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Faculty Senate meeting minutes: 12/02/2002

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TO: FACULTY SENATE
FROM: DEE VIGEANT, for the SENATE AGENDA COMMITTEE
SUBJECT: MINUTES, 2002-2003 FACULTY SENATE MEETING, 2 DECEMBER 2002

Present: (Professors) Alper, Alverson, Aroian, Bannister, Barnes, Bruns, Ellis, Gilmore, Herman, Hope, Kane, Khaw, Lowndes, Morrison, Platt, Powers-Lee, Rotella, Serafim, Shafai, Sherman, Vaughn, Wallin, Wertheim, Wray
(Administrators) Abdelal, Greene, Mantella, Meservey, Onan, Pantalone, Putnam, Soyster, Stellar, Zoloth

Absent: (Professors) Baclawski, Brookins, Flym, Hall, Metghalchi, Ondrechen, Sherwood
(Administrators)

Convened by Provost Abdelal at 11:55 a.m.

I. **Minutes.** The minutes of 4 November were approved.

II. **SAC Report.**

Professor Lowndes reported that the Agenda Committee met once since the last Senate meeting.

Pursuant to a question asked at the last Senate meeting about how many vice presidents currently are at the University, Professor Onan, Special Assistant to the President, had communicated to Professor Lowndes that there are fifteen. She also reported that SVP Larry Mucciolo had indicated that there were no plans to increase the number of vice presidents in his area.

III. **Provost's Report.**

Provost Abdelal reported that, in meetings with various groups on campus, questions have been raised that he had believed to be settled. Two main concerns relate to the semester conversion, specifically the contention that students will be held harmless in terms of cost and time to graduation. In fact, some students may finish earlier because the conversion of quarter hours to semester hours will mean that most 4-hour quarter courses will satisfy 4-hour semester courses. He asked that Senators convey this message to colleagues and students in order to allay any lingering concerns. The semester conversion has been designed to the advantage rather than the disadvantage of students. For graduating seniors, if they need four courses in one semester and two in the second, or three and three, the cost will not exceed what they would have paid otherwise.

IV. **Question and Discussion Time.**

Professor Wallin asked whether the fifteen vice presidents include the new position of Vice President for Corporate Relations. Professor Lowndes replied that that was his understanding.

V. **Ad Hoc Handbook Review Committee Report.** Professor Ellis reported back from the Committee that Resolution #6 had been amended to include the changes indicated in the materials that had just been distributed.

Motion. Professor Alper moved to postpone discussion to the next meeting in order for Senators to digest the changes. The motion was seconded.

Professor Ellis pointed out that the changes would require little further reading and suggested that he could present the changes briefly so that a vote to postpone would not be needed.

He explained that the Committee had developed two categories of equity--institutional and market equity. Institutional merit had been moved under the heading "Market Equity," and the language for market adjustments, which was now crossed out at the bottom of the second page, had been placed under "Market Equity."

Vote to postpone discussion to the next meeting: FAILED, 3-23-3.

Professor Ellis noted that, after the discussion at the last meeting, the Committee felt it would be a refinement of the language about matchmates at the bottom of the second paragraph on page 2 of the handout to have it read as follows: **"Where matchmate studies are done, faculty members shall receive the names of the matchmate institutions for their field and the corresponding salary information received by the University."** The other changes to make the language more felicitous were in the final paragraph, on what happens when an equity increase is ordered when a unit has failed to apply its merit policies and the amount can then be deducted from the merit pool.

Professor Herman added that, depending on where the problem originated, the Provost historically has elected to recoup the money from different places. The new language is more flexible in order to give the Provost more discretion in terms of determining where, in the event of human failure, the money is to be recouped so that it does not cost faculty in other units.

Professor Wertheim pointed out that the term **"market adjustment"** appeared in the first paragraph but was deleted from the second page. Professor Ellis responded that it would be appropriate to say, **"including institutional equity and market equity"** instead of **"market adjustments"**.

Professor Rotella noted an apparent mooted issue as to who determines which matchmate institutions are selected. He asked whether it was to allow one or more systems to obtain. Professor Ellis replied that this was deliberate to allow evolution of the matchmate process without having formally to revise the handbook.

