

UNIVERSITY OF MICHIGAN

SENATE ASSEMBLY

Minutes of Regular Meeting of 18 April 1983

ATTENDANCE

Present: Bailey, Barald, Beutler, Briggs, Brooks, Loup, Comninou, Boyd, Catford, Cooper, Dahl, Easley, Eaton, Eschman, Evans, Farley, R. Green, Deniston, Herbert, Hollinger, Hopwood, Kalisch, Kaplan, Kusnerz, Lehmann, W.G. Lockwood, W. J. Lockwood, Luther, Margolis, McClamroch, Mermier, Moerman, Mosher, Nagy, Payne, Powell, Radine, Rae, Regezi, Scheele, Sears, Taylor, Warschausky, Whitehouse, Young, Zweifler, Blass, Hildebrandt

Absent: Burdi, Burt, Caffesse, Caldwell, Carter, Courant, Danielson, Fellin, T. Green, Howe, Janecke, Kelsey, Keren, Knudsvig, Lawrence, Ludema, Meyer, Morash, Ringler, Robinson, Rucknagel, Simon, Smith, Solomon, Wieland

CALL TO ORDER AND MINUTES

The meeting was called to order by Professor Hildebrandt, chair, at 3:21 p.m., and the minutes of the meeting of 21 March 1983 were approved.

REMARKS BY THE CHAIR

Professor Hildebrandt introduced the members of SACUA, Judith Nowack (executive assistant to SACUA), and Sharron Wenzel (secretary, Faculty Senate Office). He asked the newly elected members of the Assembly to introduce themselves.

He then reviewed the structure and purposes of the Assembly and its committees, using slides to show the major committees and their interrelationships. He recalled that the vice presidential advisory committees were formed in the late 1960's. Their members are nominated by SACUA subject to Assembly approval. The vice presidents occasionally come before the Assembly, and the Assembly can bring issues to the vice presidents through SACUA. Professor Hildebrandt also mentioned several other committees (the Civil Liberties Board, the Senate Advisory Review Committee (SARC), the Rules Committee, the Tenure Committee, the Budget Priorities Committee, and the Committee on the Economic Status of the Faculty (CESF) and some of the issues they consider. He asked Assembly members to bring to these committees and SACUA their concerns and suggestions, as representatives of the schools and colleges.

Professor Whitehouse said that he was concerned by the lack of a connecting line, on the slide, between the Assembly and SACUA. Professor Hildebrandt agreed that there should be a heavy connecting line there.

REPORT OF THE BOARD IN CONTROL OF INTERCOLLEGIATE ATHLETICS

Athletic Director Canham reported on four problems facing the athletic program. The first is that the NCAA, in which all schools have equal votes, tends to be dominated by the smaller schools. Although he described himself as a great supporter of the NCAA, Professor Canham expressed his unhappiness with several decisions that the NCAA had made despite the opposition of major schools. Among these decisions were freshman eligibility, lowered high school academic standards for eligibility (a C average is required, but the meaning of a C average depends on the high school), and taking over women's athletics from the AIAW. He expressed strong support for the recently passed Rule 48 which will, in four years, impose as a requirement for freshman eligibility a 2.0 average in high school, a score of at least 700 on the college board exams or fifteen on the SAT, and at least two years each of English, mathematics, and science. He said that high school coaches, prodded by this rule, will make sure that athletes take the necessary courses. He felt that those who object to this rule are not thinking of the students' welfare. He added that he would prefer to see freshman eligibility eliminated altogether (which would solve the problem of phony high school transcripts) and that there may be a move in this direction at the next NCAA meeting.

The second problem is the increase in litigation on issues ranging from eligibility of players to availability of tickets.

The third problem is financial. The University's athletic department is completely self-supporting. Michigan is the only school in the U.S. that finances women's athletics entirely out of intercollegiate gate receipts; this allocation has increased from \$325,000 to \$1,300,000 over the last five or six years. If costs increase, it may be necessary to increase greatly the price of football tickets, or to drop certain sports (as Indiana, Oregon, and Southern Methodist University have done).

The fourth problem is the controversy over the USFL, in which football coach Schembechler has been badly misquoted. The problem with the USFL started with the plans for a draft in December, which would have left no seniors eligible for Bowl games. These games are a major source of revenue. Unless football and basketball stay strong financially (hockey breaks even), there are no funds to support the women's program or non-revenue men's sports.

DISCUSSION

Professor Hollinger asked about the desirability and feasibility of the University and perhaps 70 comparable schools seceding from the NCAA. Professor Canham said that secession would solve the problem of being overruled by the small schools, but an attempt in this direction, the formation of the College Football Association within the NCAA, failed because it did not extend to other sports. He expects that eventually the top 150 schools might reorganize into a presidents' organization.

