

JOURNAL OF THE FACULTY SENATE
 The University of Oklahoma (Norman campus)
 Regular session - November 13, 1995 - 3:30 p.m.
 Jacobson Faculty Hall 102

The Faculty Senate was called to order by Professor Pat L. Weaver-Meyers, Chair.

PRESENT: Badiru, Benson, Bremer, Carnevale, Dillard, Dillon, Durica, Egle, Fiedler, Friedrich, Fung, Gana, Genova, Gilje, Griswold, Gutierrez, Gupta, Havener, Hertzke, Hillyer, Holmes, Horrell, Hutchison, Laird, Lucey, R. Miller, Mouser, Nelson, Ogilvie, Palmer, Patterson, Ragep, Scaperlanda, Shaughnessy, Sipes, Stock, Stoltenberg, Tepker, Weaver-Meyers, Weinel, Wenk, Williams

PSA representatives: Iselin, Spencer
 GSS representatives: Royal

ABSENT: Baker, Burnett, Elisens, Greene, Gupta, Gupta, Harris, Konopak, F. Lee, Murphy, Roegiers, Thulasiraman, Wallach

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APPROVAL OF JOURNAL

The Senate Journal for the regular session of October 9, 1995, was approved.

ANNOUNCEMENTS

At their September meeting, the OU Regents approved a recommendation to have one hearing body for all faculty grievances. Therefore, the Committee on Discrimination, Committee on Sexual Harassment, Racial and Ethnic Harassment Hearing Panel, and Student Discrimination Grievance Committee will be collapsed into the Faculty Appeals Board, which will hear discrimination and harassment complaints, as well as the customary academic freedom and academic due process violations. The tenured faculty who served on these discrimination and harassment committees will be transferred to the Faculty Appeals Board if they are willing.

The interim Conflict of Interest Policy (available from the Senate office) will be effective until Fall 1996. Faculty who have any problems with the interim policy should contact the Faculty Senate office, so that any needed changes can be incorporated in the final policy.

President Boren approved the Staff Senate's proposal for supervisory review that was endorsed by the Faculty Senate (see 5/95 Journal, page 5). Professors Donna Nelson (Chemistry and Biochemistry) and Sally Zepeda (Educational Leadership and Policy Studies) agreed to serve on the advisory committee to review plans for the short management course and the forms for employee management review.

A faculty/staff blood drive will be held on Tuesday, November 28, from 9:30 a.m. to 4:15 p.m. in the Ming Gallery of the Oklahoma Memorial Union. A sign-up sheet will be available at the meeting, or interested faculty may call 5-6789. Those who donate will receive a "holiday hero" button.

REMARKS BY DR. LISA PORTWOOD, STAFF SENATE CHAIR

Dr. Lisa Portwood, Staff Senate Chair, said she appreciated the opportunity to represent Staff Senate. She introduced Ms. Katie Pursley, the Staff Senate's administrative coordinator. Dr. Portwood said the university has 2600 continuous staff and many part-time employees. The academic areas have as many staff now as the administrative areas. Staff Senate and Faculty Senate share many issues of common interest, such as OTRS and compression. Another issue of concern to staff is shared leave. She explained that the shared leave proposal would allow employees who have an accrual of leave to give that to someone who has run out of leave. The Staff Senate will consider the Information Technology Council proposal on November 15. Dr. Portwood said she appreciated the Faculty Senate's support for supervisory review. She said faculty and staff have a stronger voice when they work together.

REMARKS BY DR. MILLIE AUDAS, INTERNATIONAL PROGRAMS DIRECTOR

Dr. Weaver-Meyers noted that President Boren is emphasizing international programs. Dr. Millie Audas, International Programs Director, explained that OU has been very active internationally throughout the history of the institution. For about 21 years, OU has been one

