

Minutes for Notre Dame Faculty Senate Meeting
October 7, 2014, 7:00pm

Attendees: Gail Bederman, Karen Buranskas, Christopher Chowrimootoo, Xavier Creary, Matthew Devine, Liz Dube, John Duffy, David Galvin, John Gaski, David Gasperetti, Liangyan Ge, Nasir Ghiaseddin, Alexandra Guisinger, Michael Hemler, Michael Kirsch, BJ Lee, Hai Lin, Linda Major, Adam Martin, Paul McDowell, Paul McGinn, Hildegund Muller, Walter Nicgorski, John Polhamus, Sylwia Ptasinska, Jeanne Romero-Severson, Christopher Shields, Joshua ShROUT, John Stamper, Marsha Stevenson, Joe Urbany, Sandra Vera-Munoz, Meng Wang, Kyle Watson, Richard Williams

Excused: Matthew Capdevielle, Mark Caprio, Sophie White

Absent: George Howard, Donald Kommers,

Meeting opened at 7:00pm in DeBartolo Room 140

1. Opening Prayer
2. Introductions
3. Minutes of the September 2, 2014, meeting were approved with minor corrections
4. Chair's Remarks (Paul McGinn)
 - a. 403(b) Transition

The Chair and Nasir Ghiaseddin (Benefits Committee) met with EVP John Affleck-Graves (JAG) and VP of HR Robert McQuade to ask questions regarding the 403(b) transition. JAG informed the Chair that Faculty Senate representatives are not allowed on the 403(b) investment committee (because of concerns that it could create fiduciary responsibilities). The Chair and Nasir were allowed to view a summary of the investment committee's minutes (not the actual minutes), but were not allowed to keep the summary.

- b. Academic and Faculty Affairs Committee of the Board of Trustees

The Chair met with the Academic and Faculty Affairs Committee of the Board of Trustees and raised the following issues:

- i. The lack of a Faculty Senate representative on the 403(b) investment committee
 - ii. The possibility of the Faculty Senate having a representative on the University's budget working group. JAG has not yet responded to the Chair regarding this request. The Chair will follow up.
 - iii. Concerns regarding the proposed criminal background checks for new faculty hires

- iv. Concerns raised by Walt Nicgorski regarding the lack of Faculty Senate input on the Campus Crossroads project. JAG will attend the November Faculty Senate meeting to discuss this issue and issues regarding budgeting.

5. Proposed Background Checks for New Faculty Hires

VP & Assoc. Provost for Faculty Affairs, Prof. Dan Myers attended the meeting to summarize the proposal that would require felony and sex offender background checks for new faculty hires, and to answer questions. Prior to the meeting, a number of Senate representatives had forwarded questions/concerns to Prof. Myers.

a. Slide Presentation

Prof. Myers went through a slide presentation summarizing background considerations, peer school policies, and key elements of the proposed policy. A copy of his slides are attached to these minutes.

In discussing the slides, Prof. Myers addressed several concerns that had been raised prior to the meeting.

- i. Regarding the potential for discrimination, he agreed that ND does not want to replicate biases that may exist in the criminal justice system. However, he noted that ND needs to be convinced that a person who has committed a prior felony that may be relevant to their potential position at ND (e.g., embezzlement) has been rehabilitated and that a similar problem won't arise here.
- ii. With respect to concerns that had been raised regarding potential competitive disadvantage in the hiring process, Prof. Myers provided details regarding background-check policies at AAU private schools, the "top 20" Catholic schools, and the Colonial Group. He noted the "definite trend" toward these policies and asserted that within a year there might not be any colleges that don't implement a similar policy. He stated that the proposed checks will not significantly slow down the hiring process (at least in the domestic context), given that the criminal background check usually takes only 3 days in the domestic context. He acknowledged that it is tougher to predict the timing of the checks in the international context (the vendor states that it typically takes 30-90 days for the background checks in the international context, at least with respect to those countries for which background checks are available). Prof. Myers stated that ND will monitor the process (particularly in the international context) to ensure that the timing is not creating significant problems.
- iii. Regarding privacy concerns, Prof. Myers noted that the felony and sex offender data are public records (although he acknowledged that it

often might be difficult for an individual to find these records). The data is maintained in a database by the private vendor, and ND is notified only if there is a “hit” pursuant to the criteria specified in the proposed policy.

