

ACADEMIC SENATE
FACULTY CAUCUS MINUTES
February 23, 2005
(Approved)

Call to Order

Chairperson Crothers called the caucus to order immediately following the Senate meeting.

Approval of Faculty Caucus Minutes of 1/26/05

Motion: By Senator Hammel, seconded by Senator Adams, to approve the Faculty Caucus Minutes of January 26, 2005.

Senator Holland: I was attributed to saying a number of things at the last caucus and I was in New York.

Senator Hammel: I just gave Cynthia those corrections. It was actually Dan Hammel instead of Dan Holland.

The minutes, as amended, were unanimously approved.

ASPT Post Tenure Review

Senator Crothers: I have had any number of communications regarding our discussion about the timeline for the ASPT and the FRC and URC, etc. The URC has apparently sent out a memo indicating the changed timeline with the changed dates. That is appropriate and, on the other hand, it is also awkward because we are acknowledging changes that exist without actually having made them. I can only tell you that my guess is that this year I think we are trying to provide guidance for URC, who will make these changes, and then come to the caucus with them. It is probably better to think about that language in these terms. If somebody were to go through the process, the DFSC supported them, the CFSC supported them, and the Provost made a counter-recommendation, under the current rules as they are written down, they have the right the appeal to the FRC. The Provost won't tell the FRC anything so therefore they won't have any basis for the appeal, but it structurally exists. It is at least possible to imagine that situation occurring. Hopefully, by early next year, we will have clarified all of this in the rules so that the next class of candidates will not have any of this kind of confusion or worry.

Senator Reid: The proposal would be to have the FRC receive appeals after the CFSC then?

Senator Crothers: Correct and I had a conversation with the Chair of FRC today and one idea that came out was what if you allowed the FRC to meet. Let's assume that the DFSC and the CFSC are split or the DFSC and the CFSC agree, but the Provost disagrees. You might allow the FRC to meet, not call it an appeal, just an additional review, to provide additional information to the President. It can't be an appeal because you don't have any information as a basis of the appeal. It might be appropriate, however, to say, yes, that those final recommendations to the President are a good idea. The only other thing that I don't think we talked about is that those changes also imply a change in the timeline because the college processes have to be done by March 1. That suggests that your appeal now is due by March 8, where under the old system, it wouldn't be due until April 1.

Senator Reid: Are you saying that an appeal to the CFSC will start this spring?

Senator Crothers: The process that we talked about a couple of weeks ago is, I believe, what the Provost hopes we can use this year. The appeal would come after the CFSC and before the Provost's recommendation.

Senator Reid: And he wants to use it this year?

Senator Crothers: Correct, because there is no appeal if the Provost does not provide any information to the FRC.

Senator Reid: Unless they do what you have just said—unless they do a parallel review?

Senator Crothers: That is my guess in thinking through the permutations.

Senator Borg: That may or may not be a good idea, but I would suggest that we not entertain any notion that that is what we are endorsing *right now*. That is for the URC to discuss and then bring to the caucus. We are confusing the *possibilities* with the very real problem that we have of a confused timeline.

Senator Devinatz: In terms of this appeal, it is not like the appeal overturns an earlier decision, but it is just another layer of the information that finally goes to the President.

Senator Crothers: I think that the bulk of the problem is that the language is unclear because it uses the language of review in some cases and appeal in others. An appeal is meaningful in the actively overturning sense, whereas a review is not. The other permutation of this, which is something that URC will consider and come to us with, is there is a general agreement that if there is a minority report from a DFSC and a CFSC, that that is not appealable; you don't get to appeal if you win. The question is what happens if there is a separate report from a dean or chair that is negative—is that appealable? In the current guidelines, it is not clear and that is one of those questions that we will have to discuss after URC discusses it in the near future.

Senator Jerich: For a point of clarification, this is because of the legal counsel's opinion? Has the Board of Trustees accepted that opinion?

Senator Crothers: I don't know the answer; I can only tell you that the Board does what its legal counsel recommends. If the Board did not like that opinion, they could get another one; my guess is that they are not going to.

Senator Jerich: Would it be worthwhile to entertain that if we feel strongly about that?

Senator Crothers: I don't see a foundation on which we can because the Provost is going to follow what his bosses tell him to follow. We would have to persuade the BOT to pursue a different opinion or get a labor judge to say that the ruling is inadequate.

Senator Borg: The Board of Trustees has vested the legal responsibility for those decisions in the person of the President.

Senator Seelinger: I guess I am unclear. It says in this memo from URC that at its January 26, 2005 meeting, the Faculty Caucus of the Academic Senate considered this finding and approved the process suggested, as well as the following changes to the ASPT appeal timelines and gives March 8 as the date prior to which a

candidate wishing to review a negative recommendation by a DFSC, SFSC/CFSC must file a request for review with the FRC.

Senator Crothers: I believe that this new timeline is the one that we would like to use. I don't recall if we talked about the timeline question here.

Senator Borg: We talked about the fact that it needed to be adjusted to accommodate this sequence of events. We did not approve or disapprove a date. We charged the people to come up with something that was appropriate temporarily for this spring.

Senator Crothers: I think that that is a very fair assessment and that is where I thought the memo might be a little stronger than I wished. That said, this is only going to be an issue if you have the Provost making decisions that run counter to DFSCs and CFSCs. We can hope that that doesn't happen this year. My concern is that if we tried to enforce the March 8th deadline, someone who started last October would say that 'you are going to lose in court'.

Senator Seelinger: You proposed sort of an alternate role for the FRC in not doing a formal appeal, but providing information?

Senator Crothers: That was just a conversation that I had today.

Senator Seelinger: Has that been discussed by the caucus?

Senator Borg: No, that has nothing to do with this spring's process.

Senator Hammel: I am not trying to speak for the Provost, but he did seem to make it clear at our last meeting that what was in the ASPT might be viewed as a contract, but it is not. So, it struck me that he thought he could change the dates with our approval.

Senator Crothers: And his final point was that that is where the great virtue of this clarification is. He says that they administer and that they manage and if we, as faculty, have a problem, then we should go to court. That is his contention, but the Provost is not a lawyer and neither am I. We don't know.

Senator Hammel: If I recall correctly, this policy was set up the way it was because a previous Provost was regarded as being somewhat arbitrary. What is the problem with appealing on those grounds?

Senator Crothers: The problem is that in order for it to be an appeal, there has to be an empirical foundation on which to appeal. The Provost is legally constrained from providing the reasons for his recommendation.

Senator Holland: We could still just make that assumption and have the FRC look at the merits.

The issue will return to the Faculty Caucus for further discussion at a later date.

Confirmation of Council for Teacher Education Faculty Representative Appointment

The appointment by the Provost of Diana Jones, KNR, to serve on the Council for Teacher Education was unanimously confirmed by the Faculty Caucus. Her term of service is 2005-2008.

Adjournment

