***Faculty Caucus Minutes***

***October 12, 2016***

***(Approved)***

***Call to Order:***

Senator Kalter: Hi everybody. Should we start again? Everybody ready? Good evening. You will see in front of you the very reason why we split the AFEGC policy into five parts last year. This means we don’t have to rush through it. We can take our time and we could stop half way through the night. I think we should start by putting a hard stop on this meeting. Anybody got any suggestions for when that should be?

(inaudible, too distant to hear)

Senator Kalter: (Laughter) Let’s see. Ten minutes. Nice, very good. Any other suggestions?

Senator Haugo: No, that’s good.

Senator Bantham: Sounds good.

Senator Hoelscher: I got something going there.

Senator Kalter: How about if we say 9:15, 9-9:15?

Senator Horst: Yes.

Senator Kalter: Is that good? Senator Dawson, is that what you’re going to say?

Senator Dawson: I was going to ask what was it last year?

Senator Kalter: Oh, we don’t want to do last year’s. That was 9:45. I think 9:15 is enough. If we have to go to 9:45, you know, my goodness. Yeah, ok, so great. Let’s do it until, somebody put their alarm on and let me know about five minutes beforehand. Alright so we’ve got, one of the reasons we’re bringing this to you again, as you may remember the Rules Committee has been involved in the process of revising AFEGC policy for like two or three years, and we, Senator Horst and I, talked about it and sort of decided, you know, they’ve done a lot of work and we have most of the recommendations, so why have Rules Committee spend a lot of time on it again? Let’s just sort of put a draft together and move it to the Caucus floor. So we’ve done so, some of this also is, just to let you know, some of the recommendations of Rules Committee are not on this draft, because as you may remember last year there were some things that needed further research and some of that is still in the legal office doing some of that research. Others are things that have come up through to the Senate’s Chair attention because whether he or she wants to or not the Senate Chair often learns about certain things that are happening on AFEGC. Even though it’s supposed to be an independent committee, sometimes you find out that processes were not working all that well. So there are a couple of items on here because of those kinds of things.

***Information Items:***

***10.05.16.01 Proposed changes to 3.3.8 main AFEGC policy***

Senator Kalter: So we’re going to start with the main policy 3.3.8, this is document number 10.05.16.01. And, you’ll see on the summary that I handed out that the main things here have to do with adding a half paragraph to clarify non-tenure-track rights. Just a note that things like post-tenure review and other types of ASPT issues are currently with the URC for consideration. There are some additions to the ASPT book that have happened over the years that I don’t think they ever considered in concert with AFEGC policy. And then there’s one addition to help clarify timelines for the laboratory school faculty associates in case they should have a grievance. Sam, did you have a comment to make? Sam Catanzaro, Assistant Provost for Academic Administration, or is it Assistant Vice President for Academic Administration?

Dr. Catanzaro: The latter

Senator Kalter: The latter. Terrific. Sam, you had a comment about the non-tenure-track addition which is under Authority in the third paragraph.

Dr. Catanzaro: Actually, I may not have been clear. My comment is on the selection of NTTs for the pools. So it’s a little later.

Senator Kalter: Oh, okay, sorry about that. Terrific.

Dr. Catanzaro: But since you invited me. This language we worked on together with HR and is a good step to clarify the relationship between what AFEGC might consider and what is governed by the collective bargaining agreement, which was unclear.

Senator Kalter: Yes, indeed. We discovered through the AFEGC Chair that there was sort of a, not a loop hole, but a…

Dr. Catanzaro: A gap.

Senator Kalter: A gap between the union contract and the AFEGC policy where it was completely unclear where non-tenure tracks were supposed to go if they had a Code of Ethics type of complaint. And so Legal Office, Sam, myself, HR and the union negotiator Mike Schultz, and the AFEGC Chair, and then the non-tenure track union in fact got together and said yes, we all agree that this should go through AFEGC. So that’s what that language is, to clarify that. So looking at the main policy, are there any comments or questions about either the Authority or Jurisdiction, Exemptions, Malicious Charges sections, or, I guess those are the only two sections there.

Senator Horst: My question has to do with Section II, the Jurisdiction, A.6. regarding non-reappointment. I realize the ASPT document says that they have five days to file a complaint. And I am just wondering if somebody in the Provost office can clarify, when somebody gets a non-reappointment letter, do they see in the letter this information?

Dr. Catanzaro: Yes.

Senator Horst: Ok, thank you.

Senator Kalter: Other comments, question, observations.

Senator Dawson: I’m a little fuzzy on this in terms of where this, it sounds like it is a committee to help with complaints and things like that, but where does this start and where does our contract pick up with our own grievance process that is in the negotiated contract?

