

The
UMKC
Faculty
Senate

Report

The Voice of the U.M.K.C. Faculty

June 18 & July 2, 2002

Note: This is Part I of a report on two meetings. The central issue at both was consideration of a Board of Curators amendment to the university rules that allowed reductions in the salaries of tenured faculty. The language of the amendment was broad and permissive. Steve Lehmkuhle, Vice President for Academic Affairs, met with the Senate on July 2nd to discuss the Board's action. He said that its intent in passing the revised language was narrower than the language itself. The Senate appointed a committee to draft a response and recommend narrower language, and that response was considered and passed at the second meeting. Other issues were also common to both meetings: VERIP, the Provost's actions regarding the SBS and the budget crisis. These will be discussed in Part II of the Senate Report.

***News Flash:
Lehmkuhle responds to Senate concerns.***

After the Senate meeting Steve Lehmkuhle wrote the IFC:

Members of the IFC

I wanted to provide you an update concerning the discussion about Collected Rules and Regulations (CR&R) 10.0303.A.9.

The President has spoken with the Chancellors about the amended CR&R 10.0303.A.9 and has shared with them the concerns expressed by the faculty governance bodies on the four campuses. As a result, he has instructed General Counselor Wright and me to prepare an executive order that would be part of the Collected Rules and Regulations. The executive order will serve to restrict the interpretation of CR&R 10.0303.A.9, including the recent amendment. The executive order, which would be referenced in CR&R 10.0303.A.9, would ensure that CR&R 10.0303.A.9 does not supercede the tenure regulations, cannot be implemented for an individual, and any salary reductions would be temporary in nature. I am currently working with General Counselor Wright to prepare a draft of the executive order. I will distribute a draft to the IFC at its retreat on August 5-6 for discussion prior to its issuance by the President. I will also discuss at the retreat the rationale behind issuing an executive order rather than re-revising CR&R 10.0303.A.9.

As always, if you have any questions or concerns, please contact me.

Steve

RULE CHANGE TO ALLOW SALARY REDUCTIONS FOR TENURED PROFS

The Board of Curators unanimously passed the following resolution by a unanimous vote in an emergency session. The resolution was not distributed beforehand, and faculty members did not know about it until after it passed. It isn't clear if campus administrators were aware of the resolution or asked for comments. [Changes are in italics and color.]

That Section 10.030A.9 of the Collected Rules and Regulations, pertaining to appointments, be amended as follows:

9. Appointments - The appointments of all officers and employees of the University, although made for administrative or fiscal purposes for a specific term, may be terminated at any time at the pleasure of the

Board of Curators. Notwithstanding any rule, regulation or policy *of the University of Missouri to the contrary, all such appointments are subject to the right of the Board of Curators to adjust salaries and other terms and conditions of employment, on a prospective basis only, at any time during the indefinite, term or continuous appointment of all officers and employees of the University; provided, however, the foregoing shall not be deemed to restrict the authority of the President of the University under any specific or general delegation of authority from the Board of Curators.*

Senators expressed concern, both at the way in which the amendment was passed and its content. The rule was extremely broad, though the central administration sent assurances that it was only meant to allow faculty salaries to be reduced with other salaries if the budget crunch necessitated such a drastic move. Steve Lehmkuhle, Vice President for Academic Affairs, came to the Senate meeting of June 18th to discuss the issue.

Lehmkuhle agreed that the language of the resolution was very broad, but claimed the intent was narrow. Counsel had told the Board and central administration that under university rules only at-will administrators and staff could be furloughed. The draconian budget reductions to the university¹, combined with the possibility of even greater reductions in the near future, made it necessary that the university consider the possibility of salary reductions & furloughs. Lehmkuhle said:

- * If there were salary reductions, they would be temporary.
- * Any salary reductions would be across-the-board -- the intent of the resolution was not to reduce the salaries of individual professors.
- * The purpose of the resolution was not to supersede the tenure policy or change provisions on removal for cause.
- * The policy was prospective in nature - money due for services already rendered would not be affected.

According to Vice President, past and prospective budget cuts were so severe that the system had to seriously consider closing a campus. It had already raised student fees, was using VERIP to reduce the size of staff, had deferred maintenance in all but the most pressing projects, and was considering the possibility of stopping admissions to some programs. If further cuts were made the university would need to reduce salaries -- it had no other choices. He agreed that the choices were all unpalatable and were inflicting grave harm on the university structure. Lehmkuhle argued that the Board amendment, though probably excessively broad, was simply meant to meet the current fiscal crisis. It was not a subterfuge for dismantling tenure.

