FACULTY SENATE STEERING COMMITTEE MEETING
JULY 24, 2001 - 3:30 PM - 307 FERGUSON

(corrected minutes)

ATTENDING: Norm Baldwin, Wythe Holt, Margaret Garner, Bing Blewitt, John Mason, Alvin Winters, Keith Woodbury, Harry Price, Jim Williams.

This meeting of the Faculty Senate Steering Committee was called to discuss the proposed changes for the Mediation and Grievance document. Wythe Holt has crafted the changes and will not be on campus next semester. He explained the reasoning for the changed language and solicited the opinion of the Steering Committee on many issues contained in this document.

Harry Price of the Senate Operations Committee brought forward that there is no provision for "faculty to faculty" grievance issues. There are situations that faculty need an outlet or mechanism to seek redress from other faculty. One example would be a faculty member pirating another faculty member's work. In the past, the grievance procedure was used for a faculty member to address alleged administrative errors. The document was written with this purpose in mind. Faculty members do sit in review of another faculty member in the tenure and promotions process, and it would be possible that a faculty member could have a vendetta against another faculty member. There is no formal provision for a faculty member to file a grievance against another faculty member. Other examples of faculty to faculty problems include professional damage and harassment. After a faculty grievance is brought to the department chair and this proves unsatisfactory, there should be a formal policy to follow. In the past, a committee hearing grievances had each faculty member write out in detail an explanation of how they saw the situation; after which a committee of four met with each individual, prepared questions, and then rendered an opinion which went in a formal letter to each faculty member and the Provost. This was handled ad hoc, confidentially, and seemed to work well according to a member of the Steering Committee. The provision being added to the Mediation and Grievance document would have to provide confidentiality for those involved. It was the consensus for this issue to go back to the Senate Operations Committee for additional work on the provisions and language.

The next issue was whether attorneys should be removed from the grievance procedure. The three exceptions are when the University attempts to deprive a person of tenure, attempts to terminate a contract person early, or when an administrator attempts to impose a severe sanction. A severe sanction would be the suspension of a faculty member from service for a stated period; relieving a faculty member from teaching duties in other than extraordinary circumstances; reduction in academic year salary; or violation of a written and duly approved departmental, divisional, or University policy, rule, or regulation that has a negative impact on the faculty member. An example of a written and duly approved rule would be a tenure vote that a dean chose to go against. In severe sanction instances, the faculty member may choose to have an attorney, and this would allow the administrator to have an attorney. If the faculty member chose not to have an attorney, there would be no attorneys involved. The points against having attorneys included that attorneys make the process adversarial, harsher, and there would be less chance of keeping the proceedings academic rather than legal. Compensation for the attorneys would be the responsibility of the faculty member, while the administration has access to the University attorneys at no cost. The last Tribunal, the first in fifteen years, felt that legal counsel was needed for the Tribunal. The faculty member and administration had legal counsel and the Tribunal needed legal advice to provide fair guidance for both parties, to provide

information about how to proceed, and to safeguard their legal liability. A member of the Law School provided legal counsel for the Tribunal. In this instance, the matter was settled before the Tribunal heard the case. The University only pays for the faculty member's attorney when the faculty member represents the University. An example would be if a student sued a professor.

In the first paragraph of the Memorandum to the Faculty Senate from the Senate Operations Committee containing Modifications of the Mediation and Grievance System there was an inserted the phrase "if not necessarily all the details." It was decided to eliminate this phrase.

There was discussion of having three members rather than five members on Tribunals. It was the opinion that since those members would be chosen by the Faculty Senate, they would have those qualities desired in a person serving in such a position.

On Page 7, the addition to section "D" would be: "Otherwise, if the University makes a transcript of any Tribunal hearing, it will provide a copy without cost to the faculty party. All paper and other costs generated by a Tribunal, except the cost of the faculty member's attorney if any, shall be borne by the University." Each member is allowed to bring a recorder or make an independent record of the proceeding. The Tribunal is responsible for making the official record of the proceedings. The Tribunal will make a transcript of the hearing whenever the hearing is concerning charges brought by an administrator. The Steering Committee agreed to this.

On pages 2 & 3 of section "A", three possible changes not voted on by the Senate are: stating when the term of the Tribunal member begins (commencing May 1), when the FTE in teaching and/or research drops below 0.5 that Tribunal member shall immediately become ineligible and vacate the position, and no person may be compelled to serve on more than one Tribunal at a time (serving on more than one Tribunal at a time was eliminated from these changes). Discussion of replacement of a vacated position ensued. It was decided to replace a vacancy on the Tribunal with the last "struck" member.

