

**1996-97 UNIVERSITY OF MINNESOTA No. 3
FACULTY SENATE MINUTES**

DECEMBER 12, 1996

The third meeting of the Faculty Senate for 1996-97 was convened in the 25 Law Building, Minneapolis campus, on Thursday, December 12, 1996, at 3:00 p.m. Checking or signing the roll as present were 100 voting faculty members, 2 ex officio members, and 2 nonmembers. Professor W. Andrew Collins, Vice Chair, presided.

**I. FACULTY CONSULTATIVE COMMITTEE
Resolution on Department Chairs and Heads
Action**

MOTION:

To approve the following Resolution:

Resolution on Department Chairs and Heads

The Faculty Senate objects to the position taken by the Administration and Regents that department heads and chairs are not part of the faculty for purposes of voting in the current collective bargaining elections. This objection does not depart from the Faculty Senate's neutrality on the topic of collective bargaining.

We believe that the position taken by the administration and Regents ignores the realities of faculty life, sets one group of faculty against another, discourages faculty from making the personal sacrifice of taking on onerous administrative duties for the good of the community, and violates the intent of the University Senate Constitution.

We point out that regular faculty of the University who currently hold positions as department heads or chairs, or similar administrative positions in units corresponding to departments:

- were viewed as regular faculty in previous collective bargaining elections,
- are chosen from the ranks of the faculty and generally will return to the faculty after a limited period of time,
- are usually expected to have teaching and research duties and interests similar to those of regular faculty in addition to their departmental administrative duties,
- are viewed by their faculty colleagues as faculty members, and
- are eligible for election as voting faculty members of the University Senate.

The Faculty Senate therefore urges the Administration and Regents to bring their position into conformity with the University Senate Constitution, Article III.4, sections a and c, by informing the Bureau of Mediation Services that they view all faculty members, except those with class titles 9302-9329, as eligible to vote in the current collective bargaining elections.

VIRGINIA GRAY, Chair

DISCUSSION:

Professor Gray, chair of the Faculty Consultative Committee, presented the Resolution on Department Chairs and Heads. After providing some clarification concerning the status of directors, the Resolution was overwhelmingly approved on a voice vote.

APPROVED

II. FACULTY CONSULTATIVE COMMITTEE
Regulations Concerning Faculty Tenure
Action

MOTION:

To approve the following Resolution:

RESOLUTION

WHEREAS the Board of Regents have placed on their docket for December 13 adoption of a document entitled "Faculty Tenure: Specified Units" (previously called Sullivan II) as the applicable tenure policy for the Law School, Academic Health Center, and Morris Campus; and

WHEREAS the Bureau of Mediation Services has renewed a Status Quo Order for the Academic Health Center; and

WHEREAS the Tenure Subcommittee, Judicial Committee, and Faculty Affairs Committee have begun a substantial effort to review "Faculty Tenure: Specified Units" and have identified a number of issues for resolution and possible amendment of the "Faculty Tenure: Specified Units" language, as contained in the appended report;

THEREFORE BE IT RESOLVED that the Faculty Senate requests the Board of Regents to defer consideration of adoption of "Faculty Tenure: Specified Units" for the Morris campus at least until its meeting in February, to give the Faculty Senate time on an expedited schedule to consider the "Faculty Tenure: Specified Units" proposal and report to the Regents its advice and recommendation on its provisions.

VIRGINIA GRAY, Chair, Faculty Consultative Committee

DISCUSSION:

Professor Gray introduced the Resolution requesting the Board of Regents to defer adoption of "Faculty Tenure: Specified Units" for the Morris campus until the Faculty Senate has had time to consider it. The Board, she said, is currently scheduled to act on the proposed Code at its meeting on December 13. Upon request of the Faculty Senate the previous week, the appropriate Faculty Senate committees have begun deliberation of the Tenure Code and while it appears the committees find the proposal favorable, there are a number of items that require more substantive discussion.

The motion received unanimous approval.