Senators remained concerned. Broad language on the books could allow later actions that were not originally intended. We didn't understand why the amendment was passed so quickly and surreptitiously. Surely, there was some time to discuss the issue with the faculty leadership? Also, why wasn't the central administration sensitive to the way in which faculty would view the amendment? This was not a time for a crisis of confidence or a public disagreement between the administration and the faculty. Other issues were also raised:

- * Was it possible to reduce the cost of other programs or eliminate them? Some academic programs were going to be gravely harmed by the VERIP cuts. [Lehmkuhle conceded that it was a shotgun approach that would cause great damage to some programs. The UMKC campus is expected to lose 80 faculty.] PeopleSoft has been very expensive to implement - was it possible to terminate the program. Athletic programs also cost a great deal. Could they be curtailed or eliminated? [Lehmkuhle thought that we were too far into the PeopleSoft conversion, but some

¹ Higher Education had born the brunt of state budget reductions. It got 12% of the state budget, but had received 37% of the budget cuts. Missouri is one of the states with the most severe higher education budget cuts, and the cuts to the UM system exceed what UMR and UMSL combined get from the state.

Senators called for a fact finding commission. He also was not very open to reductions in the sports programs, asserting that the reductions would end up costing the university more than they saved.]

* A second tack was that of raising money by creating alumni networks, trying to get business sector support, etc. The extension program had once done this very well. The public and government needed to be educated about the value of a research university. The President of Ohio State has gone around the state talking with citizens to try to build grass roots support for the university in the different legislative districts. [Lehmkuhle said that Pacheco has done the same thing.]

* Lehmkuhle said that the high costs of duplicated programs were being examined. Other options were to increase the faculty teaching load, but that would reduce research, to reduce the MU system expenses or combine the system administration with the UMC administration, or to temporarily suspend some high cost programs.

* In Lehmkuhle's opinion it was absolutely necessary to give raises next year, even though that would add to the budget woes of the university.

Senators persistently questioned why the rule was so broadly drafted if the intent was narrow and specific. Also, they didn't see the type of emergency that precipitated a response without any consultation with the faculty. Since the rule change had not been implemented that implied that there was at least some time. The rule had neither a triggering mechanism nor a sunset provision. The President has indicated he would support a revision and clarification of the amendment, and Lehmkuhle said he would work with the faculty chairs to draft appropriate language.

After Lehmkuhle left the Senate continued to discuss the issues. We decided to take the Vice President at his word, and make suggestions for changes. A Committee was appointed to draft a letter. [Tony Luppino (Law, chair), Stuart Mcaninch (Education), Harris Mirkin (College) and Read Sullivan (SBS)] The committee was instructed to bring back a resolution for the Senate's July 2nd meeting.

At that meeting the following two resolutions were presented. The first discussed the issue of consultation:

During the current financial crisis for the University of Missouri, it is especially important that the faculty, the administration, and the Board of Curators work as closely as possible to address that crisis and to serve the best interests of the University. There are many complex institutional problems associated with cuts in state appropriations for the University which can only be successfully addressed through the intelligence and active and collaborative engagement of all three groups. As educational professionals responsible for the curriculum of the University, for teaching its students, and for the research conducted within it, the faculty has a key role to play in collaborative problem-solving. Moreover, such problem-solving, in order to be successful at this critical juncture in the history of the University, will require open lines of communication and trust.

In the interest of maintaining open lines of communication and trust, the Faculty Senate of the University of Missouri-Kansas City urges the Board of Curators to not take action through Bylaws changes or other means toward reducing salaries or altering other terms and conditions of employment for faculty without first engaging in meaningful consultation with the elected faculty representative bodies.

This resolution was unanimously passed and was to be distributed to the President and the Board.

A second resolution went through some modifications on the Senate floor, and afterwards via the Senate's email list. There was some discussion of whether we should actually draft a resolution that fulfilled the Board's stated intention, but that would imply endorsement of the stated purpose of the rule, and not all Senators thought that should be done. We ultimately voted that it was best to offer well-constructed guidelines, asking to review the resolution submitted to the Board, and offering to cooperate in the drawing up of a resolution. We also wanted to insure that there was a reasonably prompt response from Lehmkuhle, who had requested cooperation and feedback. We copied the letter to the IFC (Intercampus

Faculty Council), and since the Senate Chairs from the four UM campuses are members of the IFC we thought that was an adequate way of getting the letter to the Faculty Senates on the four campuses. The final version of a letter to Steve Lehmkuhle was unanimously endorsed by the Senate:

Dear Vice President Lehmkuhle:

Thank you for attending our June 18 meeting to discuss the above-referenced Board of Curators action and related issues concerning the University's current financial challenges. Your explanation of the intent of the amendment was very helpful. We are writing in response to your invitation for comment on the revised Section 10.030.A.9, which we understand is being questioned by our counterparts at other campuses in the system as well.

For the reasons explained in detail below, we object to revised 10.030.A.9 in its entirety. Its language suggests a broad scope of possible actions in form and substance inconsistent with the limited nature of the measure you indicated the amendment was intended to authorize. Moreover, revised 10.030.A.9 conflicts with long-standing rules, regulations, policies and principles governing the relationship between the University and its employees, including tenured faculty.