Senator Kalter: Sam, why don’t you field that one.

Dr. Catanzaro: The contract governs grievances with management, if you will. So let us say a Department Chair violates the terms, or is alleged to have violated the terms, of the contract in assigning courses or assigning work. That would be governed by the contract. But let’s say an NTT, I am making up a possible violation of the Code of Ethics, overhears a colleague, be it an NTT or tenure-track faculty member, disparaging him or her to students. The person who is making those disparaging remarks, which would be inconsistent with our Code of Ethics, is not acting in a management capacity. The contract is sort of silent on what you would do about that. But I think it’s the spirit of our Code of Ethics that a member of our community, someone on our faculty would have some kind of recourse, and that would be the scenario we have in mind here. Would you add anything?

Senator Kalter: No.

Dr. Catanzaro: That is one example.

Senator Dawson: Where does the ombudsperson then fit in with that?

Dr. Catanzaro: First step in any possible AFEGC process is informal conciliation.

Senator Dawson: Okay.

Dr. Catanzaro: And that could be through referral to an ombudsperson or with the elected member of the AFEGC who’s been designated the… are we keeping that? The informal…

Senator Kalter: That is a question that has come up, but for now we’re keeping it. But it is a question that has come up, whether or not now that we have a three-person ombudsperson panel if we still should have a voluntary conciliator on AFEGC because it does somewhat muddy the mission and role of a judicial body between a conciliator and a determiner of the facts, so to speak. But we’re not, this year I don’t think we’re going to be debating that question. We’re going to sort of gather evidence about that.

Senator Dawson: Okay.

Senator Kalter: The only other thing I would add to what Sam says is that the first line of conciliation is direct person-to-person conciliation. So in the example that he gave, when your anger subsides, walking up or tapping that person on the shoulder or walking to their office and saying “can I talk to you about what I heard in the hallway the other day. Did I overhear it correctly?” In other words, that conciliation begins with the person taking responsibility for trying to resolve the conflict first on their own, and then with an ombudsperson or conciliator. Of course, that’s not always possible, but it’s ideal.

Senator Dawson: Thank you.

Senator Horst: I’m hesitant to ask this, but I’m going to. All of the ASPT document revisions we’re doing with suspensions. We had those conversations about the AFEGC and expanding the role of the AFEGC. Have we decided that we’re going to wait until that gets passed before we at all muck with the jurisdiction language here? Are we, have we rejected the idea of expanding the jurisdiction to include suspension hearings?

Senator Kalter: The URC invited me to their first meeting, and to sort of tell them what we were doing this year with the dismissal, suspension, sanctions policies, etc. And at that meeting I asked them to also compare ASPT policy with AFEGC policy in every place where it might matter. Whether it is in ASPT or not, whether it is in AFEGC or not, and to see how those reconcile with one another, specifically about ASPT policy but also to give recommendations about AFEGC. So when and if, and I think it’s really more about when the sanction, suspension, and dismissal policies come back to us, they will be coming back with recommendations about that. And so we can debate that then.

Senator Dawson: So we’re going to do them in tandem?

Senator Kalter: Yeah. We may not wait, in terms of these revisions for that. Especially for this first one with the non-tenure tracks, it would be best to put this into place as soon as possible since the current policy is really unclear about where non-tenure tracks go. But we will, once we get that sort of, take another look at AFEGC policy, and make sure they coincide with one another. Other comments or questions about the main policy?

Senator Dawson: I’m trying to think ahead to contract negotiations. Is there something that, or “phrase-ology” or whatever that we should be looking at implementing into our contract negotiations so that our contract is clear?

Senator Kalter: I would say absolutely. And I think Sam will agree with me on that. When we started looking at the contract, the actual language about ethics and academic freedom in the contract is antiquated, incorrect, unclear, and claims in the title to include ethics but in the body only talks about academic freedom. So yes, please. I think, and as a matter of fact I would recommend doing that as soon as possible, you know, working with Mike Schultz, and having the union take a look at that one part of the contract because it is extraordinarily unclear to at least the lay person looking at it from the outside. And I would imagine that is a problem.

Senator Dawson: Even to NTTs it can be confusing. For sure. Great. I will mention that to our local president, and others. Thank you.

Dr. Catanzaro: And as Senator Kalter indicated the ground work for that conversation has already been laid because there was a conversation with all parties just mentioned about this revision.

Senator Dawson: With the non-tenure track?

Dr. Catanzaro: With the NTTFA, yeah.

Senator Dawson: Okay. Thank you.

Dr. Catanzaro: You’re welcome.

Senator Kalter: Any further...