APPROVED

**III. TENURE SUBCOMMITTEE
FACULTY AFFAIRS COMMITTEE
JUDICIAL COMMITTEE
Regulations Concerning Faculty Tenure
Discussion**

Proposals Regarding Regents' Policy on Faculty Tenure: Specified Units

**Presented for Information by
Tenure Subcommittee
Judicial Committee
Faculty Affairs Committee**

The following pages contain (1) draft proposals for amending certain sections of the Regents' Policy on Faculty Tenure: Specified Units (formerly Sullivan II), (2) draft proposals for interpretations of certain sections of the Regents' Policy on Faculty Tenure, (3) descriptions of certain language in the Regents' Policy on Faculty Tenure that raise significant issues for response, but as to which it is premature to offer specific amending language, and (4) descriptions of certain language in the Regents' Policy on Faculty Tenure that differs in significant ways from the language endorsed by the Faculty Senate on May 30 and June 4, but as to which no recommendation for change is made.

All items are presented for information and discussion only. Motions for amendments to the Regents' Policy on Faculty Tenure will be offered for action at a subsequent Faculty Senate meeting. The final text of proposed interpretations will also be submitted to the Faculty Senate for its information at a subsequent Faculty Senate meeting.

Item 1: Motion A -- Housekeeping Amendment to Footnotes

To amend the Regents' Policy on Faculty Tenure: Specified Units by deleting footnote 1: (new language is in CAPS; language to be deleted is contained in brackets)

Footnote (1): [A "senior academic administrator" is an officer who has final review authority on academic personnel decisions, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators (vice presidents, chancellors, provosts, etc.) to have responsibility for academic matters for all or part of the University, and will define their respective jurisdictions.]

To delete the reference to footnote 1 in section 3.3.

To change references to footnotes 2 through 12 to reflect the removal of footnote 1. (References to footnotes 2 through 12 are contained in sections 3.4(4), 5.5, 7.11, 7.2, and 14.1.)

Comment:

In the amendments approved by the Faculty Senate on May 30 and June 6, as well as in Sullivan II, many of the definitions that had previously been in footnotes were moved to the text in Section 2.3 in order to make the code more understandable to readers. The definition contained in footnote 1 as adopted for the Law School on November 7 is virtually identical to a definition of "senior academic administrator" contained in section 2.3(e): "a `senior academic administrator' is an officer who has final administrative review authority on academic personnel decisions, and who reports directly to the president and regents, such as a vice president, chancellor, or provost. The president will designate one or more senior academic administrators and define their respective jurisdictions." The definition in Section 2.3 as adopted by the Regents for the Law School is identical to the definition contained in the Senate-approved amendments. In the docket for its meeting on December 13, the Regents have proposed to move the definitions from Section 2.3 to a position just following the Preamble. That repositioning does not make any substantive change. The change proposed in Motion A will avoid repeating the definition of "senior academic administrator" in two places in the code and therefore contribute to clarity.

Item 2: Motion B -- Housekeeping Amendment to Section 12.4

To amend Section 12.4 as follows: (language to be deleted is contained in brackets)

12.4 Termination of Appointment

A faculty member who chooses not to [take or] accept a reasonable reassignment or retraining opportunity shall receive . . .

Comment:

The proposed amendment would remove a redundancy that appears in Section 12.4.

Item 3: Motion C -- Amendment to Section 4.5 on financial stringency

To amend section 4.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets)

Section 4.5 Reduction Or Postponement Of Compensation.

If the University or a collegiate unit is faced with financial stringency that does not amount to a fiscal emergency, the president may propose a [temporary] reduction or postponement in compensation to be allocated to faculty FOR A PREDETERMINED PERIOD NOT TO EXCEED TWO YEARS, in accordance with a mathematical formula or similar device. ANY SUCH PROPOSAL WILL BE PRESENTED TO THE FACULTY CONSULTATIVE COMMITTEE FOR ITS CONSULTATION AND ADVICE. THE PRESIDENT WILL GIVE