- iv. Regarding the 2004 report, *Verification and Trust: Background Investigations Preceding Faculty Appointment*, by the American Association of University Professors, Prof. Myers suggested that the proposed policy complies with the AAUP report’s recommendations. In particular, as summarized in his slides, he asserted that the proposed policy is consistent with the scope and procedural concerns raised by the report. In addition, he noted that the AAUP report does not adequately address the costs to potential victims if a problem arises after a person is hired without an adequate background check.
- v. Prof. Myers stated that the University is more than happy to consider changes to the proposed policy. Among the changes under consideration are:
 - a. Specific language about avoiding replication of structural discrimination.
 - b. Clarify the offenses that are relevant (e.g., sexual offenses; violent offenses; offenses involving financial crimes, such as embezzlement). Prof. Myers expressed his opinion that it would be useful to clarify this.
 - c. Allow the applicant to invoke the review process (Prof. Myers said he needs to think further about this, as it might raise problems, particularly if the hiring unit decides that it no longer wants to hire the applicant).
 - d. Allow the applicant to start working while the check is being completed (Prof. Myers noted that this change will probably not be made, given the numerous problems it might generate).
 - e. Add language clarifying that “political persuasion” and “intellectual viewpoint” will not be factors that would prevent hiring (Prof. Myers suggested that this would be a reasonable change).

b. Questions & Answers

Following his presentation, Prof. Myers took questions from Faculty Senate representatives. The following summarizes the principal questions and Prof. Myers’s answers:

Question: Regarding the process, if there is a “hit”, who asks the candidate for an explanation?

Prof. Myers: The vendor asks the candidate if the candidate would like to provide an explanation. The vendor then sends the relevant

information (including the applicant's response, if any) to the Provost's Office.

Question: Will criminal background checks be done on students, given that sexual assault allegations often involve students?

Prof. Myers: The committee especially considered whether to have background checks for graduate students, but decided not to address that now; it might be considered in the future. Graduate students are asked about past convictions on their application; we don't verify the answers, but students could be disciplined if they are later determined to have not told the truth.

Question: The proposed procedures seem to place too much trust in the deans/unit heads – in particular, faculty could only get involved in supporting the candidate if the dean was willing to call for a review.

Prof. Myers: This is a good point that should be considered further.

Question: The Kellogg Institute, Kroc Institute, and other units rely on visitors from abroad, many of whom often come for relatively short periods (e.g., 3 months). Will the proposal interfere with their ability to bring people here?

Prof. Myers: This raises the question of how long of a stay should trigger the background check. Prof. Myers's initial thoughts are that a semester-long visit seems like an appropriate trigger, but he will have additional talks with the Kellogg Institute and other relevant units to determine their needs.

Question: Are there concerns about a department knowing an offer was extended and then wondering why a person didn't come to ND?

Prof. Myers: We're willing to consider language in the proposal regarding this.

Question: What eventually happens to the report when there is a "hit"?

Prof. Myers: If the person is hired, it will go into their confidential personnel file. If the person is not hired, the report will be destroyed. A follow-up question asked whether, instead of putting the report into a hired person's personnel file, an annotation could be made in the file stating that "an issue was identified, we looked at it, and determined it was ok". Prof. Myers responded that this might be a reasonable alternative and he will look into it.

Question: Does the proposed policy apply to various categories such as undergraduates, post-docs, and contract employees?

Prof. Myers: It does not apply to "post-docs", who are not considered hires. Background checks will apply (indeed they already apply) to undergraduates to the extent they are hired to work in special areas (e.g., working with children). Prof. Myers is not sure how the proposal will apply to contract employees.