Professor Morrison explained that in last year's matchmate process the Provost's Office had contacted the deans and department chairs and asked for their input. Chairs suggested matchmates, but there was some difficulty due either to a lack of data or inappropriate matchmates. He referred to the new sentence at the end of the first full paragraph on page 2, which read, **"Where matchmate studies are done, faculty members shall receive the names of the matchmate institutions for their field and the corresponding salary information received by the University"**, and recommended that faculty be able to see a summary of information received by the University. At present, the University receives numbers for each rank from each of the ten matchmates but provides aggregate information without identifying the individual matchmates. He did not think it necessary for people to see ten numbers for each rank. Professor Morrison suggested that someone might wish to propose, as a friendly amendment, a motion that faculty receive summary information by rank.

Professor Ellis indicated that he would not consider the such an amendment friendly because the word "summary" might be interpreted to mean one average for all the matchmates. Because the mean might be skewed by one of the institutions in some way, it would be better to see the patterns of averages by rank for the ten institutions.

Professor Lowndes agreed with Professor Ellis's position and suggested that Professor Morrison's suggestion might be more appropriate in the future, when we have a better system. Professor Morrison concurred.

Dean Greene referred to the sentence in 5.a, which read, **"This summary shall be in a form agreed to by members of the unit and shall ensure confidentiality of individual salaries"**, and asked what the agreement would look like.

Professor Herman noted that there are merit salary regulations that exist in all academic units of the University. They vary but generally say something about the form of the summary report.

Professor Ellis pointed out that the newly added phrase **"to the unit's faculty"** would ensure that the unit head provide a summary accounting to the faculty of that unit, who would then decide on the form.

Dean Greene thought it important to state explicitly that what is being asked for is the summary of the merit increases and not the summary of the raises.

Professor Wertheim asked if other kinds of salary adjustments were possible. Professor Ellis replied that the concept of market adjustment was not in the old handbook, but this wording leaves open the possibility of something meaningful.

There being no further discussion, the Senate turned to a vote.

Vote on Resolution #6: PASSED, 31-0-0.

Professor Ellis moved Resolution #8, adding **'as amended'** to include the suggestions from Vice Provost Meservey, which he would address, taking first the ones that the Committee accepted. The motion was seconded. Resolution #8 read as follows:

BE IT RESOLVED That the Faculty Senate approves Section VI.A.7 (Grievance Process) presented in the Revised Draft (4/30/02), as amended, from the *ad hoc* Committee to Review the Faculty Handbook, to go into effect when published in the revised edition of the *Faculty Handbook*.

On page 1, at the end of the first paragraph of 7.a, the Committee had addressed Vice Provost Meservey's suggestion #17, which read, "Throughout the grievance section, where the Provost is identified, it should read the Provost (or President) in the event the Provost is the respondent." The Committee inserted the following text: **"In any instance where the Provost is the party against whom the grievance is initially lodged, the President shall assume the role of the Provost in the procedures provided in this section."**

In response to Vice Provost Meservey's item #7 (p. 14, item b. Informal Resolution, paragraph 1), the Committee replaced **"appropriate administrator"** with **"immediate supervisor of the person whose action is being grieved"**. The sentence then read, **"If the dispute is not resolved through this meeting, the faculty member should next meet with the immediate supervisor of the person whose action being grieved."**

Professor Vaughn pointed out that in the following sentence the word **"refuse"** should be changed to **"refuses"**.

In response to Vice Provost Meservey's editorial changes in item #8 (p. 14, last two paragraphs), **'should reasonably'** was changed to **"reasonably should"**. Also, on page 3, third paragraph, **"is clearly"** was changed to **"clearly is"**.

In response to Vice Provost Meservey's item #10 (p. 15, Step 2, last paragraph), which had been accepted as a friendly amendment at the last meeting, the Committee changed **"five (5)"** to **"ten (10)"**, so that the sentence then read, **"The grievant must notify the Grievance Officer in writing of the wish to continue within ten (10) business days of the written notification that the Provost found no procedural violation, or that the violation has been remedied."**

In response to Vice Provost Meservey's item #12 (p. 15, Step 3, paragraph 2), the Committee agreed to add the following sentence, **"The Committee also will consider relevant documents and conduct whatever investigation it believes will further the resolution of the grievance"**, the Committee added the following: **"The committee[sic] may also consider relevant documents and conduct whatever investigation it believes will further the resolution of the grievance."**