THE COMMITTEE FULL ACCESS TO ALL AVAILABLE INFORMATION REGARDING THE FINANCIAL STRINGENCY, THE ASSERTED NECESSITY FOR A TEMPORARY REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION, AND THE ALTERNATIVES THAT HAVE BEEN CONSIDERED TO REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION. THE PRESIDENT WILL RESPOND SPECIFICALLY TO ADDITIONAL PROPOSALS SUGGESTED BY THE COMMITTEE TO RESPOND TO THE FINANCIAL STRINGENCY. THE FACULTY CONSULTATIVE COMMITTEE WILL REPORT TO THE FACULTY SENATE ITS RECOMMENDATION ON THE PRESIDENT'S PROPOSAL. IF THE FACULTY SENATE APPROVES THE PROPOSED ACTION (OR ANY MODIFICATION OF IT) BY AN ABSOLUTE MAJORITY OF ITS MEMBERSHIP OR BY A TWO-THIRDS VOTE OF THE MEMBERS PRESENT AND VOTING (A QUORUM BEING PRESENT), [If approved by the Faculty Senate and] the Board of Regents MAY IMPLEMENT THE REDUCTION AS APPROVED BY THE SENATE (OR ANY LESS STRINGENT ACTION) BY REDUCING TEMPORARILY the base pay of all faculty members in the University or in the designated collegial units [shall be reduced temporarily] in accordance with the formula or device. [The reduction may not continue for longer than two years, unless renewed by the same procedure.] THE PRESIDENT AND BOARD OF REGENTS MAY RESCIND THE TEMPORARY REDUCTION OR POSTPONEMENT OF FACULTY COMPENSATION AT ANY TIME WITHOUT SEEKING FACULTY SENATE APPROVAL.

Comment:

Section 4.5 is a new addition to the tenure code, but it draws heavily on provisions already contained in Section 11 on Fiscal Emergency. There are two notable differences between the provisions in 11.4 (Second Stage: Reduction or Postponement of Compensation) and Section 4.5. The first is discussed here and addressed by the proposed amendment to Section 4.5. The second difference is raised immediately below as a discussion item.

One difference between Section 11 and Section 4.5 is that a number of the articulated procedures in Section 11.4 were omitted from Section 4.5. Although any proposal to reduce or postpone faculty compensation under Section 4.5 would have to be approved by the Faculty Senate as well as the Board of Regents, Section 11 has additional provisions calling for consultation with the Faculty Consultative Committee (and the Senate Consultative Committee, with respect to other issues related to financial emergencies) and providing expressly that the Faculty should have access to information to permit it to evaluate the proposals regarding faculty compensation. Section 11 also called for approval by either a simple majority of the entire Faculty Senate membership or a super-majority (two-thirds vote) by the members present at the meeting. The proposed amendment to Section 4.5 would add some of those procedural safeguards to the process of deliberating on any proposal offered by the president to reduce or postpone faculty compensation. Also in accordance with the language in Section 11.4, the proposed amendment calls for the president to specify in the proposal itself the duration of the proposed postponement or reduction in compensation, with the period not to exceed two years. As adopted by the Regents, Section 4.5 permits the postponement or reduction to be implemented for no more than two years, but does not indicate whether the president would specify the length of time when

proposing the action on compensation. The amendment would make Section 4.5 consistent with Section 11 and would clarify the duration of any proposed action on compensation.

Item 4: Discussion -- Application of postponement or reduction to collegiate units

The second major difference between Section 4.5 and Section 11.4 is the scope of the proposed salary action. Under Section 11.4, any temporary reduction or postponement of compensation would apply to all University faculty. In contrast, the temporary postponement or reduction in Section 4.5 may be implemented either for all faculty in the University or for only the faculty in an identified collegiate unit. The Senate committees view this as a significant change, substantially broadening the power of the administration and Regents to respond to financial exigency. Any postponement or reduction, even for a single collegiate unit, could be enacted only with the approval of the Faculty Senate, which provides substantial protection against abuse of the power. Smaller units with relatively few representatives in the Senate nonetheless might have legitimate concerns about that process. Moreover, whether financial difficulties in a collegiate unit amount to "financial stringency" warranting postponement or reduction of compensation only in that unit seems to be a decision particularly subject to disagreement based on interpretation of data and potential manipulation of financial accounting figures. In addition, financial stringency may be claimed when the financial difficulties are the result of internal reallocation decisions and priority-setting by the administration rather than the consequence of external financial pressures. On the other hand, it has been suggested that having at least this degree of flexibility is of special importance to the Regents in ensuring that some effective management tools exist for responding to true financial exigency in the coming years. Some of the concerns about potentially singling out individual collegiate units may be alleviated if the Regents adopt the procedural protections outlined in this Motion. Beyond that, however, the Senate committees make no recommendation at this time whether it is appropriate or desirable to have temporary postponements or reductions in compensation be directed at collegiate units. The committees seek the advice of the Faculty Senate before deciding how to proceed.