Professor Bailey asked about the graduation rate of scholar-athletes. Professor Canham replied that the rate is quite good, around 80% for football players, 100%

in tennis and track. A study on this subject will be finished soon; the situation is complicated by the need to account for students who finish their studies elsewhere, who leave the University for reasons unrelated to athletics, or who are counted as athletes only because they once tried out for a team.

GRIEVANCE PROCEDURE

Virginia Nordby, chair of the joint administration-faculty Task Force on Faculty Grievance Procedures, presented the report of the task force to the Assembly. The task force had been formed because SARC (Senate Advisory Review Committee), which was established over ten years ago to review grievances after appeals within units had been completed, had not been effective in commanding the attention of officials who could respond to the grievances. The task force met weekly and kept Vice President Frye and the chair of SACUA informed about its work until it issued its report in February. That report, which was distributed to the Assembly with the call to the meeting, has been reviewed by SACUA and the Academic Affairs Advisory Council. Both recommended that it be expanded to provide a grievance procedure for research scientists. An addendum to the report, covering research scientists, is being prepared and will be reviewed by the Research Policies Committee. It is hoped that schools and colleges will approve the proposed grievance procedure in substantially its present form, so as to give it wide credibility.

Professor Shaw Livermore explained the task forces' recommendations. He noted that, when SARC was founded, only a few colleges had formal grievance procedures; now all do, so central University involvement has become less necessary. Many aspects of the new proposal resulted from a jolting experience in the SARC system: A grievant was unsuccessful despite the unanimous and vigorous support of SARC and SACUA and despite a formal representation by these groups to the Regents. There seemed to be two essential weaknesses of SARC. First, its reviews occurred late in the process, when administrators had already decided and the outcome was hard to change. Second, the University's tradition of autonomy led to resistance and even hostility, on the part of officials within a unit, to "carpetbaggers" from outside the unit. The key recommendations of the task force are:

1. A much earlier hearing by an all-faculty panel, before administrators made a final decision on this issue.
2. The panel is to consist of a chair from outside the unit, to preserve the sense of a University faculty interest in grievances, plus two or four members from within the unit.
3. If the faculty panel's recommendation is rejected by the responsible authorities within the unit, the reasons for the rejection must be presented in writing as part of the record of the case.
4. Provision is made for appeal, by either the grievant or the respondent, about the fairness of the hearing panel's procedures. (This should prevent rejections of the panel's recommendations on the basis of alleged unfairness).

5. A grievant's right to petition the Vice President for Academic Affairs, previously implicit, has been made explicit.

The SARC system had lost the confidence both of potential grievants and of those who are to act on its recommendations. The task force therefore changed the direction of the grievance process considerably.

DISCUSSION

Professor Cooper expressed reservations about any grievance process whose decisions, like those of SARC, are only advisory rather than binding. He said that the Marwil report was a paragon of collegial logic, yet was rejected; indeed, of the SARC decisions in favor of grievants (about half the total) none was accepted by the administration. The administrators who made or confirmed the decisions being appealed are the same ones who can reject the panel's recommendation. He advocated a hearing panel, consisting of a representative of the grievant, a representative of the respondent, and a third-party chair, with the authority to make binding decisions. He asked why such a system wasn't considered, and he announced his intention to introduce it, as an amendment, when the report comes before the Assembly for a vote.

Professor Livermore replied that the Regents would refuse to give binding authority to an all-faculty panel. He said that he preferred a clear statement, by such a panel, of what is just rather than a binding decision by a panel on which the faculty voice was diluted by the inclusion of, for example, outside arbitrators. If, and only if, the decisions of the faculty panel are ignored, the other approach should be tried. Professor Cooper replied that such decisions have been ignored for the past ten or twelve years, under the SARC system. Professor Livermore said that this was, in his opinion, due to defects in the SARC system, which the new proposal is intended to correct. If the new system also fails, he might join Professor Cooper in calling for binding arbitration. He added that, although it is technically true that SARC recommendations were not accepted, SARC nevertheless influenced results, often through informal negotiations. Virginia Nordby added that, although still advisory, the new mechanism differs from SARC in that (1) it included representatives of the grievant and respondent along with a third member chosen at random from a panel nominated by SACUA and the Vice President for Academic Affairs, (2) reasons for rejection of the panel's recommendations must be stated in writing, and (3) the recommendations go to the Vice President for Academic Affairs, not to the dean and executive committee. Professor Cooper said that SARC also made recommendations to the vice president; Nordby said that this was not accepted by the deans. She added that there have been cases, within schools and colleges, in which decisions by faculty panels in favor of grievants have been upheld.