In response to Vice Provost Meservey's item #16 (p. 16, paragraph 3), the Committee accepted the recommendation to reverse the last two sentences to read, **"If the Provost (or President) accepts the recommendation and the grievant rejects it, the grievance is closed. If the Provost (or President) rejects the recommendation, the grievant may request arbitration."** The Committee did not accept the recommended **"option of having the Provost or President suggest an alternative resolution if he is not satisfied with the one provided by the Committee"** because the previous step allows the Provost and grievant to review the report and make comments so that the Grievance Resolution Committee can revise the report.

Professor Ellis pointed out that, wherever it appeared, **"Affirmative Action Office"** was changed to **"Office of Affirmative Action and Diversity"**.

Vice Provost Meservey's item #2 (p. 12, Section 7.a, paragraph 2) stated the following: "Promotion is excluded from the exclusions meaning that a faculty member could grieve a negative promotion decision. Later on in the document under promotion, the document states that the grievance would be for a procedural concern. I recommend that we add promotion back to the exclusions here and when we get to promotions, we add a process for appealing a promotion decision when there is a procedural concern." Professor Ellis explained that the primary purpose of the grievance procedure is to deal with grievances on process. Now and then, someone brings a grievance for unfair treatment that is not tied to a specific university process, but most grievances that are tied to process tend to be successfully resolved. The grievance process does not apply to promotion issues, or to tenure or dismissal issues.

Provost Abdelal noted that the promotion and tenure sections state that this procedure does not apply to promotion. Professor Ellis replied that the previous handbook committee had stated that promotion decisions would not be grievable. The present committee felt that a route was needed to deal with procedural problems related to promotion decisions and that following the grievance procedure is the right way to do that.

Professor Herman pointed out that in the current appeal procedure tenure goes directly to arbitration and not through the grievance procedure. A substantive appeals procedure exists both in tenure and promotion considerations such that substantive issues are not supposed to pass through the grievance procedure. In the arbitration process, power is withheld from the arbitrator to second-guess substantive evaluations of the individual by the promotion committee and the administrators who reviewed that evaluation, so that the process is meant to deal with procedural issues. In terms of substance, an appeals procedure is built into the current promotion procedure.

Professor Sherman asked whether promotion had been excluded from the grievance process because there is an avenue through the normal promotion process whereby substantive issues can be raised if something untoward has happened. Professor Herman responded that grievance is defined as a procedural malfunction, which is made clear in the first paragraph. The promotion, tenure, and dismissal procedures each have specific codicils with regard to substantive issues.

Professor Onan pointed out that the words "**otherwise been treated inequitably**" made the definition seem broader than just procedural. Professor Ellis responded that some individuals file grievances based on occurrences that do not fit written procedures or where they believe they can prove they have been treated inequitably. In this regard, the grievance procedure, as now written, is doable. The Grievance Officer of the Agenda Committee has the authority to determine that a grievance is without merit or is frivolous, and the grievant can appeal the decision to close the grievance, to the Agenda Committee.

Motion. Professor Onan suggested, as a friendly amendment, inserting a footnote to indicate the section in which promotion grievances are dealt.

Professor Herman noted that, whatever criteria the Grievance Officer can use to determine whether the grievance was inappropriate, he or she does not have the authority to correct it. In the past, substantive appeals generally have been directed back through the promotion procedure and not through the grievance procedure. Even if the Grievance Officer and the grievance committee would allow it to go to arbitration, the arbitrator does not have the power to grant redress, and therefore it cannot be grieved.

Professor Vaughn suggested moving forward with the rest of the section and then returning to this item if it seemed appropriate at that time.

Professor Herman added that, while it is possible to state a substantive issue procedurally or to state a procedural issue substantively, we have to count on the good sense of the people processing the grievances to be able to determine which is which.

Professor Ellis continued with Vice Provost Meservey's suggested changes. Item #3 recommended adding language about hand-carrying, signing for, and date-stamping documents. The Committee felt that hand-carrying

and getting signatures of receipt can be difficult and might ultimately derail the process if a party were to refuse or avoid delivery. It was his understanding that the Provost's Office and the Senate Office regularly date-stamp incoming documents.

