

**UNIVERSITY COMMITTEE ON FACULTY WELFARE
MEETING MINUTES – DECEMBER 9, 2011**

I. Chair's Comments – Bill Parker

Chair Parker discussed UCFW's draft letter on the Salary Equity Study. Council Chair Robert Anderson commented on the causality clause in the letter, noting that it would be almost impossible to establish causality in a study like this; one would need a double-blind assignment to do this. He is concerned that UCFW's letter may dissuade policy makers from doing anything about this problem simply because of the lack of causality.

Regarding UCFW's letter on APM 015, members suggested taking out the word "ridiculous" and replacing it with "inaccurate". It was noted that this is a management review, so it would not be further reviewed by Academic Council. The UCFW letter will be sent directly to Vice Provost Susan Carlson.

DISCUSSION: Regarding the letter on the equity study, Chair Parker concluded that this data does indeed make the committee uncomfortable, but a snapshot approach does not really show the University how to address it. Indeed, longitudinal studies may show that these discrepancies gradually decrease over time. Simply put, one should not draw too many detailed conclusions from this one study, but it does highlight a problem that needs to be addressed.

II. Report: UCFW Task Force on Investment and Retirement (TFIR) – Shane White, TFIR Vice Chair

REPORT: Shane White noted that the Financial Education portal is up, but some users have reported difficulties accessing it. Mercer has been contracted to study UC's disability benefits. TFIR is concerned about the next step, when new tier benefits are designed, and existing tier benefits may be modified. TFIR is also concerned about the Fidelity UC Benefits portal; it seems that UC faculty and staff could indeed pay more for managing their finances through the Fidelity portal than by doing so independently. Regarding Agenda Item L from the UCRS Advisory Board, *the Proposed Defined Contribution Plan -- Contributions on Additional Negotiated Compensation Earned by Faculty*, Academic Affairs has advanced two proposals to implement employer and employee contributions for defined-contribution (DC) accounts for new faculty, especially those who can generate extramural funding for research and teaching. One proposal would apply to faculty in the Health Sciences; the other would apply to ladder-ranked faculty in other disciplines. TFIR has been told this is only a proposal to study; it does not mandate anything at this time. Apparently this is being envisioned for non-academic staff at the medical centers, who would have an option for either a DC or a defined-benefit (DB) plan. One issue concerns the fact that many employees will join and re-join the University at different times in their careers; this may get awfully complicated over time. The next agenda enclosure, a letter from Provost Pitts regarding the *Progress of the Proposed Retirement Savings Plan for Health Sciences Faculty*, concerns the ability of Health Sciences faculty to make contributions to their DCP on the negotiated component of salary (Y). The proposed change requires that both the University and Health Sciences faculty make mandatory pretax contributions of 3.5% to the UC DCP based on the %age of the negotiated Y pay (proposed at 3.5%). However, most Health Sciences faculty would have to pay both sets of contributions, as they would be charged to external grants. The third enclosure is a transcript of Nathan's remarks to the State Legislature; these remarks are well-aligned to the Senate's own talking points.

DISCUSSION: With respect to the Fidelity portal, Chair Parker noted that a number of years ago, the University made a decision to limit and even discourage employees from proactively managing their 403(b) by imposing fees and limiting investment choices. He did ask Fidelity why it charges higher fees for their brokerage services to UC clients than their retail clients. Fidelity responded that this is what the University had requested. Council Chair Anderson commented that an argument could be made for slightly higher fees (say five to ten basis points) for tax-deferred brokerage accounts because retail accounts would not have the record-keeping requirements of tax-deferred accounts. Regarding the *Proposed Defined Contribution Plan -- Contributions on Additional Negotiated Compensation Earned by Faculty*, one member opined that this may weaken the UCRP. He noted that UCRP benefits from short-term employees who do not eventually vest. Some members expressed concerns over the *Proposed Retirement Savings Plan for Health Sciences Faculty*, noting that “Y” comes mostly from clinical earnings. In the 668 area, none comes from clinical; all of it comes from grants. A number of members criticized both the plan itself and the process. In particular, they noted that it has not been formally reviewed by the Senate, but has been brought directly to the UCRS Advisory Board.

ACTION: UCFW requests Senate review of the *Proposed Retirement Savings Plan for Health Sciences Faculty* and the Agenda Item L, the *Proposed Defined Contribution Plan Contributions on Additional Negotiated Compensation Earned by Faculty*. EVP Brostrom also gave approval for UCFW to send the transcript of his comments to the State Legislature on the Governor’s Pension plan/proposal to Divisional Faculty Welfare members but requested the transcript not be widely distributed on the campuses.

III. **Report: UCFW Health Care Task Force (HCTF) – Robert May, HCTF Chair**

REPORT: HCTF Chair May reported that a letter requesting a meeting between the principals involved in the UCSC Blue & Gold Plan has gone forward to Dwaine Duckett. The Health Care Work Group will have its first meeting on December 19. It will be working on the following five topics: 1) Limiting the University's dependence on the commercial HMO market; 2) exploring options for a self-insured model; 3) expanding the use of UC’s clinical infrastructure as a provider; 4) creating a stronger relationship between health care choices and costs; and 5) encouraging participants to be active partners in managing their health.