Senator Cox: My question is about the jurisdiction. On number four I see here “a complaint by a faculty member, an administrator, or body alleging that a faculty member or an administrator have violated the Code of Ethics.” This seems to be the only place where a faculty member has room to bring a charge or grievance against an administrator and would that be all AP? I’m not quite sure what an administrator is. So is an administrator anyone holding an AP status? For example, I’m just throwing this out here…

Senator Kalter: No. I would not define it that way. I would say that an administrator is the President, the Provost or vice presidents and their direct reports, and the deans and their direct, you know, deanlets, a chairperson. Chairpersons are defined both as faculty and as administrators. They sort of play that very difficult dual role. I don’t know if you would add anybody. Obviously, I don’t know if I said, the President and his direct reports such as the University Counsel, the Auditor General, whatever they call it here, the OEOA Director, those kinds of people. Would you add anybody else to that list, Sam?

Senator Horst: Aren’t they defined in the administrator policy?

Senator Kalter: Yeah, they are indeed…

Dr. Catanzaro: Yeah. Right, right.

Senator Cox: That was my general understanding of an administrator, but I’m wondering, I was trying to expand that in my head to include other AP status personnel. So is there room to bring, to make those people accountable to the Code of Ethics?

Senator Kalter: There is, but it’s a different process. I believe that for APs it would go through HR. And, really, for APs it should go first through themselves and then their direct supervisor and again trying to work out whatever the conflict might be. And then, because it has to do with the faculty it could potentially involve the ombudsperson, but then goes through an HR process.

Dr. Catanzaro: Yes.

Senator Cox: Is that correct? Okay. I understand.

Senator Kalter: Other questions about the main policy, Authority or Jurisdiction, etc. etc.?

Senator Dawson: I just have one more question. When we talk about NTTs who are not covered by the bargained agreement, and I recognize Milner and Mennonite as being non-tenure-track faculty not covered, we also have a large number of fee payers. They pay into the union, we collect dues from them because they benefit from what we do. Are those also to be considered NTTs covered?

Senator Kalter: Yes.

Dr. Catanzaro: Yes, they’re not members of the union, but the reason, the rationale behind fair share dues, fair share fees is that they benefit, their employment is governed by the parameters of the contract.

Senator Dawson: Okay.

Senator Kalter: You’ll notice that in the policy here we don’t call people unionized or non-unionized we call them negotiated or non-negotiated, which is an acknowledgement that not everybody who’s negotiated is actually in the union.

Senator Dawson: Sounds good. Thank you.

Senator Kalter: You’re welcome. Other questions about the main policy? Seeing none let’s move to 3.3.8A.

***10.05.16.02 Proposed changes to 3.3.8A AFEGC policy***

Senator Kalter: Let’s see. The rundown of this, just as an FYI, because we have not had staff for a while, we’re going to try to revise the flowchart, but that will come to us at a later date. One of the efforts here in number 6 under Chairperson’s duties is to try to make sure there’s continuity from Provost to Provost and from AFEGC to AFEGC. One of the questions there is whether there is a role for the Senate Chair or the Senate office. Either the Senate Chair or the Administrative Clerk of the Senate or both or neither. Also in this section we are talking about the addition of a full-time appointment requirement for service. And I think that was, in other words the idea that people serving on the AFEGC should be full-time rather than part-time faculty. Changing the election for the non-tenure-tracks from fall to spring, because even though you may or may not end up hired for the next year, we have enough status non-tenure-tracks to hedge against that. And, it makes it impossible for that person to meet with the AFEGC at their first meeting of the year. So if they can get elected in the spring it is much easier for that person to meet with the full committee the first time. The other two things, minimum non-negotiated semesters of service, in other words if you are in the non-negotiated non-tenure-track ranks, that you should have at least have eight consecutive semesters of service just like a status non-tenure track. In other words, trying to protect people as much as possible because you may or may not remember that AFEGC used to be only tenured members of the faculty. That is obviously because of the kind of work that they do, and you can really be in a position where somebody could retaliate against you. So we’re trying to make sure that we put people on who are in the most protected position. And then a hint at requirement for as-needed summer service. This is one of those things that has come up to the attention of the Senate Chair that sometimes people don’t realize when they’re on AFEGC that it’s kind of like being on a DFSC or a CFSC, that there may be urgency in a certain case that would require a modicum of summer service. We hope that usually doesn’t happen. It’s very rare, but we want to make sure people just don’t take the hiatus from May 16th to August 15th and then a really important case is left hanging. So that’s the rundown of the main things there. Sam, is this where you needed to make a comment?