Vice Provost Meservey's items #4 and #5 (p. 13, Availability of Documents section) suggested that the Provost and the Grievance Officer review all materials to be sure that confidential documents are not inadvertently distributed, and that the summaries of the confidential material be reviewed by the Grievance Officer in consultation with the Provost or Provost's designee. Since many grievances stop at the level of dean or department and do not reach the level of the Provost when it comes to obtaining documents, the Committee felt that item #4 was not necessary. With regard to item #5, the Committee took the Provost out of the consultation because, when it is the Provost's Office that claims something is confidential and needs to be summarized, the person who made that claim should not then be involved in reviewing the material and preparing the summary. Also, the Committee felt that the Grievance Officer, as a neutral person trusted by both sides, needs to be able to see documents, even if the grievant does not see them.

Vice Provost Meservey's item #6 (p. 13, Assistance section) suggested that the language in the first line be retained. Professor Ellis pointed out that the Committee did not want to require absolutely that the Agenda Committee provide assistance in preparing and presenting a case because a cantankerous grievant could disable the process with endless requests that go beyond what is reasonable.

Vice Provost Meservey's item #9 (p. 14, Step 2. Early Provostial Review Option, sentence 1) suggested adding "**published**" so that the first part of the sentence would read, "**If the grievance involves an alleged violation of a published University, Unit and/or College policy or procedure, . . .**" Professor Ellis explained that this would make it impossible to use the Early Provostial Review Option to resolve something that is not published..

Vice Provost Meservey's item #11 (p. 15, Step 3), that "**a pool of faculty be established at the beginning of the year who would be available should a grievance be submitted**", was discussed at the last Senate meeting. The Committee did not think that this is the way to generate the kinds of mediation we need.

Vice Provost Meservey's item #14 (p. 15, last paragraph), suggested replacing the paragraph with the following: "**If the respondent refuses to meet with the committee, it may reach a judgment on the grievance in the absence of his/her testimony or evidence. If the grievant refuses to meet with the Committee, the grievance will be closed.**" Professor Ellis pointed out that the existing language covered this concern; it read, "**If any of these parties refuse to meet with the Committee, it may reach a judgment on the grievance in the absence of their testimony or evidence.**" Vice Provost Meservey asked whether the committee would have to continue its work even if the grievant were unwilling. Professor Ellis responded that, as the committee would have invested significant time and effort by that time, it would be better for the committee to put on record that it was closing the grievance because of nonparticipation.

Vice Provost Meservey's item #15 suggested deleting the first paragraph on page 16 and adding the following: "**The Grievance Resolution Committee shall, upon completion of its investigation, determine whether the grievance is supported by sufficient, reasonable, and credible evidence. If the Committee does not find sufficient, reasonable, and credible evidence to support the grievance, the grievance will be closed.**" She also suggested deleting the first phrase of the first sentence of the next paragraph and substituting the following: "**If the Committee concludes there is sufficient, reasonable and credible evidence to support the grievance, the Committee will forward . . .**" Professor Ellis explained that these changes were not necessary because in the current language the Grievance Officer can make the determination of credible evidence at the beginning of the procedure, and it is possible for the grievant to appeal the Grievance Officer's determination to the Agenda Committee.

Vice Provost Meservey asked what action would be possible if the committee did not find credible evidence. Professor Ellis responded that the committee could report that no redress of the grievance was possible.

Vice Provost Meservey thanked the Handbook Review Committee and the Senate for their patience and response to her concerns and suggestions.

Professor Alper asked why, in the case of a faculty member who had left the University, a grievance about back pay would not be continued. Professor Herman replied that it is difficult to continue a grievance with someone who has left the University. Such claims seem to trail off without the authority to close the grievances. He advocated clarifying a line that tended to be hazy. Professor Ellis added that it might be advantageous for the grievant, as a former employee in a back pay case, to be able to go to court for redress. Professor Alper thought it would be less expensive for the grievant to go through the University process. Professor Vaughn noted that the grievance process is an internal procedure for faculty who are here.