On Page 3, the "Role of Attorneys" was reviewed. This states: "With the exceptions mentioned, during any post-mediation proceedings in the system, including those before hearing Tribunals, no party may be represented or accompanied by an attorney. No advisor or observer named by either party may be an attorney. Attorneys may not be consulted by any party when a hearing Tribunal is sitting, nor may a recess be obtained for the purpose of consulting an attorney; nor may any party consult an attorney during the process of selecting a Tribunal. Any party may consult an attorney before or after any hearing, Tribunal selection, or other process which forms part of the post-mediation proceedings. This paragraph also applies if the parties choose not to engage in the mediation stage." The question was asked "could the observer be an attorney?" An observer is not a participant. An advisor is a participant. If an observer is a faculty member of the Law School and is a friend of the grievant, should s/he be allowed to communicate with the grievant during the proceedings? It is stated in the Faculty Handbook that each of the parties has the right to name an observer. This observer has the right to attend all proceedings, public or private, except for the deliberations of the Tribunal. It does not state that the observer has to be mute. The advisor may be held over from the mediation stage that is appointed by the Mediation Committee. At the request of a potential grievant, the Mediation Committee may appoint one of its own members to help guide them through the mediation process and that person may not be an attorney. The dean/respondent may also have an advisor. It was suggested to eliminate the words "advisor or" and bring it up to the Senate for debate.

Objections to disenfranchising faculty member attorneys were expressed. There are no

restrictions on the person that can be an observer. The concerns about attorneys being involved in these proceedings are expressed because the desire is to keep these proceedings academic rather than legal. The consensus of the committee was to allow the observer to be an attorney. An amendment will be added on Page 91 that says, " An observer may not address the Tribunal." The next sentence in the paragraph will be changed to read, "A recess may not be obtained for the purpose of consulting an attorney; nor may any party consult an attorney during the process of selecting a Tribunal." The last sentence in the paragraph states: "This paragraph also applies if the parties choose not to engage in the mediation stage." Even if the grievant chooses to bypass mediation, this paragraph still applies.

If a dean delivers a notice saying, "I am going to terminate your tenure for cause," a faculty member and appropriate administrative officers will then discuss the matter, looking toward a mutual settlement. At this point, the Tribunal has not been brought into play. The grievant cannot have an attorney in the mediation stage. " If a mutual settlement is not achieved within a reasonable time following such notification to the faculty member, the administrator will expeditiously provide to the faculty member and to the Mediation Committee a full written statement of reasons and charges, framed with reasonable detail and particularity. If the faculty member disputes the sufficiency of the detail and particularity of this notice, he or she will so notify the Mediation Committee, which will deal with issues of the required amount of detail and particularity, and can require the administrator to amplify the statement of reasons and charges. Within a reasonable time after receipt of a proper full written statement (no less than two work weeks, unless the faculty member opts to submit it sooner), the faculty member shall submit a written rebuttal of the full written statement ot the administrator and the Mediation Committee." In tenure cases, "the written statement shall state the cause or causes deemed adequate, in detail, with supporting facts."……"When a faculty member does not dispute either the facts or the adequacy of the cause, the faculty member may resign immediately or receive immediate termination, or may serve out all or a portion of the period specified, as the parties may agree." You do not have the right to an attorney until then. You can consult one but you cannot during the mediation process. If the faculty member disputes the sufficiency of detail and particularity of the notice, then the Tribunal process begins. As a formal part of the proceedings, an attorney is now allowed.

Chapter Two, Part XIV is the University policy for termination and severance. The first paragraph reads: "The employment of a person with tenure may be terminated because of **bona fide** financial exigency or demonstrable need to discontinue a program or department of instruction. The University accepts the obligation of showing that the needs are genuine…..Otherwise, tenure may be revoked only for adequate cause. "Adequate cause" must be directly and substantially related to performance of academic duties and responsibilities or to fitness to perform academic duties and responsibilities. When a faculty member does not dispute either the facts or the adequacy of the cause, the faculty member may resign immediately or receive immediate termination. When dispute exists on the facts or on their adequacy, the procedures outlined in the current Mediation and Grievance System will be followed (see Appendix B). A faculty member in a tenured position normally shall receive notice of the termination date at least one calendar year in advance." Only the grievance document is being changed. The University can terminate tenure for financial exigency. The exceptions are in the current document. If an attempt is made to terminate a contractual person, the opinion is that person has the right to an attorney and it was the consensus of the Steering Committee to have this in the Mediation and Grievance document. As it is stated now, they would not be allowed an attorney until it reached the Tribunal stage.

