Wednesday, September 4, 2013, 2 p.m., ASH 196

Present: M. Bacon, N. Bacon, Casas, Holley, Mahoney, P. Smith, R. Smith, Surface, Wileman

Excused: Mitchell, Petrow

I. Official Call to Order

II. The August 14, 2013 Minutes were approved as submitted.

III. Officers’ Reports

A. President’s Report: Senator M. Bacon reported

1. President M. Bacon will e-mail Senator Mitchell, chair of the Goals & Direction Committee, the report to the Board of Regents from Chancellor Perlman and Christensen, as soon as it is available. Senator R. Smith, chair of the Educational Resources & Services, will also be consulted.

2. President M. Bacon also requested that Senate Coordinator, Sue Bishop, e-mail the EC&C the link to the Freeman Report, when she receives it from Senator R. Smith.


<table>
<thead>
<tr>
<th>Res.#</th>
<th>Date Senate Passed</th>
<th>Title</th>
<th>Admin Accept</th>
<th>Sent for Senate Action</th>
<th>Denied</th>
<th>Deferred</th>
<th>In Progress</th>
<th>Final Action/Resolved</th>
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<tbody>
<tr>
<td>4108</td>
<td>8/21/13</td>
<td>Appreciation for Dr. Harold M. Maurer, M.D.</td>
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<td>4107</td>
<td>8/21/13</td>
<td>Deadline for Fall Grades</td>
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<td>4106</td>
<td>8/21/13</td>
<td>Temporary Replacement for Education Senator</td>
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<tr>
<td>4105</td>
<td>8/21/13</td>
<td>Appt. of Parliamentarian</td>
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<tr>
<td>4102</td>
<td>5/8/13</td>
<td>Presidential Appointments (a-e) / completed</td>
<td>8/8/13</td>
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<td>Chancellor Supports</td>
</tr>
<tr>
<td>4101</td>
<td>5/8/13</td>
<td>Standing Committee Vice Chairs / completed</td>
<td>8/8/13</td>
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<td>Chancellor Supports</td>
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<tr>
<td>4094</td>
<td>5/8/13</td>
<td>Campus Committees (a-g) completed</td>
<td>8/8/13</td>
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<td>Chancellor Supports</td>
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Executive Committee & Cabinet Minutes - 9/4/13
<table>
<thead>
<tr>
<th>No</th>
<th>Date</th>
<th>Description</th>
<th>Action Date</th>
<th>Notes</th>
</tr>
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<tbody>
<tr>
<td>4074</td>
<td>2/13/13</td>
<td>Criminal Background Checks at UNO</td>
<td>2/18/13</td>
<td>Not supported. As with Resolution 4073, which I opposed, in part, because of its reference to all NU campuses, I also believe this to be a safety issue for which we have legal and fiduciary responsibility. In summary, the absence of some form of background checks for persons employed on campus seems in opposition to best practices.</td>
</tr>
<tr>
<td>4073</td>
<td>1/16/13</td>
<td>Amended Resolution 4054 on Criminal Background Checks</td>
<td>1/23/13</td>
<td>The Chancellor cannot support and would like to discuss this resolution at today’s Faculty Senate Exec. Committee / Administration meeting.</td>
</tr>
<tr>
<td>4054</td>
<td>7/11/12</td>
<td>Determine Contractual Implications of Background Check Policy</td>
<td>9/6/12</td>
<td>The chancellor acknowledges receipt of the resolution and has provided the legal opinion requested.* (UNO Faculty Senate is not satisfied with this response.)</td>
</tr>
<tr>
<td>3079</td>
<td>3/9/11</td>
<td>Shared Governance</td>
<td>4/15/11</td>
<td>Not supported. Chancellor’s Comment: “While I continue to be an advocate for shared governance, I will not support 3079, as I am unable to support any resolution which defines the role and responsibilities of the University’s governing board, the office of the chancellor, or other administrator, which is outside the purview of the Faculty Senate.”</td>
</tr>
<tr>
<td>2944</td>
<td>1/4/09</td>
<td>UCRCA Funding</td>
<td>X*</td>
<td></td>
</tr>
</tbody>
</table>

*4074 (From Chancellor Christensen via Nancy Castilow in an e-mail sent on 2/18/13: Not supported. As with Resolution 4073, which I opposed, in part, because of its reference to all NU campuses, I also believe this to be a safety issue for which we have legal and fiduciary responsibility. In summary, the absence of some form of background checks for persons employed on campus seems in opposition to best practices.)