Dr. Catanzaro: I did. One was a comment, or a question, and one was a suggestion. The question is, and I’ll preface the question with a comment, that I think the spring election provision is smart. Logistically it will work a lot better. I’m not sure but I wondered about the possibility of unintended consequences if someone gets elected and then perhaps there’s no course or courses for them to be offered, and so then their eligibility may be in question or it may be a little bit more complicated with them. So, I don’t know how frequently that might happen, and how bad that might be. Some people might not mind, some people might be very upset by that situation. And I wondered if you had had a chance to consult with any NTTs to get a sense on that. I’m guessing you probably did.

Senator Kalter: Actually, not in terms of that specific question. One of the things that I understand from Cynthia over the years is that there has never been a non-tenure-track member of this committee. Despite the fact that we hold elections every year, no volunteers have stepped forth. And that may have to do with that risk factor, it may also have to do with the fact that non-tenure-tracks usually do not have service in their portfolio of essential job duties. So what I would say, though, to your question is that changing the elections from fall to spring is better than keeping it at fall. Because what you would do, if for some reason that person who got elected fell below full time or simply wasn’t re-hired for that next semester, you’d hold the election in the fall just like you would with any other vacancy. So at least you would have the chance for them to be seated and be able to be at that first committee meeting. Without having it in the spring, you have no chance of that.

Dr. Catanzaro: Agreed.

Senator Kalter: So I have not actually talked to anybody partly because there’s no specific non-tenure-track with experience on the AFEGC to talk to about it.

Dr. Catanzaro: Understood. Thanks. And then, in the paragraph about the non-represented or non-negotiated representatives, at least those in theory, you are trying to parallel the language that is used for status, I believe?

Senator Kalter: Yes.

Dr. Catanzaro: Yes, and I think, I may be misreading it, but it looks like it reads that the requirement would be eight semesters of teaching with, out of nine consecutive semesters with one semester break. Whereas the requirement for status is eight semesters of teaching over eight academic years defined as fall and spring semesters. So that’s somebody who regularly teaches a class that is only offered in fall or in spring, can earn status by regularly teaching that on a regular schedule. So, really it’s just an editing thing to clarify that, if that’s your intention that it may be just to revise it to say something like “with breaks in service, never any longer than one semester” or something like that.

Senator Kalter: I could have sworn that we took that language straight out of the union contract. But, we can go back and check or if you, are you suggesting in other words that rather than saying “with no more than one one-semester break” just crossing out the one? Saying…

Dr. Catanzaro: Cross out the one, and make break plural. So somebody could have…

Senator Kalter: Teach every spring.

Dr. Catanzaro: Teach in spring, not in fall, teach in spring, not in fall. But if somebody does that for eight consecutive years and accumulates the eight semesters in that way, and they’re in the negotiated group, they earn status.

Senator Kalter: Got it. Great.

Dr. Catanzaro: And you know we can connect later on the exact language if that would be helpful.

Senator Kalter: Yeah, and maybe with Marie too, to sort of work that. And maybe also with Kathleen and Mary. Because this is really about the Nursing non-tenure tracks and the Library non-tenure tracks. So it’s not just teaching because the Library non-tenure tracks would essentially be doing librarianship and service as well, Kathleen?

Senator Lonbom: The question I had was that our NTTs are twelve month appointments, so I was unclear what eight consecutive, is the summer counted as a semester?

Dr. Catanzaro: The summer doesn’t count either for or against status for the representative.

Senator Lonbom: Okay.

Senator Kalter: So should that then be worded slightly differently? With at least…

Dr. Catanzaro: That’s a good point.

Senator Kalter: So clarify somehow that that is fall/spring semesters. Okay. Any other comments, questions… any observations about proposed changes to 3.3.8A?

Senator Nichols: Just a quick clarification about section B, the bolded list of members who cannot be eligible to serve. Either someplace else in this document or if there is a separate document that would take precedence, is there a definition of Department Chairperson that would automatically always include School Directors? Because under the bolded list the first sentence, we do the departments/school statement, but up above it only exempts chairpersons of departments, not school directors.

Senator Kalter: That is an easy addition. I think we should put “/School Directors.” That would absolutely clarify it. Thank you Senator Nichols. Any other observations?

Provost Krejci: Can I just ask if it is assumed when you say “College Deans” that it includes assistant and associate deans as well?

Senator Kalter: That’s a very interesting question.

Provost Krejci: I’m just trying to read it, and to see who is included. I don’t have a recommendation; it is just to clarify.

Senator Haugo: I think clarity is always good, and given that many faculty become associate deans, I think maybe it should read something like College Deans and staff.

Senator Kalter: Yeah, I think, you know, so right now we have Senate rules allowing associate deans to sit on the Senate, but for this particular committee, totally and utterly inadvisable.

Senator Haugo: Right.