of only one hundred universities in the country with more than one thousand international students. Last year we had 1750 international students from over 103 countries. The Office of International Programs (OIP) was started in 1986 and in 1987 had one reciprocal student and one reciprocal faculty. Now there are about 250 reciprocal students and 30 faculty who are doing research or teaching abroad. Faculty opportunities can range in time from two week teaching assignments to full sabbaticals. She pointed out that the list of 59 participating institutions in the brochure she distributed continues to expand. She said the OIP provides students with the opportunity to graduate with international competence. An alumni association of students who have studied abroad has been formed to help promote interest among other students. Several committees have been formed of faculty members with expertise in certain areas of the world to help determine the best exchanges. Whenever a faculty member wishes to begin an exchange, a committee is formed. The goal is to have student, faculty, and research exchanges. American students pay tuition here and then pay only living expenses at the foreign university. Likewise, international students who come here have their tuition waived. A wide variety of opportunities exist for faculty at English-speaking universities. OIP can help faculty who take sabbatical in a foreign country. All kinds of teaching arrangements exist. A new consortium has been formed to bring students and faculty from universities abroad to work in American programs. OIP is also linking with 14 universities in Europe to send and receive students and faculty. The orientation session for students lasts about nine months. Most of the programs include a six-week language program before the foreign studies start. Dr. Audas asked the faculty to encourage their students and colleagues to participate in international programs.

Prof. Weaver-Meyers asked about the percentage of undergraduate and graduate students who participate. Dr. Audas said at least 90% of the students are undergraduates. Faculty can also be of assistance in the selection process. Three areas of importance are (1) study opportunities for our students, (2) the encouragement to take courses with international focus (beyond modern language courses), (3) friendships with international students through the "OU cousins" program.

Prof. Fiedler asked about the advantage of an agreement with an institution. Dr. Audas said an agreement facilitates arrangements like priority housing and student fee waivers. Prof. Fiedler asked about the obligation of a department to accept an international person. Dr. Audas said that was at the discretion of the department and had to be of mutual benefit and accord.

SENATE CHAIR'S REPORT, by Prof. Pat Weaver-Meyers

Prof. Weaver-Meyers announced that the searches for the provost and Arts & Sciences dean would begin in January. The President's office wants to get the HSC provost search further along first. Nominations for those searches probably will be brought before the Faculty Senate in January. The Faculty Senate has been asked to provide two nominations for the faculty-at-large position on the College of Law dean search committee. Senators were asked to call in nominations to the Faculty Senate office by noon, November 16.

Prof. Weaver-Meyers spoke again to several OU regents about the athletic funding issue. If the football team does not get a bowl bid, the athletics budget will be seriously impacted. The

President has not yet formed the committee the Executive Committee requested to review the athletics budget.

The Executive Committee met with Sean Burrage, OU's director of state and federal government. The state could have 4% more revenue than what was projected, which amounts to an additional \$120-130 million, but higher education has some competition for those funds from prisons and common education. If State Question 669 passes, that could cost the state \$80-100 million. Therefore, we may be looking at a flat budget. It is important to let legislators across the state know that funding for higher education is important.

The Executive Committee discussed the academic goals of the university with Provost Mergler. She will expand on these goals when she speaks to the Faculty Senate in January. These goals are: (1) Achieve Carnegie research I university status. OU has improved in the National Research Council rankings. We should increase GA stipends. (2) Improve the student-faculty ratio from 21 to 18.5. (3) Gain national preeminence in undergraduate education. (4) Provide international studies and research opportunities. (5) Target specific programs to bring up in national rankings.

At the meeting of the Faculty Advisory Committee to the state regents on November 4, the other state institutions expressed concern about retirement and the number of adjunct faculty. Provost Mergler says OU has about 200 teaching faculty in temporary positions, and that number has remained stable. What has increased is the number of research associates, now at about 200.

A general faculty meeting likely will be held early next semester and focus on the Governor's commission report. Preliminary recommendations of the commission are that employees should not have to pay the unfunded liability of OTRS and that a defined contribution plan should be substituted. Other recommendations would eliminate the governing boards of institutions, empower the Secretary of Education to govern and coordinate the university system, and realign all four-year institutions under OU and OSU. The state regents have issued a response to the report.

Questions have been raised about the committee responsible for summarizing the responses to evaluations of deans. Not all faculty knew how the committee was selected or were clear about who would be reading the evaluations. Apparently, the units handled this in different ways. Either previously established committees were used or new ones were elected. Prof. Weinel asked to whom in the college office the request to form the committees was sent. Prof. Weaver-Meyers said there did not seem to be a consistent procedure followed.

Some faculty have expressed concern about the quality and cost of health care, specifically, the lack of mental health care and non-participation in the state system. Personnel Director Don Flegal indicated that the Employment Benefits Committee reviewed this issue about two years ago and decided that our plan had some advantages over the state plan. Personnel will look at this again in a year or two.