*4073 (From Chancellor Christensen via Nancy Castilow in an e-mail sent on 1/23/13: The Chancellor cannot support and would like to discuss this resolution at today’s Faculty Senate Exec. Committee / Administration meeting.)
Ed,

In a response to my email of July 14, you have indicated that at this time you anticipate that the “background check” at the University of Nebraska at Omaha will consist of the University reviewing public records (i.e., sex offender registry, criminal convictions, etc.) for applicants for employment. Based on the foregoing you have inquired whether such an approach would constitute a mandatory subject of bargaining.

The simple answer is that the University could, in my opinion, proceed to implement such an approach for applicants without any discussions. The obligation to bargain in good faith concerning mandatory subjects is generally limited to the current employees of an employer. There is generally no obligation to negotiate concerning prospective employees. Star Tribune, 295 NLRB 543 (1989).

If there remains any discussion about expanding such an approach to current employees, then the answer becomes more complicated. Nevertheless, I do not believe that the University would be required to bargain over the decision to review public records at its own cost and expense. As I indicated previously, this decision would likely be within the employer’s managerial discretion. However, I also believe that the University would be required to bargain over the “effects” of such a decision; such as (a) whether any information in a person’s criminal record would remain confidential; (b) whether certain employees would be exempted based upon length of exemplary work records; (c) the appeal rights of employees who claim that they have been incorrectly identified of having been convicted of a particular crime or who believe there are extenuating circumstances that would exclude their disqualification; and (d) the categories of offenses that would result in automatically exclusion from employment.

If you would like to discuss further, please do not hesitate to call.

John C. Hewitt  jhewitt@clinewilliams.com  CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER, L.L.P.; 1125 S.103rd Street, Suite 600; Omaha, Nebraska 68154; Phone 402.397.1700/Fax 402.397.1806

(From Chancellor Christensen via Nancy Castilow in an e-mail sent on 10/25/12: Relative to Resolution 4054, the Chancellor cannot support this resolution; as was discussed at a 10/25 AAUP meeting, the AAUP agrees that they have no jurisdiction over background checks as those affected are not part of the bargaining unit until they are hired and these check occur pre-hiring.)

*3079 (From Chancellor Christensen via Nancy Castilow in an e-mail sent on 4/15/11: Not supported. Chancellor’s Comment: “While I continue to be an advocate for shared governance, I will not support 3079, as I am unable to support any resolution which defines the role and responsibilities of the University’s governing board, the office of the chancellor, or other administrator, which is outside the purview of the Faculty Senate.”)

*2944 (From the EC & Admin Mtg 1/21/09: The Chancellor supports the concept in Resolution 2944 on funding an UCRCA budget line but opined we wouldn’t get it during the years of budgetary problems. 6/10/09 Nancy Castilow wrote for Chanc. Christensen: “One clarification related to Res. 2944, dealing with ongoing support of the UCRCA budget. I said that I was open to the concept and supportive of continued funding of the UCRCA budget, albeit we would need to review its funding during times of budget constraints, as we do with other such programs. The decision to fund and how much to fund remains the purview of the Office of Academic Affairs. I did not opine that the UCRCA budget line would automatically see no funding during years of budgetary problems.”)