Senator Kalter: I would say to have anybody with a close connection to a piece of the administration, in that way, so I would agree that, but then the question is how best to word that? So you would say “College Deans and their staff?”

Senator Haugo: I don’t know. “And staff?” Do we want to spell out “Associate and Assistant Deans?”

Senator Kalter: And is there anybody else who we would miss if we said “College Deans, Associate Deans, Assistant Deans”? Are there any other faculty direct reports to Deans that we would miss in there?

Provost Krejci: So there are all kinds of different titles across campuses, and sometimes they’re called directors. There’s just a variety of titles out there, and quite frankly there are associate deans who are more faculty than not, you know associate deans for research sometimes are. So I just think for clarification it would be helpful to identify who you mean, because it could be questioned.

Senator Kalter: And I just wrote down “and their staff.” Would that be not clear enough? So “College Deans and their staff.” Of course, using that word staff also mixes things up.

Senator Haugo: I’m just wondering if that is more clear than deanlets. (laughter) Or if… Sorry, Sam.

Senator Gizzi: I like that term. I’m using it from now on.

Senator Haugo: Yeah.

Senator Kalter: Is that the first time you have heard that term?

Senator Gizzi: That’s the first time I have heard that.

Senator Haugo: I had not heard it either, so.

Senator Kalter: I grew up, my father was a faculty member so I think I have heard that term all my life actually. So okay, so we’ll work out language that will clarify that. Thank you for bringing that up, Senator Krejci. Are there other observations about this one?

Senator Horst: Assistant Directors?

Senator Kalter: Ah, in other words, associate chairs and assistant directors, that type of thing?

Senator Horst: Would they be allowed on?

Senator Kalter: Okay, so one of the things that we should clarify here is that, remembering that nobody ever serves on a case from their own department. But, Senator Horst I think you are also suggesting that even being an associate director or an associate chair or an assistant chair might put you in that connection to administration?

Senator Hoelscher: So I have heard the word director multiple times now. I teach six hours a semester, and I’m a director. So this is going to muddy the waters, and I don’t have an answer, but am I faculty? I certainly don’t fit the same mold as, say, the Director of the School of Technology, but at the same time I wear that title so we’re going to have to be, we’re threading a needle here. We’re going to have to be careful.

Senator Kalter: Many of the interdisciplinary program directors are called directors also.

Provost Krejci: I couldn’t find, Senator Horst, the description of administrators in the policy. I was checking, but this just comes to the decentralized nature. We also have titles called coordinators but they’re really full time administrators. If you found a description of administrator it seems like the sense here is administrators cannot serve. And I just don’t know if you found, Senator Horst, a good description of administrators. I couldn’t find a definition in that policy I thought it was in.

Senator Horst: Oh no, it just went through who it was that that applied to.

Senator Cox: Won’t those deanlets and other administrative personnel be covered under administrative personnel below that line?

Senator Kalter: If they are in fact AP or Civil Service, but if they are tenured faculty, possibly not. Are you talking about, Senator Krejci, coordinators who are also faculty?

Provost Krejci: And some of them could be NTTs quite frankly.

Senator Cox: So I wonder if we could define more closely the administrative personnel in terms of their faculty status. That are NTTs, tenure track, I don’t know. I wonder if that’s a line, rather worrying about the College Dean and adding other titles if administrative personnel can be a catch all for those oddballs.

Senator Kalter: In other words, we could put something next to administrative personnel like parentheses, e.g., Associate Deans, Associate Chairs, Faculty Administrative Coordinators, or something like that.

Senator Horst: I just wanted to remind this body that we had a search for maybe the president three or four years ago, and there was in a policy it said that there was a faculty position and we had a big debate because an associate dean got one of those positions. So I think this discussion is really worthy because there was a lot of confusion with these lines that seem to be going to faculty. Well, who was it eligible for? So it’s good for us to take some time to consider that.

Senator Kalter: Certainly. And you are also referring there to a Panel of Ten, you know, in other words, the Administrator Selection policy. So the Panel of Ten rules are slightly different than Senate seating rules or what have you. So all of these rules go into different, they’ve come out of different histories.

Senator Horst: Right.

Senator Kalter: Yeah, thank you. I kind of like Senator Cox’s suggestion that rather than trying to crowd College Deans and Department Chairpersons/School Directors with their deanlets and chairlets—that’s a new one—that we put that down under administrative personnel. That might be the best way to put it, and just put it as an e.g. That way, I mean all these people get elected by the Faculty Caucus anyway so we would as a body be able to say, this person is the associate chair of their department, perhaps we shouldn’t have them on the list. Anything else about 3.3.8A?

