reduction plan.

Another reason was this was an ad hoc proposal and there was not enough time for wider discussion, Professor Hanna said. Professor Sirc said the situation came up in a hurry and there were a lot of rumors; what will happen next year? This was a last-minute attempt, Professor Ostrow agreed; they were trying to articulate a principle, not specific numbers. Professor Hanna said this Committee could ask the administration to do some modeling. Professor Ostrow said they would like the Committee to endorse the proposal and obtain the numbers.

The question is where to set the thresholds, Mr. Croce said, and he indicated a preference for shared sacrifice. Professor Rodman said they have tallied salaries at the University and are running the numbers to reach the $20 million that was required this year. They did not figure in median salary or what is required for a living wage, Mr. Croce inquired? They did not but they are worth looking at, Professor Rodman said.

Professor Bruin pointed out that there is the freedom to take extra furlough days and she preferred the freedom of individual agreement to do so. There are so many numbers that affect someone's cost of living that she supports the freedom of individual households to make choices, because individuals are the only ones who know their financial circumstances. But people can feel pressured to take extra days, Professor Taussig responded, and she would object to relying on voluntary furloughs because that can put the most vulnerable employees in a difficult position. Do they not feel that those with higher salaries will feel more pressure to take additional furlough days, Professor Bruin asked? He did not, Professor Ostrow said; staff may only take additional furlough days with permission and he, as a department head, would not be inclined to approve them because of the work that needs to be done. The voluntary furlough days are a good idea but they do not work in practice. Their plan also takes the personal element out of the equation, Professor Rodman explained. There is nothing magic in their numbers or in the President's plan. Voluntary furloughs are a problem for most people at the University—people are not unwilling to take the hit, and furloughs are supposed to mean that one does not work, but for many employees, taking additional days off just means the work piles up. Instructors can't say they will not prepare a syllabus for spring semester because they were on furlough. Professor Bruin said she was not sure that furlough meant one did not work; it means one is not paid for the holidays. She reiterated support for the voluntary nature of furloughs.

Dr. Littlefield inquired if there has been any discussion of permanent salary reductions. There has not, Vice Provost Carney responded; the salary reductions for faculty have been approved under the terms of section 4.5 of the tenure code, which only permits temporary (up to two years at most) salary reductions.

Professor Kulacki urged the Committee to take the plan under advisement and not vote today. Salary pools present different dilemmas; he personally would hold harmless P&A, civil-service, and bargaining-unit staff and ask faculty to take cuts across the board, but it is not possible to see the unintended consequences. He said the Committee should not vote today but should wait to see what the future looks like and how faculty/staff salaries fit into the picture. Professor Hanna agreed the Committee should wait to see the context but it can say that it wants more lead time and more discussion if salary reductions are to be considered again.

Professor Sheets asked Vice President Carrier and Vice Provost Carney if a progressive plan had ever been considered and if they provide more information about them. They looked at over ten alternatives, Dr. Carrier said, and banding was in the mix. What arguments won out, Professor Sheets inquired? Were there considerations the Committee has not heard? In the early discussions, when they were considering more furlough days (e.g., 10), they looked at a progressive plan, but when the number of furlough days was reduced to three, then shared sacrifice evolved into the 1.15% salary cut along with closing the campuses during the last week in December.

Professor Sirc asked if there will be a study of the number of individuals who take voluntary furlough days. There will be, Dr. Carrier said. There will be a form people file to take the days.

Mr. Croce said the Committee could vote to say that the general idea of a progressive plan should have greater weight in the future, depending on the financial situation. Professor Sheets said he supported the progressive plan but was also sympathetic to the view that to vote now would be rushing into things, and that it would not hurt to take the matter under advisement with the understanding that it will return to it and possibly advise the administration to consider a more progressive plan if salary cuts are necessary in the future. The issue need not be decided today.

It was agreed that Mr. Croce and Professor Sheets and Sirc would draft a motion for the next meeting.

In terms of why their motion did not pass, Professor Taussig said, there were two issues. One, time, and two, communication. They felt they were held hostage to time; one can see there will be a budget cliff and faculty in governance should prepare for it, which is why they were gratified they were invited to meet with the Committee. There was also the problem of administrative control of communication. They wished to send a response to Professor Sampson's email but were not allowed to do so. As a governance body, the Committee needs to be sure that faculty can communicate with each other.

Professor Hanna thanked Professors Ostrow, Rodman, and Taussig for joining the meeting, and adjourned it at 4:20.

-- Gary Engstrand

University of Minnesota