Professor Bailey raised two concerns, first that the panel from which the chairs of the hearing panels are chosen will bias the process by excluding younger, untenured faculty, and second that written reasons for rejection could be used by a grievant's attorney in court. To the second concern, Virginia Nordby replied that the task force included William Lemmer, from the University Attorney's office, and the recommendation was unanimous. She said that administrators can reach better

decisions with a written record, and tradeoffs, such as possibly helping a grievant's court case, occur everywhere; we cannot run the University just to avoid suits. To Professor Bailey's first concern, Professor Livermore replied that the task force was aware that grievants were likely to be untenured, but it specified tenure rank for the panel, despite the potential problems, because it also foresaw problems for an untenured person serving on such a panel.

Professor Thornton asked for clarification of the role of the Vice President for Academic Affairs. He recalled that, in the Marwil case, the vice president had worked behind the scenes and the dean and executive committee had not felt bound to agree with him. Would the new procedure force the vice president to make a public binding decision? Professor Livermore replied that the vice president can act in whatever way he sees fit. We cannot command him, and the task force did not want to limit him. No public statement is required of him, but some response should be expected.

Professor Kaplan noted that the Assembly had repeatedly rejected "binding" status for SARC. He then asked about the status of the new procedures, noting that SARC was part of the Senate Assembly system and had Regental approval. Virginia Nordby replied that the new procedures had been approved in principle by the deans, the vice president for Academic Affairs, and SACUA. The governing faculties of the schools and colleges must now modify their procedures to conform to the new system; they cannot be forced to do so. The Assembly should formally abolish SARC. It would be helpful to have informal (as SARC had) statements of how hearings are to proceed. Professor Livermore added that this system is intended to fully replace SARC. Professor Kaplan said that the Assembly would be giving up its role in the grievance process, so formal Assembly approval is needed.

Professor Lehmann noted that SARC often succeeded through informal mediation; he asked whether anything similar was envisaged in the new process. Professor Livermore said that the only analog he could see was the possibility of mediation by the chair of the hearing panel. He added that many units now have ombudsmen. Virginia Nordby said that many schools have unit representatives, as liaisons to SACUA; these positions could be continued.

Professor Lehmann suggested that, in the definition of grievable matters, "aspect of employment", be broadened to include civil liberties and academic freedom issues. Nordby said that some schools (e.g., medicine) have broader definitions, and this decision can be left to the school. However, the vice president does not want to be the court of last resort on questions of professional competence. Professor Livermore said that the task force intended to allow grievances about any issue other than professional competence and objections to publicly known rules.

Professor Warschausky asked why legal rules of evidence were not to apply to the hearings. Professor Livermore said that the task force did not want to require the presence of a lawyer. The procedure should be viewed as appropriate by faculty members. Professor Warschausky asked whether this could lead to legal problems later; Nordby said that administrative procedures, such as the grievance hearings, are only required to satisfy a "reasonable man" standard. Professor Warschausky said

that the procedure makes the Vice President for Academic Affairs the court of last resort, and he need not give a reasons for his decision.

Professor Cooper said that, as long as Regental Bylaw 5.08 is in effect, any administrator, even a low-echelon one, could reject a panel's decision. Nordby said that the bylaws delegate certain regental powers to the governing faculties and thence to the deans and executive committees; this is why the faculty panels can only be advisory. Professor Cooper said that, in the School of Music, there is the option of referring a grievance to the full faculty which, after obtaining a report from an investigating committee, makes a binding decision. He asked whether this option must be abolished. Professor Livermore said that it could be kept if made consistent with the new system (by having an outside chair for the hearing panel). Virginia Nordby said that such options, which lead to problems with politicization and with privacy rights, were adopted by some schools to avoid SARC but were never used. Professor Livermore added that any system that precludes an appeal to the vice president cannot stand.

Professor Hildebrandt said that, after the addendum covering research scientists is completed, the proposed grievance procedure will be brought back to the Assembly with a recommendation from SACUA.

FUTURE MEETINGS

Professor Hildebrandt called attention to the schedule of meetings of the Assembly for next year, which had been distributed with today's agenda. All meetings will be on the third Monday of the month, except the February, 1984, meeting will be on the 13th, not the 20th, because of winter recess.

SACUA REPLACEMENT

Professor Hildebrandt announced that SACUA had appointed Jean Loup, one of the unsuccessful candidates in the last SACUA election, to fill both the three-month vacancy on SACUA (April-June, 1983) created by the election of Professor Easley who had been serving as a replacement for Professor Brown and the nine-month vacancy (July, 1983-March, 1984) created by the resignation from SACUA of Professor Hollinger. As required, the appointment was being brought to the Assembly for approval. Professor Cooper moved that the appointment be approved. The motion was seconded by Professor Nagy and carried unanimously.

NEW BUSINESS

Professor Kaplan requested that SACUA investigate a report that the student infirmary is to be closed on 1 May and that students were not consulted about this decision. Professor Hildebrandt promised to do so.

ADJOURNMENT

The meeting was adjourned at 5:04 p.m.

Respectfully submitted,

Andreas Blass
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Senate Secretary