***10.05.16.03 Proposed changes to 3.3.8B AFEGC policy***

Senator Kalter: Let’s go then to B. Let’s see. Here are the main changes. Something to comment on that we’re actually probably not going to be able to do this year. When I met with the AFEGC to run down the changes we had made last year to the AFEGC policy, they said, you know, the timelines that you guys are putting into this policy are completely and utterly unrealistic. We cannot do every single thing that you asked us to do in five days from the day that we receive XYZ. So there’s a comment SK1 there about that, that AFEGC has requested that the Caucus create realistic deadlines for hearing panels and chair duties, that we will need to talk about whether the timing of such changes needs to be decoupled from the current policy revision, but also that there needs to be a balance, a happier medium between the complainant and respondent needing to have an expeditious process, and the committee needing a realistic process. So that seems like something that we could do this year or we could wait. But it is apparently causing a lot of headaches because the AFEGC Chair is essentially constantly having to extend deadlines, and that is not good. The second thing there is just clarifying that on any referral cases the department members that sit on the AFEGC would have to recuse themselves from the full meeting of the AFEGC to decide whether there’s a hearing that’s needed. Same thing for Executive Committee members. If there is an appeal that anybody in the same department on the Executive Committee would have to step off and the same thing for the Faculty Caucus. So this policy was created so that department members are never listening to cases and unfortunately when the policy was created they didn’t take that through all of the final steps. They only took it through the hearing panels and the appeals panels, but not when it gets appealed to the Caucus and through the Executive Committee. Then also very small changes correcting it from Affirmative Action Officer to OEOA Office. Anybody see anything that we should discuss in 3.3.8B?

Senator Blum: What is a reasonable timeframe?

Senator Kalter: They didn’t say. My sense is that pretty much everywhere we say five days it should be ten. In other words, they, we have to remember that these are, we are all very busy people. We get something in our inbox, whether that’s email or physical inbox, and that for example I think it’s relatively reasonable that when the AFEGC Chair gets notice of a complaint, that’s probably five days, right? Just acknowledging, thank you, I got your complaint. Those kinds of things can be five days, but I think other things, and I don’t remember all of the cases, but where they have to do, the Committee is working, and much of this is in 3.3.8D, where the Committee is in the middle of its work and having to shuffle things around. Having to receive information from the complainant and then send that to the respondent and then have the respondent send their information. One problem obviously, like I said, is expedition. You want the case to be done as soon as it’s brought up. Nobody in these kinds of cases wants them to drag on. On the other hand, getting something on a Friday, let’s even say on a Monday and having to deal with it by the next Monday, if it’s something big, that’s a little rapid. Especially if you were away at a conference when it happened or that kind of thing. But no, they did not give specific guidance on that.

Senator Horst: To extend that conversation, I think it’s just ludicrous that somebody who got non-reappointed would have five days to figure out whether or not they think there’s an AFEGC policy complaint there, and whoever was on the URC didn’t think that was an unrealistic timeline. If we could persuade them next time to give somebody in that situation a little bit more time to contemplate that.

Senator Kalter: I couldn’t agree with you more. I believe I brought it up last year when we were doing ASPT revisions and the answer apparently was no on that one. The URC did not recommend and we ended up voted for the five days, but I agree. I think ten days would be reasonable for a non-reappointment. It’s not that long. It gives potentially a person who’s only been here six months or three months a chance to figure out all of our policies. So I couldn’t agree with you more. Unfortunately, that is dictated by ASPT policy not by AFEGC policy. So that’s not part of our purview here right now. Any other comments, observations about 3.3.8B?

***10.05.16.04 Proposed changes to 3.3.8C AFEGC policy***

Senator Kalter: Alright, let’s move on to 3.3.8C. The only addition here is basically saying if you serve as a voluntary conciliator, you cannot either appoint a hearing panel or appeals panel or serve on one unless everybody agrees to that. So this is one of those issues that just got brought up about, do we still need voluntary conciliators if we have got ombudspersons? But sometimes what happens is if somebody has been involved in trying to mediate or conciliate between two parties, then some party might decide you took sides with that other person in the dispute. Then you don’t want that person either being the chairperson of the AFEGC who appoints your hearing panel or being a person sitting on the hearing panel. Because you already know the case and you have formed some opinion about it or at least you’re perceived as having formed some opinion about it. So we are suggesting to insert something that says only if everybody thinks that that person can be fair on a hearing panel should they either appoint or serve on one. Any other comments about that one?

Senator Day: Seems reasonable.