In the first paragraph under "Special Rules and Procedures in Cases Involving Severe Sanctions, Tenure Termination, or Early Dismissal," language was added to clarify that if the Tribunal desires counsel, they would have the right to choose and request anyone to assist them. The phrase "each Tribunal member retaining the option of resignation from the Tribunal" was added. The possibility of two of the three Tribunal members resigning would result in one person continuing with the process. There is no provision if all Tribunal members resign. It was suggested to go back to the pool of those that were struck and the last person struck would replace the resigning member. It was suggested also to go back to five-member tribunals and two members not serve unless a vacancy occurs. What would happen if someone resigned in the middle of a Tribunal procedure was discussed. You could replace them and go on or not replace them and go on. It was also suggested to let the parties decide and, if they could not reach an agreement, let the Tribunal decide. If one Tribunal member were replaced, they would have to listen to the recordings and review the transcript. It was agreed to add to the Grievance and Mediation document to go back to the "last struck" to replace a vacancy on a sitting Tribunal.

The Provost provides the means for recording the procedures and the Chair of the Tribunal is responsible for the safekeeping of the records. The Tribunal has the responsibility to decide if the transcript is accurate if it is challenged. Preponderance of evidence means "a little more than the other side." It was agreed to leave in the phrase "each Tribunal member retaining the option of resignation from the Tribunal."

The last paragraph states: "Nothing in this section shall be construed to prevent a faculty member who is an attorney from bringing a grievance, nor an administrator who is an attorney from being a party to a grievance." This was to assure those in this category would not be barred from being a party to a grievance.

Under "C", the word "petitioner" was used to replace the word "grievant," and the word "respondent" with the words "opposing party". There was confusion and controversy concerning the words "petitioner" and "respondent."

To be taken out of the classroom would be a severe sanction under any circumstances. Termination and Severance policy states: "In extraordinary circumstances a faculty member may be relieved of teaching duties with compensation. Any faculty member for whom such action is contemplated will be informed of the University's intention before the action is performed and will have an opportunity to prepare and immediately present an argument in rebuttal before the University Mediation Committee. If a faculty member is relieved of duty in accordance with these procedures and is subsequently reinstated, all mentions of the suspension will be removed from personnel files."

An example given was if a faculty member became mentally incapable of continuing to teach. In years past, the administration could suggest that a faculty member had a mental problem and refer them to a selected physician. It often ended with the dismissal of that faculty member under that condition.

How is "extraordinary circumstances" defined? In the proposed phrase, "unless all faculty members have their salaries reduced pro rata due to emergency, the meaning of **all** was discussed. Also, what severe sanction meaning would apply to a dean's instruction of what courses the faculty member should teach or if the removal from teaching a course would fall under "severe sanction?" Some faculty could complain that the removal from teaching a specific course would be a severe sanction but that is not automatic. But it is severe if the faculty member is removed from <u>all</u> teaching.

The proposed phrase "unless all faculty members have their salaries reduced pro rata due to emergency" was discussed. If everyone received reductions in salaries, this would be the exception of severe sanction. It was agreed to leave this in.

"Other actions may constitute a severe sanction" was a proposed addition. The Mediation Committee will decide whether an action taken by an administrator, other than those specified above, constitutes a severe sanction. Also a proposed addition in this paragraph is: "In this instance, or the instance of a reversal by the Provost, the administrator who does not decide to withdraw the severe sanction will then expeditiously follow the steps set forth herein, commencing by putting the severe sanction in writing (see below).

Stated *"Under Written notification; settlement":* "To commence any such action as is mentioned in the preceding paragraph, the administrator wishing to invoke a severe sanction, dismiss such a probationary or full-time temporary faculty member, or terminate the tenure of a tenured faculty member for cause, will notify the faculty member in writing of the action to be taken [with a summary of the reasons and charges made]." The faculty member and appropriate administrative officers will then discuss the matter, looking toward a mutual settlement. The following was discussed: should this be a written or oral notice, written in detail or rudimentary? One or both parties may not want a written notice. It was suggested that it be a written summary from the administrator. It was also suggested that the faculty member have the option to ask for a written notice. The phrase should now read: "will notify the faculty member of the action to be taken and shall provide in writing a summary of the reasons and charges made, if so requested by the faculty member." If a mutual settlement is not reached in a reasonable time, there is no one to decide what constitutes a reasonable time.