IV. Standing Committee Reports

A. Committee on Academic and Curricular Affairs: Senator Holley reported the Committee is reviewing a program proposal from the College of Information Science and Technology for the creation of an Executive Master's Degree in Information Technology. This program proposal underwent some review by the Executive Committee of the Faculty Senate over the summer. For our review we met with Hesham Ali, the dean of the college. After meeting with him we discussed the proposal and came up with a list of suggested changes to the proposal, with most of them focused on the proposal's budget. We instructed the program proponents to revise the proposal and resubmit it to us.

B. Committee on Educational Resources and Services: Senator R. Smith reported the Committee did not meet—we needed more time to arrange necessary coordination
with the people with whom we plan to work. Our next meeting will be the normal date in September.

C. Committee on Faculty Personnel and Welfare: Senator Wileman reported the Committee decided not to meet in August since we had already "divvied up" the initial workload for "off-line" processing.

D. Committee on Goals and Directions: Senator Mitchell wrote the Committee has no report and will determine the issues to be worked on at the next meeting on September 25th.

E. Committee on Professional Development: Senator Casas reported the first meeting will be in September, so there is no report.

F. Committee on Rules: Senator Mahoney, for the Committee, moved the following. All five will be brought before the full Senate next week.

1. RESOLUTION: University Committee on the Advancement of Teaching (UCAT)

   BE IT RESOLVED that the following name go forward to complete Rene Erlandson’s three-year term (07/01/12 - 06/30/15) to the University Committee on the Advancement of Teaching (UCAT):

   Robert Nash, LIB.

2. RESOLUTION: Replacement on University Committee on Research & Creative Activity (UCRCA)

   BE IT RESOLVED that the following names go forward to complete Lisa Knopp's term (08/01/11 - 07/31/14) on the UCRCA (University Committee on Research & Creative Activity):

   Tammie Kennedy, A&S, Humanities (to replace Lisa Knopp) 08/01/11 - 07/31/14.

3. RESOLUTION: Academic Freedom & Tenure Committee (for Faculty Senate nomination. The ballot will be mailed to the UNO Faculty.)

   BE IT RESOLVED, that in accordance with Article 6.5.2 of the Faculty Senate Bylaws the following nominees for the Academic Freedom and Tenure Committee are brought forward by the Rules Committee for senate nomination. The ballot will be presented to the UNO Faculty.

   Two tenured faculty members will be elected from the following four nominees to serve three-year terms from October 16, 2013, through October 15, 2016, to replace Ann Fruhling and Michael Peterson, whose terms will expire:

   Donna Dufner
   Robert Nash
   Birud Sindhav
   Robert Smith
And one Non-Tenured Faculty member will be elected from the following two nominees to serve three-year terms from October 16, 2013, through October 15, 2016, to replace Jay Irwin whose term will expire:

Chi Chung (Joy) Chao
Ramon Guerra.

4. **RESOLUTION: Faculty Grievance Committee** *(ballot handed out to full senate 9/11/13, completed, collected, and tallied)*

**BE IT RESOLVED,** that in accordance with the Faculty Senate of the University of Nebraska at Omaha Bylaws, Article VI.5.1, Faculty Grievance Committee, the following faculty members are brought forward by the Rules Committee for ballot election by the senate.

One full Professor will be elected from the following two nominees to replace Carolyn Gascoigne, whose term has expired, for three-year terms from September 16, 2013, through September 15, 2016:

Marshall Prisbell,
Pamela Smith.

And one Assistant Professor will be elected from the following two nominees to replace Kerry Ward, whose term has expired, for three-year terms from September 16, 2013, through September 15, 2016:

Eugenio DiStefano,
Manfred Wogugu.

And one member of the Faculty Senate Faculty Personnel and Welfare committee will be elected from the following two nominees to replace Marshall Prisbell, whose term has expired, as the Faculty Personnel and Welfare Committee representative for a one-year term from September 16, 2013, through September 15, 2014:

Matthew Harden
Stan Wileman.