Item 5: Interpretation 1 -- Relating to section 4.5 on financial stringency

The Tenure Subcommittee proposes to add the following interpretation of Section 4.5:

Financial stringency in Section 4.5 is understood to mean financial difficulties that are unusual in extent and require extraordinary rather than ordinary responses. Section 11 may be invoked if the Regents are "faced with the necessity of drastic reduction in the University budget," reductions so severe that they may "threaten [the] survival" of the University. It is understood that the financial difficulty that would permit the president to propose temporary reductions or postponements in compensation under Section 4.5 is less severe than the "fiscal emergency" outlined in Section 11, but it is also understood that "financial stringency" should not be invoked to respond to predictable fluctuations in the University's budget and finances.

Comment:

The undefined nature of the "financial stringency" that can lead to postponement or reduction in faculty compensation under Section 4.5 is troubling. Although it is probably not possible to

define precisely what circumstances would fall under this category, it seems advisable to attempt some further description that indicates the special circumstances required to invoke this response. Interpretations proposed by the Tenure Subcommittee and the Senior Vice President for Academic Affairs are reported to the Faculty Senate and take effect if adopted by the Board of Regents. This interpretation is offered to the Faculty Senate for comment before final approval by the Tenure Subcommittee.

Item 6: Motion D -- Amendment to Section 7a.5 on alternative methods of peer review

To amend section 7a.5 as follows: (new language is in CAPS; language to be deleted is contained in brackets)

7a.5. Peer Review Option.

Upon application to it by the dean of [an academic unit] A COLLEGIATE UNIT, AFTER APPROVAL BY THE FACULTY ASSEMBLY OF THAT UNIT, the Faculty Senate may adopt a system of peer review of performance of faculty of that unit different from the system set forth in Sections 7a.1 through 7a.4 if in the Faculty Senate's judgment so proceeding is in the University's interest.

Comment:

The amendment would limit the adoption of different systems of peer review to collegiate rather than academic units. It seems more appropriate to vary the peer review system only for "a major academic entity of the University . . . a college, school, institute or campus" rather than for "a department or similar unit." (See definitions of "collegiate unit" and "academic unit" currently in Section 2.3.) The amendment also adds a requirement that any proposal made to the Faculty Senate for adoption of a different system of peer review have been approved by the Faculty Assembly as well as the dean for that collegiate unit. Such approval is required for proposals to change the probationary period for tenure-track faculty under Section 5.1, and a similar mechanism seems appropriate for a proposal to change the peer review system for a unit.

Item 7: Motion E -- Amendment to Section 12.3 on Reassignments

To amend section 12.3 as follows: (new language is in CAPS; language to be deleted is contained in brackets)

12.3 Reassignments.

In cases of programmatic change THAT LEADS TO THE DISCONTINUATION OF A PROGRAM, an officer designated by the president will make the reassignment or offer of training. The officer will consult with the faculty member and the receiving unit and will seek a mutually satisfactory assignment. If agreement cannot be reached, the University officer will assign new responsibilities after consultation with the individual. THE ASSIGNMENT WILL BE AS CLOSELY RELATED TO THE ORIGINAL APPOINTMENT AS PRACTICABLE.

THE FORMAL ASSIGNMENT WILL BE IN WRITING AND WILL INDICATE THE CONTINUING NATURE OF THE FACULTY MEMBER'S TENURE.

The University may give the faculty member other assignments only if assignments to teaching in the faculty member's discipline are not feasible. For example, faculty might be assigned

- to teach in another field in which the individual is qualified
- to perform professional or administrative duties, including professional practice in a field in which the individual is qualified.
- to transfer effort, by assignment in a suitable professional capacity, at another educational institution or similar entity, while retaining University tenure, compensation, and benefits.

IF SUCH ASSIGNMENTS ARE MADE, THE UNIVERSITY WILL ENDEAVOR TO PROVIDE AN OPPORTUNITY FOR THE FACULTY MEMBER TO CONTINUE RESEARCH IN THE ORIGINAL FIELD.