Question: Will this proposal actually lower the risks to the University community? After all, Penn State's Jerry Sandusky would have passed a felony and sex offender database background check.

Prof. Myers: Although we can never get the risk down to zero, that doesn't mean that we shouldn't make efforts to reduce the risk.

Question: There are many other things the University could do to lower risks for students and faculty on campus. Isn't this proposal merely about legal liability protection for the university, rather than a genuine effort to protect the University community?

Prof. Myers: I agree that there may be other things that the University can do to make the campus safer, and we should continue to work on them. However, those efforts don't need to be to the exclusion of this proposal. Even if this proposal isn't the most important thing that can be done, if it can help to some extent then we should do it.

Question: How effective is the vendor at screening and separating common names to avoid situations of mistaken identity?

Prof. Myers: The applicant would be able to clarify "that's not me" during his or her initial opportunity to respond. As a result, a false "hit" would go no farther than the Provost's office, where the false "hit" would be ignored and the applicant would be cleared to be hired (i.e., it would not go to the Dean or head of the hiring unit and it would not go into the new hire's personnel file).

At the end of the Question & Answer session, Prof. Myers invited Faculty Senate representatives to contact him with any additional comments and questions. He also agreed to distribute the Power Point slides and encouraged representatives to share the slides with their colleagues.

6. 2015 Health Insurance Benefits

Denise Murphy, Director of Benefits and Wellness, Department of Human Resources, attended the meeting to summarize changes to health and other benefits for the upcoming 2015 open enrollment. She also encouraged faculty members to take advantage of the Wellness Center.

a. Presentation

Ms. Murphy briefly summarized some of the principal benefits changes from last year, including:

Dental Plan: Although some employees had requested that the overall maximum benefit be increased, only 4-6% of faculty in the plan exceed the maximum each year, so it was decided that an increase in the maximum (with its associated premium increase) was not warranted. However, preventative services will no longer count against the annual benefit maximum, thereby effectively increasing the benefit without changing the premium.

EyeMed: No changes in the benefits or premium.

Life Insurance: The rates have increased for supplemental term and retirees.

Flex Spending Accounts: No changes.

Health Insurance Plan: The maximum out-of-pocket maximums have increased. However, this increase may be partially ameliorated by a change that will allow drug co-pays to count toward the out-of-pocket maximums. Other changes include a slight increase in the HMO Emergency Room cost. Employee premiums will increase approximately 2.5-3.0% compared to last year.

b. Questions & Answers

Following her presentation, Ms. Murphy took questions from Faculty Senate representatives. The following summarizes the principal questions and Ms. Murphy's answers:

Question: With respect to the 2.5-3% increase in employee health insurance premiums, have the overall costs of the plan gone up by that amount, or does at least some of this increase in the employee premium reflect a policy decision by the University to shift a greater percentage of the costs to employees?

Ms. Murphy: The overall plan costs have increased by approximately 1%, so the new employee premiums do reflect, in part, a shift of costs toward faculty/staff.

Question: Will same-sex married couples be covered by the plan, given the recent court developments recognizing these marriages in Indiana?

Ms. Murphy: I am waiting for an official decision by the University on this issue, probably later this week. I anticipate that the benefits will probably be extended, but there is nothing official yet.

Question: Are children with disabilities who are older than 26 covered by the family plan?

Ms. Murphy: Yes (a special process applies)

Question: What is the updated information regarding the drug formulary?

Ms. Murphy: Last year, ESI decided that they wouldn't cover some very expensive drugs (e.g., certain MS drugs). ND recognizes the frustration of affected faculty/staff, and has been trying to work in coalition with other universities to get ESI to change its policies. The pharmacist in the Wellness Center has been helping us address this issue by identifying alternative drugs.

Question: Is the ND plan a "Cadillac" plan under the Affordable Care Act?