5. **RESOLUTION: UNO Professional Conduct Committee** *(ballot handed out to full senate 9/11/13, completed, collected, and tallied)*

**BE IT RESOLVED,** that in accordance with the Faculty Senate of the University of Nebraska at Omaha Bylaws, Article VI.5.3, Professional Conduct Committee, the following faculty members are brought forward by the Rules Committee for ballot election by the senate.

**BE IT RESOLVED,** that two representatives must be elected by ballot vote to serve three-year terms from September 16, 2013, through September 15, 2016, to replace outgoing members, Shereen Bingham and Janice Rech, whose terms have expired. In accordance with Section 1.1 of the University of Nebraska at Omaha Professional Conduct Committee's Rules and Procedures, the following four nominees (all tenured faculty ranked assistant professor or above) are brought
forward by the Committee on Rules for ballot election by the full senate as follows:

Christina Dando
Jodi Kreiling
Christiana Bratiotis
Jay Irwin

The newly elected representatives will also serve as alternates for three-years from September 16, 2015, through September 15, 2018.

Shereen Bingham and Janice Rech will continue serving as alternates (replacing Robert Woody and Jeanette Seaberry) for three-years, from September 16, 2013, through September 15, 2016, per Resolution 3059.

Senator Mahoney, for the Committee, also moved the following. It will be brought before the full Senate next week.

6. **RESOLUTION: University Committee on Advancement of Teaching (UCAT)**

**BE IT RESOLVED** that the following name go forward to complete Gwyneth Cliver’s three-year term (07/01/13 - 06/30/16) to the University Committee on the Advancement of Teaching (UCAT):

________________________, Arts and Sciences (A: Humanities).

V. Faculty Senate Ad Hoc Committee Reports

A. **MOOCs:** Peter Smith, Faculty Senate Rep., will give regular updates of the committee’s work.

VI. Non-Senate Committee Reports

A. **Academic Freedom Coalition of Nebraska (AFCON):** Senator Lewis looked into the case noted in a letter from the AFCON President. His research: *Garcetti v. Ceballos* case. The citation of the case 547 U.S. 410. The link below should take one to a full version of the case. Warning: it is lengthy!

http://scholar.google.com/scholar_case?case=6711908971660042297&hl=en&as_sdt=2&as_vis=1&oi=scholarr

VII. New Business

A. **Received (9/3/13) from a Concerned Faculty Member**

*To whom it may concern:*

The criteria used to send junk email to Outlook’s “Junk Email” folder need adjusting.

1. **On Monday I received the message from Blackboard Administrator – Course Copy process complete there.**
2. Last week a student from his UNO provided email, from a UNO computer lab ended up in “Junk Email.” Within 30 minutes three additional very similar emails from him were received normally in my “Inbox”.

3. Finally, earlier last month I sent an email to a UNO staff support person which ended up in his “Junk Email” which he had not checked in several weeks. He has regularly sent and received emails from me both before and after that one.

I have complained about student UNO-gmails being miss-directed before (similar to item #2 above) without resolution as they still occur.

None of these should have happened. All came from presumably known, credible, and “internal” to the university sources to a known university recipient. When will these problems be fixed?

I do not recall these sorts of problems with Lotus Notes.

Thank you.

Cc to Faculty Senate President, Chair of Faculty Senate Educational Resources and Services committee, my local IT support person and my department chairman.

Frederic (Fritz) C. Laquer, Ph. D.

Senator Wileman, a member of the University Committee on Technology Resources & Services, will bring this to the attention of that committee at the meeting later in the afternoon.

VIII. The meeting adjourned at 2:57 p.m. with announcements.

IX. Announcements

A. Faculty Senate Mtg: Wednesday, September 11, 2013, 2 p.m., MBSC Chancellors Room (Presentation: Erin Owens on the UNO Arena)
B. EC&A Mtg: Wednesday, September 18, 2013, 2 p.m., EAB 200, Chancellor’s Conference Room
C. EC&C Mtg: Wednesday, October 2, 2013, 2 p.m., ASH 196.