A faculty member must accept any reasonable reassignment or offer of retraining. [Following the faculty member's acceptance of the assignment, any] ANY dispute about the reasonableness of reassignment may be taken to the Judicial Committee, as provided in Section 15. IN ANY SUCH PROCEEDING, THE UNIVERSITY SHALL HAVE THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE REASSIGNMENT OF OFFER OF RETRAINING IS REASONABLE. IN DETERMINING REASONABLENESS, THE JUDICIAL COMMITTEE SHALL CONSIDER ALL RELEVANT CIRCUMSTANCES, INCLUDING THE FINANCIAL BURDEN ON THE FACULTY MEMBER FROM REASSIGNMENT, THE DISRUPTIVE PERSONAL AND FINANCIAL EFFECTS OF GEOGRAPHIC RELOCATION, AND THE AVAILABILITY OF OTHER REASONABLE ALTERNATIVE ASSIGNMENTS THAT ARE LESS BURDENSOME. THE FACULTY MEMBER SHOULD CARRY OUT THE REASSIGNED RESPONSIBILITIES PENDING RESOLUTION OF THE DISPUTE, UNLESS THE JUDICIAL COMMITTEE DETERMINES THAT PROVISIONAL MEASURES ARE APPROPRIATE.

Comment:

Section 12.3 as adopted by the Regents is based on and enacts into the Code language from a formal Interpretation of Section 12 adopted by the Tenure Subcommittee and forwarded to the Senior Vice President for Academic Affairs on June 7, 1996 after presentation to the Faculty Senate. The proposed amendments restore to Section 12.3 some additional language that further clarifies the procedures for reassignment:

1. The addition of "that leads to the discontinuation of a program" in the first line of the Section clarifies that the reassignment described in that section is applicable only when a program is discontinued, as is also made clear in Section 12.2 ("In the event that programmatic change leads to the discontinuation of a program in which a member of the faculty is employed.....").

2. The amendment would add language to Section 12.3 to provide explicitly that any reassignment will be "as closely related to the original appointment as practicable." Section 12.2 already notes that the University "has the responsibility to assign [reassigned] faculty members to responsibilities as close to their original field of tenure as is practicable." The addition of this language in 12.3 reiterates that responsibility as the section details the nature of the particular reassignment that may be made.
3. The amendment adds a requirement that the University memorialize the reassignment in writing and make clear the continuing nature of the faculty member's tenure after reassignment.
4. The amendment adds language to clarify that the University should endeavor to provide an opportunity for the faculty member to continue research in the original field. This is consistent with Section 12.2, which already notes that the University "has the responsibility . . . to allow [reassigned faculty] time in which to continue scholarship in their original field if they wish." The language as proposed here differs from the original Interpretation passed by the Faculty Senate, which said the University "will provide" an opportunity to continue research in the original field; the proposed amendment would require only that the University "endeavor to provide" such opportunities, in recognition of constraints that may exist on the University's ability to do so.
5. The proposed amendment acknowledges that in general a faculty member who wishes to dispute a reassignment should nonetheless carry out the assigned responsibilities while the dispute is taken before the Judicial Committee. The amendment would, however, permit a faculty member to seek provisional relief from the Judicial Committee, for example if the faculty member believed he or she was unqualified to perform the assigned tasks. A similar clause is already contained in Interpretation 8 as adopted by the Board of Regents on November 7, providing for the possibility of provisional relief pending resolution of disputes about teaching assignments.
6. The proposed amendment would establish the burden of proof for any Judicial Committee proceedings challenging the reasonableness of the reassignment. The amendment also offers guidance to the Judicial Committee regarding some of the evidence that would be relevant to the Judicial Committee's decision.

Item 8: Motion F -- Amendment to Section 14.6

To amend section 14.6 as follows: (new language is in CAPS; language to be deleted is contained in brackets)

14.6 Temporary Suspension During Proceedings.

The dean may temporarily suspend a faculty member during the proceedings, but only if there is clear evidence that the faculty member is likely to cause serious harm or injury or is not available for work. The suspension will be with full pay, unless the faculty member is not available for work. Before ordering

such suspension, the dean must present the evidence to a special panel of the Faculty Consultative Committee and receive their written report. The faculty member must be given the opportunity to contest the suspension before the panel.