To illustrate our concerns, we will set forth below our understanding, based on the background you provided, of the intent of the amendment, followed by some observations regarding divergence from that expressed intent in the language actually drafted. We note that our comments on the text of 10.030.A.9 should not be interpreted as analysis, endorsement of or acquiescence in the legality, enforceability or propriety of the provisions of 10.030.A.9 or of any actions which might be taken on the basis of such provisions, whether or not consistent with the intent of the amendment. While we have concerns in those substantive areas, at this juncture we are simply commenting on the gap between the type of action you indicated the amendment was designed to authorize and actions which the language actually drafted might be construed to purport to authorize.

The Expressed Intent of the Amendment

Based on the information you provided in your June 3, 2002 e-mail message on this subject and in our June 18 meeting, we understand that:

The basic intent of the amendment was "to permit the possibility of instituting a temporary salary reduction for all employees, both faculty and staff, in the event the University is forced to address fiscal conditions similar to or worse than that produced by the recent 8.4% state withholding imposed late in [the FYE 6-30-02] fiscal year."

Such temporary salary reduction would be "across the board," covering all University employees, and would be "prospective" in the sense that there would be no salary reduction for work already performed.

The amendment would not impact tenure policies or override rules and regulations on the termination of tenured faculty members.

In short, we understand that the limited type of action for which authority in 10.030.A.9 was sought was a stop-gap *temporary* salary reduction, in the midst of budget crisis, which the University would hope not to have to try to implement at all, but which, if it took such action, the University might want to spread out on a prospective basis across all employees in the system.

Problematic Language Included in Amended 10.030.A.9

By virtue of the inclusion of the language "other terms and conditions of employment...at any time during the indefinite, term or continuous appointment of all officers and employees of the University," the amendment to 10.030.A.9 implies a much wider range of possible action than merely a temporary salary reduction in the midst of financial difficulty. Coupled with the "notwithstanding" clause at the outset of the added language, it is not at all surprising that many have observed that revised 10.030.A.9 could be read to purport to authorize, at any time, by-pass of existing rules and regulations governing various aspects of employment contracts and tenure policies, including, for example, working conditions, benefits, and grounds for termination.

While we were, of course, glad to see in your June 3 e-mail that the Curators, President Pacheco and the University's Office of General Counsel believe there is no impact on tenure policies (and assume they would agree, given the intent of the amendment summarized above, that no impact on any other employment arrangements for any personnel beyond temporary salary reduction was intended), the language of 10.030.A.9 is simply not as comforting. We would welcome further explanation from the University's Office of General

Counsel, but we are having trouble dismissing the possibility that someone (now or in future years) might give the term “notwithstanding” its plain meaning and interpret 10.030.A.9 as overriding *all* other rules and regulations on the terms of employment of all University employees, citing 10.030.A.9 as basis for actions other than the temporary salary reduction you described.

Limiting Concepts Omitted in Amended 10.030.A.9

Given the expressed intent of the amendment, we have several concerns with the lack of limiting and explanatory language, as follows:

Why is the provision not limited to *temporary salary reduction* (as opposed to “adjust salaries and other terms and conditions of employment”)? Could “temporary” be explained?

Why is there no reference to the “across the board” concept?

What is the definition of “prospective” in this context? You gave the example of not reducing the summer salary of a faculty member who worked a 9-month appointment but used the 12-month payment mechanics. But what about an attempt to change the salary of an employee with a 9-month contract halfway through the nine months for the balance of the term of the contract—is that considered “prospective”?

Since the expressed intent of the amendment was to facilitate temporary salary reductions in a fiscal situation similar or worse than the recent state withholding, why isn’t there a description of such a “triggering event” in the provision (instead of the “at any time” language)?

If the amendment is not to impact tenure policies and rules and regulations, why isn’t there some “subject to” or “not to restrict” language of a type similar to that used elsewhere in the amendment in instances where clarity on lack of interference with other authority was apparently sought?

In addition, we note that the pre-existing language at the start of 10.030.A.9 also contains ambiguities and could, arguably, be read to be in conflict with generally accepted and AAUP-defended rights of tenured faculty and with other rules, regulations and policies of the University affecting University employees. We therefore ask that reconsideration of the recent addition be extended to include discussion and modification of the prior content of 10.030.A.9.

We are anxious to receive your thoughts on the foregoing and on similar comments we understand you have or will be receiving from faculty bodies at the other UM campuses. We welcome the opportunity to send representatives of our group to meet with you and faculty representatives from the other campuses to discuss the concerns we have expressed, receive more information regarding these matters and collaborate in the process of considering appropriate modification of the language of 10.030.A.9. This is obviously a serious matter, warranting expedited attention. Accordingly, we would appreciate your thoughts as to how best to move forward at your earliest convenience, preferably before the next Board of Curators meeting but, in any event, prior to the IFC retreat which begins August 5th. We look forward to hearing from you.

UMKC FACULTY SENATE

By: _____

Kathleen A. Schweitzberger, Chair

Respectfully submitted,

Harris Mirkin,
Faculty Secretary