Ms. Murphy: It is unclear, and may depend on what specific benefits are included in the determination (e.g., Wellness Center, Health Flex Spending Accounts, etc.). ND estimates that it might be subject to a

\$3 million penalty if just the medical plan and Wellness Center are included in the calculation. In the rapidly changing marketplace, we benchmark AAU schools to come up with ideas to keep policies affordable but still provide quality care. The University is establishing a Working Group, which will hire a consultant, in order to make recommendations to leadership by March 2015.

Question: With respect to contraceptive care, will faculty/staff need to use separate cards again in 2015, and what is being done to address the implementation problems that arose in 2014?

Ms. Murphy: As in 2014, Meritain Health will provide contraceptive care coverage on its own, separate from the ND plan. They provide all support, and any questions should be directed to them (indeed, Meritain does not even talk to the University about the contraceptive plan, as it is not the University's plan). A follow-up question asked whether the Health Advocate could help with problems that arise. Ms. Murphy said that they might be able to help, as the Health Advocate is not a part of the University.

7. New Business

a. Campus Crossroads Project Issues

Walter Nicgorski noted that, prior to the meeting, he had circulated materials expressing concern about the Campus Crossroads project. Walter moved that the Faculty Senate pass the following resolution:

"In the light of the serious concerns raised throughout the University community – among students, faculty and alumni – and the significant, enduring impact this Project would have on the campus and community, the Faculty Senate requests the Administrative leadership of the University and the Board of Trustees to delay the beginning of construction on the project to allow further study with opportunity for open discussion."

Gail Bederman seconded the motion.

Walter noted that the resolution does not necessarily reflect opposition to the project. Rather, it reflects concern that the project, given its significance to the University and the campus (as emphasized in the University press releases), should have been brought to the Faculty Senate for advance consideration. He also noted that this is the second recent major change that was introduced without formally consulting the Faculty Senate (the changes to the 403(b) plan being the other). Walt suggested that the resolution would make clear that, in order to fulfill its role contemplated by the Academic Articles, the Faculty Senate should be given the opportunity for early consultation in significant projects.

The floor was opened for discussion. Several representatives expressed support for the resolution, expressing concern that the Administration often brings issues to the Faculty Senate only after the Administration has already made a decision.

Some other representatives expressed concern with the resolution. For example, it was suggested that the resolution (with its request that the University delay the Campus Crossroads project) is too late, given that construction has already been publicly announced and is about to get underway. Suggesting a halt to the project at this late date might make the Faculty Senate appear out-of-touch. A question was also raised as to whether the Faculty Senate should weigh-in on every construction project, which would seem to be excessive.

John Stamper proposed a friendly amendment to delete the words “to delay the beginning of construction on the project”. Walt accepted the friendly amendment in order to help move the resolution.

Other representatives suggested that if the principal concern is faculty governance (and the Administration’s failure to properly include the Faculty Senate in significant decision making), the resolution should focus explicitly on faculty governance issues (rather than the Campus Crossroads project). Under such an approach, the Campus Crossroads project might merely be listed as an example of a more general concern about faculty governance. Walter expressed concern that waiting until next month to discuss a more general faculty governance resolution, rather than passing a resolution tonight focused on an immediately impending project, would weaken the resolution.

Other representatives expressed opposition to the resolution based on several concerns—a lack of facts regarding the approval process; the lack of specific objections to the Campus Crossroads project; and general approval of the project, including the inclusion of at least some academic space in the project.

Given the apparent lack of consensus, Rich Williams moved to table Walt’s motion. Walt seconded the motion to table.

The Faculty Senate unanimously voted to table Walt’s motion regarding the resolution (with the friendly amendment that Walt had accepted).

b. Campus Life Representative

The Chair noted that the Faculty Senate needs a second representative to attend Campus Life meetings. The representative would attend meetings once per month. In the absence of other volunteers, the Chair volunteered to attend.

8. Adjournment

A motion to adjourn was seconded. The meeting adjourned at 9:38pm.

Next Meeting: Tuesday, Nov. 4, 2014, at 7:00pm; Room 140 DeBartolo. EVP John Affleck-Graves will attend to answer questions.

Respectfully submitted,

Michael Kirsch
Professor of Law
Co-Secretary