Referring to the provost search, Prof. Hertzke asked whether there was any concern about the narrowing of the provost's job and how it has changed under President Boren. Prof. Dillon said the last provost search committee discussed the job description of the provost. One concern was that the provost should maintain control over the budget. Prof. Weaver-Meyers said the Executive Committee could bring that up with the president. Prof. Fung commented

that the senators had been asked to provide nominations for the provost search last spring. Prof. Weaver-Meyers said the Senate office still had that list. Prof. Fung asked whether a search initiated in January would allow enough time to get a provost in place by fall. Prof. Weaver-Meyers said she thought that was the objective.

Prof. Hutchison pointed out that the Governor's commission recommended that tenure be abolished and replaced with something like a five-year contract and some guarantee of academic freedom. He suggested that the Senate prepare to defend tenure on the basis of academic freedom. Prof. Weaver-Meyers explained that Prof. Tepker is chairing a faculty development committee, which will be addressing the tenure issue. The chancellor of higher education and presidents of the state institutions sent letters to Governor Keating concerning the importance of tenure in higher education. Prof. Stoltenberg said there has been speculation that the tenure issue will not make it into the final draft. Prof. Weaver-Meyers said the general feeling is the abolition of tenure is not likely to happen. Prof. Tepker said the commission has proposed alternatives, such as an annual evaluation system, as if that does not already exist. The commission needs to know that tenure is not a guarantee of lifetime employment and that there are alternatives for addressing the issues of concern. Prof. Hutchison said this is a good opportunity to educate people about what tenure really is. President Banowsky made a very strong statement about academic freedom at his inauguration.

ELECTION, COUNCILS/COMMITTEES/BOARDS

Prof. Fiedler asked why more information was not given on the nominees for vacancies. Prof. Tepker said the Senate Committee on Committees was following custom and tradition. There is nothing to keep the Senate from asking for more information. We are heavily dependent on volunteers. Prof. Weaver-Meyers explained that the Committee on Committees, chaired by the chair-elect, tries to achieve a balance on committees. Prof. Benson remarked that no Arts and Sciences humanities faculty were represented on the Information Technology Council. Prof. Tepker said Professors Anderson and Gillett could be viewed as representing that area, and that was not something the committee focused on. He noted that in the case of the Campus Tenure Committee vacancy, the CTC had suggested certain disciplines that needed representation on the committee. Prof. Weinel remarked that the ITC charge did not mandate representation from certain disciplines. Following a nomination from the floor for the ITC, the Senate approved the following faculty to fill vacancies on councils and committees.

Campus Tenure Committee: to replace Beverly Joyce, 1994-97 term

Joanna Rapf (English)

Information Technology Council (if approved by President):

Connie Dillon, Educational Leadership and Policy Studies, 1995-96 term

Eric Anderson, Art, 1995-97 term

Mark Gillett, Law, 1995-97 term

Kelvin Droegemeier, Meteorology, 1995-98 term

Bruce Mason, Physics & Astronomy, 1995-98 term

FACULTY REPRESENTATION IN INTERNAL GRIEVANCE PROCEEDINGS/ ETHICS RULES

Prof. Tepker explained that a conflict exists between the State Ethics Commission Rules and university policy (Appendix I). The Ethics Commission rule states, "A state officer or state employees shall not represent another person before the governmental entity the state officer or state employee serves." At the university, we have had a practice whereby individuals seek internal resolution of disputes and can ask a colleague to represent them. We need to change the *Faculty Handbook* or seek an amendment in the Ethics Rules. The chair of the Ethics Commission says the commission would consider an amendment. Professors Tepker and Drew Kershen (Law) developed an amendment for the Senate to consider, which would be an additional exemption to the general rule and would state that the restrictions would not apply to the following:

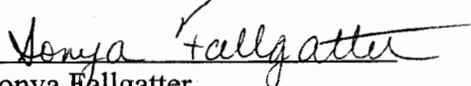
representation of the state officer or state employee in matters arising out of rules promulgated pursuant to Faculty or Staff Handbooks by the governing boards of higher learning.

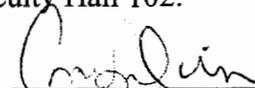
At the next meeting, Professor Tepker would like to secure the Senate's judgment on which option to pursue: (1) change the *Faculty Handbook* to conform with state law, (2) endorse the Kershen/Tepker amendment, or (3) endorse a general change and send a representative to any hearings on such an amendment. This is only a partial solution to the conflict, because it only deals with representation in internal grievance proceedings.