***10.05.16.05 Proposed changes to 3.3.8D AFEGC policy***

Senator Kalter: Alright, let’s move on quickly to 3.3.8D because this is the long one. This is the one we did not have time for last year. And a lot of this is sort of rearranging so instead of doing the principles twice, just having a section where the principles applicable to all hearings are in the same place. Also here is the addition of a college caution, in other words, when possible, especially for small colleges, trying to avoid people from the same college being put on a hearing panel or an appeals panel. That’s not always possible, but if possible to try to avoid that because often in the three-department or four-department or one-department colleges, I mean it wouldn’t happen in the one-department colleges because they’re already excluded, but everybody knows one another. And you can often, you know it’s almost the same thing as being from the same department. So that’s a caution but not a rule. The addition of legal counsel clauses, in other words clarifying that your technical or informal advisor may be legal counsel, I think that’s in, when you go to, under Hearings, under A, there are some things that we are adding to where the complainant is asked to give certain materials that are documenting the basis of the complaint. So right now we have a written position statement and any documentation, and what we’ve added is a list of proposed witnesses if relevant and notification of intent to bring a technical or informal advisor. And that in rare circumstances that might be an attorney. And notifying the name of that advisor. This is to, that part is to eliminate the surprises. So if you are bringing an advisor who is somebody else in your own department, and the other person who is the party to the complaint is also in your own department that you don’t walk in and suddenly realize, oh wow, these people have been called as witnesses, or these people have been called as advisors, and suddenly it becomes a different kind of situation. Just to make that clear. There’s a little bit of debate right now about… once the panels come to a decision they write a report, and currently that is worded as that they should say certain things, should, the written report, it says right now “the written report shall include a summary of finding of facts, a summary of the rationale for reaching the conclusion or holding a further hearing, or a recommendation of action to the provost unless a further hearing has been recommended.” Should “the written report shall include…” be changed to “shall be limited to…”? What I understand from the current AFEGC Chair is that he would recommend against limiting because there are so many different kinds of cases that you may need to have more than just the summary of the finding of facts, the summary of the rationale, etc. Senator Horst was the one who suggested “shall be limited to…” and maybe Senator Horst if you could articulate what your concern was there.

Senator Horst: Sure, my concern was that somebody might include inappropriate lines of reasoning. You know, maybe they would start quoting some Shakespeare or the Bible or something, and that would be grounds for taking away the work of the committee and making it an appealable report basically. So just to give them clear guidelines so that they don’t open up the report for being contested.

Senator Kalter: Thank you.

Senator Horst: But I totally respect what the current AFEGC Chair states. And so that’s, we talked about doing research to find out whether or not it was a good idea.

Senator Kalter: He was also going to check with his members who have been hearing panel or appeals panel chairpersons to find out what they, and just members, to find out what they think about that question. The other couple of things we did there, who gets the written reports and why. So it’s been somewhat unclear what the rationales were. And you’ll notice that we’re essentially proposing to change it so that the Provost and the Chairperson of the Academic Senate get most of the reports, but if it was a referral from an ASPT Committee, the CFSC or the FRC is the one who receives the report, and obviously that would then go through the Provost as well. The idea there, the concept there being to notify somebody in the shared governance system or a body in the shared governance system and to notify the Provost who pretty much always gets, is the end person in these cases. And then the final thing is limiting the powers of the Executive Committee or not. The question there in other words is right now in the appeals process you have a hearing panel, you have an appeals panel if the person wants to appeal or if the respondent wants to appeal, and then after that appeals panel hears the case, somebody can appeal to the Executive Committee of the Academic Senate. Just the faculty members obviously, and then the faculty members of the Executive Committee have to decide whether to send that appeal to this full body or send it up to the Provost directly without going to the Caucus. The question there is if they decide to send it directly to the Provost, should the Executive Committee be able to make comments. For example, if they observe that there was a procedural mish-mash or procedural problem, can they call the Provost’s attention to that or should they remain silent? Even if they know that something wasn’t caught. You know, there’s all kinds of different cases where the Executive Committee might want to make comment, or some people might want to make comment. So we wanted to make sure we put clarity there, and there are very good reasons for that and very good reasons against that. That one is one of the toughest decisions we have to make is whether to limit the ability of the Executive Committee to comment or not. So that’s the introduction to what is being changed in 3.3.8D, let’s open it up for comments.

Senator Cox: My expressed concern earlier may be within the committee about the case in which the Executive Committee would decide whether or not to pass along the issue or the case to the full body of the Caucus or not. And I wonder if there is some clarity about what kind of cases? Is there any wording that ought to be included about, to give us more transparency into the decision making process of the Executive Committee and forwarding on their decision to the Provost or to send it to Caucus?

Senator Kalter: Currently, no. In other words, if there were we would have to write it.

Senator Cox: Is there an understanding, some institutional understanding as to what that might be?

Senator Kalter: Currently, no.