If no final decision has been rendered one year after the commencement of formal proceedings, the faculty member shall be temporarily suspended without pay, unless the parties agree otherwise, or unless the panel extends the time period because of undue delays in the procedure attributable to the action of the University. This provision applies only in a case in which the majority of the tenured faculty of the academic unit concurred in the recommendation to terminate the appointment. If the FACULTY MEMBER PREVAILS OR THE president determines that the temporary suspension without pay was not warranted, then the president shall order the repayment of back pay to the faculty member with interest thereon from the date it would originally have been paid.

In case of any suspension under this section, the faculty member shall continue to receive full medical insurance and disability benefits without regard to the suspension.

Comment:

Section 14.6 adds a new set of provisions ordering suspension of a faculty member without pay if after a year there is no final decision resulting from proceedings to impose unrequested leave of absence, suspend, remove, or reduce in rank a faculty member. It is presumably designed to discourage faculty members from unreasonably delaying the progress of the proceedings. Exceptions from suspension without pay are made if the University, not the faculty member, has caused the delays and if the president determines that temporary suspension without pay was not warranted. In the latter case, the faculty member would receive repayment of withheld compensation with interest. The proposed amendment would add that repayment with interest should be made if the faculty member ultimately prevails in the challenge to the disciplinary action. It seems appropriate that a faculty member who establishes that the sanction sought by the dean pursuant to section 14.1 was wrongly imposed should also in effect overturn the decision to suspend him or her without pay. Indeed, it is likely that any court asked to review the proceedings would order such reinstatement.

Item 9: Discussion -- Imposition of Minor Disciplinary Action for Acts of Unprofessional Conduct

The Regents' Policy on Faculty Tenure adopts a new section 10.22 that establishes procedures for imposing "minor sanctions" on faculty members for "significant acts of unprofessional conduct" not amounting to grounds for termination, long-term suspension, or reduction in rank. The text of Section 10.22 as it appears in the Regents' Policy is as follows:

10.22 Procedure For Minor Disciplinary Actions.

Minor sanctions, such as a letter of reprimand in the faculty member's file or a suspension for up to three days, or the like, may be imposed for significant acts of unprofessional conduct. For minor sanctions, the dean may impose the sanction after providing the faculty member notice of the proposed action and of the reason that it has been proposed and giving the faculty member an opportunity to respond. If the faculty member files a grievance under the University grievance policy to challenge a minor disciplinary matter, the sanction shall be held in abeyance until the

conclusion of the proceeding. The grievance panel shall have jurisdiction to consider all claims raised by the faculty member, and if the case goes to arbitration, the arbitrator shall be an individual with experience in academic matters.

Comment:

Section 10.22 was adopted by the Board of Regents on November 7 without the advice of the Faculty Senate because the possibility of including a provision related to "minor" disciplinary matters was raised for the first time only in the early fall with release of the so-called Reagan/Spence draft. The Senate Committees

are sympathetic to the desire, and perhaps the need, for a provision that allows academic administrators to respond to misconduct that is not serious enough to warrant suspension, removal, or reduction in rank, and yet merits some disciplinary action. We are concerned, however, that Section 10.22 was adopted without serious investigation into the particular kinds of misconduct that are encountered by academic administrators, the kinds of sanctions that may be most effective, whether faculty would view those sanctions as "minor disciplinary actions," and what kinds of procedural protections would be sensible before the imposition of such sanctions.

There are a substantial number of significant issues raised by the provisions of Section 10.22, and there has been insufficient time for the Senate committees to consider and resolve those issues. Section 10.22 as written contains some troubling ambiguities in its references to "minor sanctions, such as a letter of reprimand . . . or a suspension up to three days, *or the like*" which may be imposed for "*significant acts of unprofessional conduct*." Section 10.21, which establishes the grounds for termination or long-term suspension, refers to "unprofessional conduct which severely impairs a faculty member's fitness in a professional capacity" as well as other faculty actions that may warrant termination or suspension. The relationship between the acts described in Section 10.21 and "acts of unprofessional conduct" referenced in Section 10.22 is unclear. As written, the faculty member has a right to appeal the sanction to a grievance panel, which would have jurisdiction to consider "all claims raised by the faculty member," apparently to permit the faculty member to raise issues of academic freedom that are otherwise not cognizable in a grievance proceeding. There has been no discussion, however, regarding whether a grievance panel is an appropriate venue for such an appeal or how to ensure that the grievance panel, which usually would not hear matters related to academic freedom, would be prepared to respond effectively and reasonably to such a claim. There has been no consideration of whether the dean is the appropriate official to impose minor sanctions nor whether another official might be more appropriate in collegiate units not further subdivided into departments or the like. Questions have been raised about both the meaning and appropriateness of imposing temporary suspension on a faculty member as a minor sanction. For example, is the suspension to be without pay? Is it to be imposed with respect to teaching responsibilities, despite its impact on students? If not, does suspension mean barring the faculty member from research or laboratory facilities? What if denying access will disrupt or destroy ongoing research or have an impact on the subjects of the research?