Prof. Hutchison asked if there was any reason for the Faculty Senate to wait. Prof. Tepker said it was the custom to let the Faculty Senate discuss issues with colleagues. There are other possibilities. There is no emergency. Prof. Weinel said she would prefer to take this information back to her colleagues. Prof. Durica asked whether we were the only ones in violation. Prof. Tepker said he did not know, but this practice is pretty common in a wide variety of employment situations. The *Faculty Handbook* represents a long-standing tradition in academia and has nothing to do with the situation the rule is designed to eliminate.

ADJOURNMENT

The meeting adjourned at 4:50 p.m. The next regular session of the Senate will be held at 3:30 p.m. on Monday, December 11, 1995, in Jacobson Faculty Hall 102.


Sonya Fallgatter
Administrative Coordinator


Connie Dillon
Secretary

Norman Campus Faculty Senate
Jacobson Faculty Hall 206
phone: 325-6789 FAX: 325-6782
e-mail: facsen@uoknor.edu

University of Oklahoma

COLLEGE OF LAW

HARRY F. TEPKER, JR.
PROFESSOR OF LAW
University of Oklahoma Law Center
Norman, Oklahoma 73019-0701
Telephone (405) 325-4832
FAX (405) 325-0389
E-mail: rtepker@uoknor.edu

7 November 1995

MEMORANDUM

TO: FACULTY SENATE EXECUTIVE COMMITTEE
RE: FACULTY REPRESENTATION IN INTERNAL GRIEVANCE PROCEEDINGS

1. Recently, university counsel noted that university law professors were barred from representing faculty in faculty appeals board proceedings of the university. The pertinent provision is State Ethics Commission Rules § 257:20-1-6(d) which reads:

A state officer or state employee shall not represent another person before the governmental entity the state officer or state employee serves.

According to § 257:1-1-2, the term "represent" or "representation" means

[A]ny formal or informal attendance before, or any written or oral communication with, or the filing of documents with any governmental entity on behalf of a person or organization whether gratuitous or for compensation.

The Ethics Commission saw the need to exempt some internal grievance proceedings from the scope of the broad rule. Section 257:20-1-6(e)(4) states,

These restrictions shall not apply to the following: representation of the state officer or state employee in matters arising out of or rules promulgated pursuant to the Oklahoma Personnel Act.

2. The university counsel's interpretation has been sustained by the Commission. Though courts of law might reach a different conclusion, at the present time there appears to be a conflict between Ethics Commission rules and the long-established practices of the university. In the Faculty Handbook for the Norman Campus, adopted in July 1995, the Board of Regents explicitly stated that faculty could ask a colleague to represent him or her within faculty appeals and grievances systems:

Any party, whether complainant or respondent, may select from among his or her colleagues a person to act as adviser or may select an attorney for advice on legal matters. At his or her discretion, the party may be assisted by both an adviser and an attorney.

a. Both the complainant and respondent shall inform the Chair of the Hearing Committee in writing of the identity of any adviser and/or attorney as soon as known but in no event later than 10 classroom days prior to the hearing.

b. The following procedure assumes that a faculty member will use his or her own judgment in acting upon any advice or deciding when to be represented by an attorney.

Faculty Handbook of the Norman Campus (July 1995 edition), § 3.9.1(h)(4). A similar provision with a similar purpose appears in the faculty handbook for the Health Sciences Center.

3. This conflict cannot be "waived" by the university. The rules of the Ethics Commission must be followed. Moreover, the rule bars representation by state employees, whether or not they are attorneys or law professors. For example, it is probably a surprise to almost all of us, but the following situations would now violate the ethics rules, as interpreted by university counsel:

- A faculty member represents his or her spouse before a University board relating to tenure and promotion;
- A faculty member represents his or her child, a University student, before an Academic Appeals Board or a Disciplinary Board;
- A faculty member represents a colleague within his or her department when the colleague confronts a student complaint about grading or discrimination.
- A staff member represents a fellow staff employee who confronts accusations of misconduct, such as a claim of misusing University property for personal gain.

4. If the Faculty Senate concludes that the university's current practices are wise — that faculty and staff should not be required to seek outside counsel in all situations — the Faculty Senate should endorse a proposed change in the Ethics Commission rules that would exempt internal university grievance procedures in the same way as the Oklahoma Personnel Act exemption operates.

In short, the university must either reconsider faculty handbook provisions encouraging colleagues to assist colleagues in internal grievance proceedings or to seek a change in the Ethics Commission rules.