Senator Cox: Is there a need, or am I just, perhaps stretching the limits of our review too much?

Senator Kalter: I’m not sure how to answer that question. First of all, I will just say, this is quite rare. It’s quite rare. However… Well, I won’t say however, but there are two sides to this. One is that, what Alberto Delgado who is the current AFEGC Chairperson said, every case is different, and so in that way maybe you don’t want a rule because that rule you wrote because of one case that came through may end up restricting you in ways that are really bad for the next case that comes through. On the other hand, because the cases are so rare, there’s really no institutional memory except from chair of Senate to chair of Senate or Executive Committee members to Executive Committee members, that gives any guidance whatsoever, even about why this was written in this way. And that is not necessarily a good thing. Further comments? I don’t know if, Senator Cox, do you want to suggest one way or the other?

Senator Cox: I just don’t find a resolution to my curiosity here, that’s all. And I do see a need, even though the cases are few and far between, of some consistency in decision making. And if it’s not in the policy, and it’s not in the institutional memory. I see perhaps one case, even though they are all a little different, one case being handled significantly different, and perhaps the issue of fairness can arise.

Senator Kalter: In many ways I think we deal with that every single day in our DFSCs and CFSCs, because even though there’s a lot more institutional memory there they can make very different decisions about essentially the same cases from year to year.

Senator Day: How rare is rare.

Senator Kalter: Once every ten years or more.

Senator Cox: Wow. Maybe I shouldn’t be so concerned.

Senator Day: (inaudible)

Senator Kalter: It’s quite rare. I think probably because once the person has been through the ringer of a three-person hearing panel, a five-person appeals panel, there are very few people who want to put themselves in for the possibility of a thirty-person caucus. But, one of the things we have to remember, even though it has, knock wood, we haven’t had this here, but we could have a national case. We could have one of those cases that makes the national news where somebody is, you know somebody’s academic freedom or something is violated or whatever, and in those cases we probably would be a line of appeal as a Caucus. So we make the final recommendation to the Provost and the President about the disposition of that case. And I think that is important because even though it’s unusual to mix judicial structures with legislative structures it’s kind of a good thing that a big representative body is potentially there as the final road of appeal. Most people don’t make it to the Faculty Caucus stage because they are like, I don’t want anybody else knowing about what’s going on at all, and I just don’t want to go through another step. So it’s very unusual for that reason.

Senator Cox: Maybe that’s an argument then to allow the Executive Committee to send the case to the Provost with comments and perhaps explain why the case was not passed on.

Senator Kalter: That’s actually a really interesting point, Senator Cox. That there even could be sort of semi-legal reason for being able to comment that might be in order. That if somebody is being denied tenure, for example, and they had appealed to the Executive Committee and the Executive Committee decided not to pass it on, they might, it might be a good idea for them to be able to explain to the Provost why didn’t we pass it on.

Senator Horst: Yeah, I mean it just makes sense to me that the Executive Committee can comment because the Senate Chair has been tied in with the history and precedents all along in this policy. Right? They’re learning about the whole process and they’re tied into the decision making. So it makes sense at the very end when they decide what to do that they could comment, because the Chair’s been all along in this policy, involved in that.

Senator Kalter: So that’s two votes for allowing them to make comments. Anybody else have any opinions about that one?

Senator Cox: I just might add, I don’t want to speak for our current Provost or any other Provost; but from that position I would welcome, I think, comments. I think that would be very helpful in me making the final decision to have some feedback from the Executive Committee.

Senator Kalter: Presumably the Chairperson of the Senate would give that verbally, but the Chairperson of the Senate does not necessarily represent the views of the Executive Committee. They might have been in the minority, and so that is another argument in favor of comments, is that you want to make sure that your voice as a committee member of the Executive Committee was represented accurately rather than verbally. So you see what’s going to that person. Now that doesn’t mean the Chairperson isn’t also going to give their weigh in, but it does sort of help to guarantee that at least your voice on the committee was heard. Anything else about D? Let me just go back and ask a question: Does it make sense to everybody for the written reports that essentially usually either an ASPT Committee if it’s a referral would get the final report; if not, that it would go to both the Provost and the Senate Chair? I think one of the things we’re trying to do there is make sure that there is continuity because sometimes there isn’t continuity between AFEGCs and that it would also help this body to make better policy if the Chairperson of the Senate has an idea of what kinds of things are happening and if there are patterns that could be fixed by policy so that we have fewer disputes, essentially.

Are we about to make it before our time? It’s 9:02. Any other comments?

***Adjournment***

**Motion:** By Senator Dawson, seconded by Senator Gizzi, co-seconded by Senator Hoelscher to adjourn. The motion was unanimously approved.