In short, there is a need to conduct the kind of inquiry that would lead to a reasoned and thoughtful consideration of an appropriate mechanism for imposing minor sanctions for lesser misconduct before a provision of this kind is implemented. This is especially true where the provisions would take effect only for a portion of the University's faculty, so some would be subject to such discipline as written reprimands and short-term suspensions while others would not. The Senate committees propose to explore the issues surrounding Section 10.22 further and present amending language to the Faculty Senate at a later time. In view of the difficulties surrounding implementation of this section, we hope the Regents will decide to delay adoption of any changes to the tenure regulations governing the Academic Health Center and the Morris Campus until the Faculty Senate and its committees are able to provide advice and consultation to the Regents on this provision.

Item 10: Motion H -- Definition of Regular Compensation

To amend Section 4.4 by adding language to the end of the second paragraph, as follows: (new language is in CAPS)

Section 4.4 Faculty Compensation

Each faculty member shall receive a base salary, which will not be decreased except by action expressly authorized in this section or in Sections 7a, 10, 11, or 14 of these regulations or with the agreement of the faculty member. If a faculty member's base salary is decreased, the amount of the decrease and the reason

therefor shall be set forth in a written notice and provided to the faculty member. No decrease in base salary shall occur in violation of the academic freedom of the faculty member.

The University may also from time to time provide a faculty member with additional compensation that is not part of base salary. The additional compensation may be for special awards or for activities in addition to regular faculty responsibilities such as clinical practice, administrative service, overload duties, summer school teaching and summer research support and similar activities. **THE TOTAL OF BASE SALARY AND ADDITIONAL COMPENSATION, AS DEFINED IN THIS SECTION, WILL TOGETHER CONSTITUTE THE REGULAR COMPENSATION OF THE FACULTY MEMBER. . . .**

Comment:

Faculty members in the Academic Health Center have raised concerns about the impact of Section 4.4's definition of base salary on the computation of charges that may be recovered under NIH grants. The governing federal document, OMB Circular A-21, says that "charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period." Thus both the

Regents' Policy on Faculty Tenure and the OMB Circular use the term "base salary." If the Regents' Policy-defined base salary is used in NIH grant proposals as the equivalent of the OMB base salary, the AHC faces the loss of very substantial amounts of cost recovery.

It has been suggested that the two usages of the term "base salary" are substantially different and that AHC faculty would not be required to use the Regents' Policy base salary as the "basis of [their] salary" for the purposes of NIH grants. Mark Brenner has made the same point in his memorandum responding to this issue. (See Attachment A.) Nevertheless, the concern over this potential confusion is legitimate. The proposed language may help to clarify that the University considers the faculty member's total or "regular" compensation to include both the Regents' Policy-defined base salary and the additional compensation from other sources, including clinical income. It is the faculty member's "regular compensation" that forms the basis for the "charges for work performed" under NIH grants.

Item 11: Interpretation 2 -- Regarding Section 4.4 definition of base salaries

The Tenure Subcommittee proposes to add the following interpretation of Section 4.4:

Normally, for most faculty, it is expected that any salary increases will be added to the base if recurring funds are available for that purpose. Section 4.4 does not give any specific faculty member a legal entitlement or right to an increase in base salary.

Comment:

This interpretation was approved both by the Senior Vice President for Academic Affairs and by the Tenure Subcommittee (on July 3, 1996), after final Faculty Senate action regarding the tenure regulation proposals. Although all other interpretations approved by the Tenure Subcommittee were incorporated into the Sullivan II proposal, and hence into the Regents' policy on Faculty Tenure: Selected Units, this interpretation was omitted. It is a clarification both of the expectation that salary increases will be allocated to base salary when recurring funds are available and a recognition that faculty members do not have a legal right to have salary increases be included in base salary.