After discussion, it was decided that it would be better not to specify a reasonable time. Also, what definition would be given to "expeditiously?" How long would the administrator have to provide a written statement? Reasonable time might fall into a critical time on the academic calendar. There might be a problem of those involved being out of town for a lengthy period. There will be no additional explanations of the terms "reasonable time" and "expeditiously."

In the sentence beginning, "Within a reasonable time after receipt of a proper full written statement," the proposed additional statement will be added "[no less than two work weeks, unless the faculty member opts to submit it sooner], the faculty member shall submit a written rebuttal of the full written statement to the administrator and the Mediation Committee." The "work week" definition is when the University is in session and includes the final exam period.

Additional requirements and provisions in an attempted termination of tenure. "In the instance of attempted termination of a tenured faculty member, normally the termination date will be set a least one calendar year in the future." A written statement (just mentioned) shall state the cause or causes deemed adequate, in detail, with supporting facts. The administrator shall also deliver to the faculty member copies of all supporting documents, plus other material deemed relevant by the administrator. All documents and other items merely referred to in the writing will be provided to the faculty member immediately upon request to the administrator." This puts the burden of proof on the administration since the charges come from them.

Committee determination. "Within a reasonable time after the rebuttal has been received, the Mediation Committee will expeditiously undertake an informal inquiry to determine whether in its opinion proceedings should be continued, and shall communicate its opinion to both the administrator and the faculty member, without its opinion being binding on

either. [In divisions which have a regular standing committee of faculty members elected by the faculty for this purpose, or elected by the faculty to serve as advisors to the dean, the administrator may ask such committee to undertake the informal inquiry in the place of the Mediation Committee, by delivering a copy of the full written statement of reasons and charges and the faculty member's rebuttal to that committee, simultaneously notifying the Mediation Committee in writing]." Having this step in place was questioned, however, it is already in the existing document. Eliminating this paragraph was discussed. If this isn't deleted, after the rebuttal, the proceeding would go to the Tribunal. If the faculty member spends that time rebutting and this step is eliminated, there is no one to read and respond to the rebuttal. This would pertain to all rebuttals. Should there be a period for the Mediation Committee to consider the rebuttal? The rebuttal does not have to be lengthy. It was agreed to remove the sentences in brackets.

Waiver " If the administrator decides to proceed [with the sanction] after receiving the opinion of the Mediation Committee, the Mediation Committee will inquire whether the faculty member waives the right to a hearing Tribunal. If the faculty member waives this right, the University may impose the penalty requested by the administrator, or any lesser penalty [including, in the instance of the termination of a tenured faculty member, a period of continued teaching or service]. Otherwise, the Mediation Committee will proceed to the establishment of a Tribunal."

Posture of the Grievance "The faculty member will be considered to grieve the written statement of reasons and charges presented by the administrator. The party with the burden of proof will put on evidence first."

Burden of Proof "In instances of attempted termination of a tenured faculty member, or a severe sanction of reduction in academic year salary, the burden of proof will be upon the administrator, to be satisfied by a preponderance of the evidence." The burden of proof is on the administrator only in attempted termination. Preponderance of evidence means one side slightly ahead of the other. This should be replaced with "clear and convincing" evidence in the case of an attempted termination of a tenured faculty member. A severe sanction would be "preponderance of evidence." In the dismissal of a temporary faculty member, s/he still has the burden of proving that s/he should remain.

Report on the Strategic Initiative Committee. A letter was written to Charles Nash stating that the deadline could not be met since the reports from certain committees were not received in a timely manner. An e-mail was sent from Nash stating that the report would be due on the stated date. The committee met and a report was sent to Nash, Board of Trustees, President of all three campuses, Provosts and Faculty Senate Presidents of all three campuses, etc. Margaret, Pat Bauch, John Dolly met with Charles Nash. He requested a meeting with the committee. They will meet with Nash on August 16th and discuss faculty governance and participatory management.

Meeting adjourned 6:40 PM