Dean Zoloth asked why no outside counsel was permitted. Professor Herman responded that faculty in the School of Law have served as advocates for faculty. The general principle on which the University operates is to protect faculty and mediation committees from having to deal with lawyers trying to impose their will. Grievants are told, as part of the procedure, that they may have a lawyer to counsel them privately. However, if the grievant wants a lawyer to meet with the mediation committee, the grievance procedure will end, and the alternative is to go to court. Because we have a law school it is difficult to prohibit inside counsel. Experience has shown that having a member of the law school faculty as an advocate does not necessarily affect the outcome.

There being no further discussion, the Senate turned to a vote.

Vote on the revised grievance section, Resolution #8: PASSED, 31-0-0.

Professor Ellis moved Resolution #9, and the motion was seconded. The resolution read as follows:

BE IT RESOLVED That the Faculty Senate approves Section VI.A.8 (Tenure) presented in the Revised Draft (4/30/02) from the *ad hoc* Committee to Review the Faculty Handbook, to go into effect when published in the revised edition of the *Faculty Handbook*.

Professor Ellis pointed out that a number of modifications in the previous committee's draft needed revision in accordance with last year's Senate actions. For example, the post-tenure review policy was eliminated. The other major change made by the present committee was in Step 5: Review by the Provost. The earlier committee had proposed a system whereby the University tenure and promotion appeals committee would become advisory to the Provost, on every tenure case, before the Provost's decision, and it would replace our existing appeal process. No tenure appeal would be possible. This draft simply brings back the tenure appeal procedure from the existing handbook.

Motion. Professor Wallin suggested, as a friendly amendment, deleting the following sentence (p. 24, Step 5, paragraph 1): "**In any case in which the Provost has decided to make a negative tenure recommendation, the Provost will communicate the decision, in writing, including the grounds for the negative recommendation, to the candidate only**", and substituting the following: "**In any case in which the Provost has decided to make a negative tenure recommendation, the Provost will communicate the decision, to the candidate only and in writing, including the grounds for the negative recommendation.**" This was accepted as a friendly amendment.

Professor Alper asked why, in several instances, the department was omitted from the process. In his view the department is an integral part of the process and should be informed on the status of the case. Professor Herman responded that this works well when the department recommends the candidate and the positive recommendation goes forward. Where the department tenure committee goes in one direction and the dean or Provost in another, to provide this level of information opens the door to the belief that units then can either appeal the question or take other action to reassert its recommendation. The individual determination to appeal is up to the candidate. Mischievous third party activity can take place, particularly when the unit says "No" and the dean says "Yes." A variety of interventions can take place. What is being done here is to maintain that the parties involved in the actual decision-making are the individual on the one hand and the Provost on the other.

Provost Abdelal asked whether the dean or chair was given a copy of the decision at that stage.

Professor Vaughn thought the recommendation should be based on the dossier, which the candidate creates and to which each level of evaluation adds. To open that door further would create a situation in which decisions may not be justifiable.

Provost Abdelal expressed concern that the Provost could not discuss a case with the dean of a college. If academic officers disagree, it would be better to have some discussion before putting it in writing. Professor Herman noted that it is not a recommendation until it is written, and the Provost has the authority to do that. Nothing precludes discussion. The Committee was trying to ease the decision path so that the written recommendation goes to the candidate, and the candidate has the right to respond to it instead of having a situation in which four or five different parties get responses.

Vice Provost Meservey recommended that the people who participated in the decision receive formal notification before they hear it by way of the University grapevine.

Professor Lowndes thought it appropriate to share the contents of the Provost's letter to the candidate with the department chair, the department committee, the college committee, and the dean, particularly in the case of a negative recommendation.

Dean Soyster thought that concerned parties would not like to learn what is happening in an informal fashion.

Professor Platt expressed concern about the independence of decisions. She noted that a situation might occur in which a candidate is rejected early and then supported by the Provost. She suggested that the Provost's and President's positions be kept as separate as possible.

Professor Onan defended the notion of informing people who have been part of the process. They invest considerable time and energy, and they take the process very seriously. They deserve acknowledgment in terms of information at the various stages.

Professor Ellis was in general agreement with this line of discussion, but could not accept it as a friendly amendment because it would be a significant deviation from what has been done over the years. He suggested that a proponent move a formal amendment on which the Senate can vote.

As time had run out, Professor Ellis moved to adjourn.

Adjourned at 1:30 p.m.

Respectfully submitted,

Dee Vigeant for the
Senate Agenda Committee