Item 12: Discussion -- New Ground for Dismissal or Suspension

The Senate committees wish to note for the Faculty Senate one additional significant change to the prior regulations respecting tenure, although the committees do not propose to modify the provisions as adopted by the Regents or as proposed for further adoption. In Section 10.21, which specifies the causes that may be cited for termination or suspension of a faculty member, the Regents added a new Section 10.21(e), which permits such action for "other grave misconduct manifestly inconsistent with continued faculty appointment." The aim of subsection (e) apparently is to provide some additional flexibility to seek these serious sanctions against faculty members whose misconduct, though severe, does not fall within the parameters of the more narrowly defined provisions in subsections (a) through (d). The Subcommittee believes new subsection (e) is acceptable, but believes the Faculty Senate should be aware of the change as it deliberates on its response to Sullivan II.

MARY DEMPSEY, Chair, Tenure Subcommittee
DANIEL FEENEY, Chair, Faculty Affairs Committee
ED FOGELMAN, Chair, Judicial Committee

DISCUSSION:

Professor Chomsky, member of the Tenure Subcommittee, reviewed the report of the three committees, noting that it includes proposed amendments and interpretations and items for further discussion. Professor Chomsky reviewed in some detail the twelve items. [Refer to the explanatory comments following each item.] A number of comments or suggestions were then made by senators.

Turning first to Section 4.5, Professor Chomsky was asked to clarify the terms "financial stringency" and "collegiate unit." With respect to financial stringency, she said, it will be up to the President and Faculty Senate to determine whether things are amiss enough to warrant approving a temporary reduction or postponement of faculty compensation. The term "collegiate unit" is defined early in the Code as an entire college or like entity. In this provision, the temporary reduction is either to all faculty or all faculty in a college, not just certain departments.

One person expressed concern that a situation of financial stringency could be produced in a particular college and suggested language be added to prevent such an occurrence from happening as a result of 'fancy bookkeeping' or because of reallocation decisions.

Another asked how Section 4.5 will deal with poor management that can lead to financial stringency and whether it is the expectation that everyone, including administrators, would share equally in any salary reduction or postponement. Professor Chomsky responded that the Faculty Consultative Committee would have full access to all information regarding the financial stringency and neither it, nor the Faculty Senate, would have to approve a reduction of salaries if the cause was due to poor management.

The committees were encouraged to clarify the term "postponement of compensation."

The proposal includes language that makes the procedures and standards within each college for annual reviews and the standards by which substandard performance can be alleged unclear, said a senator. For example, Section 7a.2 does not define what constitutes approval by the committee (majority vote or two-thirds, etc.) or whether the vote is by secret ballot, etc. In what way are these procedures to be specific or generalized in this section? Professor Dempsey, chair of the Tenure Subcommittee, said it was the Subcommittee's intention that specific procedures be adopted.

Is there a definition for "significant act of conduct?" Does it include only conduct in a person's role as a professor or does it include conduct outside the University which may entail such things as political involvements, etc? Professor Chomsky replied that no definition has been given, which is a good example of why the committees would like more attention given to the document.

Who determines whether grave misconduct or other kinds of shortcomings have occurred in the context of Sections 10.21 and 10.22, asked one person? Is it the dean? As written, the dean imposes a sanction. Therefore, the dean determines whether something has happened which would warrant the action. It is not clear what the scope of review is of the Grievance Panel or the process leading up to the dean's decision.

One senator suggested that Section 7a.5 is potentially dangerous in that it could result in unfairly different systems of peer review in the University.

If the Regents ignore the motion and vote to approve the document for the Morris campus, is the Faculty Senate prohibited from continuing its deliberations? The chair clarified that there is nothing prohibiting the continuation of deliberation and that the Faculty Senate will proceed with its proposed amendments regardless of the Regents action on December 13.

IV. OLD BUSINESS

NONE

V. NEW BUSINESS

Professor Gray reported that the Faculty Consultative Committee and Provostal Faculty Consultative Committee Chairs prepared a statement in support of the selection of Dr. Mark Yudof as the next U of M president. She said the statement appears to be consistent with what faculty have conveyed to their committees.

VI. ADJOURNMENT

The meeting was adjourned at 4:45 p.m.

Martha Kvanbeck
Abstractor