DISCUSSION: Chair Parker remarked that what seems to be missing from the Health Care Work Group’s agenda are the consequences of recent federal legislation; these agenda items are focused on cost containment almost exclusively. Another member commented that the phrase “making the consumer a partner” seems to be rather punitive in nature, and denotes a movement towards a consumer-based model and a movement away from an HMO model. Another member raised the issue of rising Medicare Part B premiums, which will be pay-banded (effective January 2012). This will result in premium increases from \$100 to \$320 per month. Indeed, retirees on Medicare with any UC policy will be paying more in some instances than they would have been paying as active employees of the University. This will be an agenda item at the HCTF meeting in February.

IV. **Campus Response to Protests – Council Chair Robert Anderson**

REPORT: Council Chair Anderson reported that campus administrations around the system have been acting with considerable restraint since the Davis pepper spray incident. The Berkeley Division recently held a meeting to address the protests on its campus, and voted in favor of four motions that were highly critical of the Chancellor and the EVC for Student Affairs. Regarding Davis, a number of independent reviews are taking place, including a fact-finding review by Kroll Associates, a Presidential Task Force chaired by former Supreme Court Justice Cruz Reynoso; a system-wide

examination of police protocols and policies by UC General Counsel Charles Robinson and UC Berkeley School of Law Dean Christopher Edley; and an independent review by the Davis Division. In addition, the Yolo County District Attorney is determining if any criminal charges should be leveled. There are also reviews ongoing regarding possible disciplinary procedures within the UC Davis police department. The systemwide Senate also issued a [statement](#) on the Berkeley and Davis incidents.

DISCUSSION: Chair Parker remarked that the faculty associations seem to be the ones commenting on these incidents; at least these are the ones being quoted in the media, not the Senate. Council Chair Anderson commented that this is probably due to the fact that the Senate is advocating for a more nuanced response, rather than extreme measures. Another member commented that generally, it seems that the guidelines, procedures, and protocols used in such incidents are less well-known by all parties involved (including the protesters themselves) than had been the case in previous times of civil unrest (e.g., the 1960s and 1970s). Indeed, at Davis it seems that procedures were not made known to the protestors.

V. **New Patent Agreement: Consequences of Not Signing** – *Chair Parker*

ISSUE: In *Stanford v. Roche*, a faculty member at Stanford signed the Stanford patent agreement, which is quite similar to UC's existing patent agreement. The faculty member subsequently signed the patent agreement at a pharmaceutical company, for which he was working. He previously had patented a process at Stanford, but made improvements on this process while at the pharmaceutical company. Subsequently, Stanford asked the pharmaceutical company for payment for a license to use this process. This case went all the way to the Supreme Court, which ruled that the Stanford patent agreement did not apply to this improved process, as the language read, "I am obligated to assign..." denoting a future intent to assign. As a result, the Court ruled that Stanford's patent claim was invalid. Therefore, UC's attorneys amended the wording of UC's agreement to read: "I am obligated to assign, and hereby do assign..." The University also added a phrase, "in the scope of my University appointment." The latter wording allows a faculty member who developed a product or process outside the scope of his employment to enjoy all rights to the patent of that product or process. The Academic Senate is on record as endorsing both the new patent agreement and the expectation that all faculty members should sign this agreement. However, there is no agreement on what the consequences of non-compliance should be. On this point, Chair Parker and UCORP Chair John Crawford drafted a letter that reads "the consequences to faculty should be in proportion to the risk to the University..." This draft letter proposes that the patent agreement should be signed at the time a proposal is put forward. As a straw proposal, Chair Parker suggested that the University would refuse to process a proposal to an external agency unless the faculty member has signed the patent agreement. In the past, this agreement was contingent on University employment. From a legal perspective, the issue is a unilateral modification of a contract; individual faculty members were not a party to this renegotiation.

DISCUSSION: Members wondered if the faculty members are in any bargaining position to either sign or not sign the agreement. Chair Parker responded that under the current proposal, the benefit accruing to the faculty member would only be the processing of the proposal, and nothing more. However, a refusal to process a grant could also be viewed as an infringement on academic freedom (e.g., tobacco funding). Members were generally in agreement with the language of the draft document, as it limits any action to the actual faculty concerned. It was noted that if UC did not do anything with the patent, the University was indeed free to reassign it back to the faculty member. It was also mentioned that an administrator may just hold onto the patent and not reassign it back to the faculty member; thereby putting the faculty member in some sort of limbo for an undue amount of time. After some further discussion members agreed that the best route forward is not to offer any advice at this

time, but instead review an administrative proposal when it is available.

ACTION: UCFW opined that it is uncomfortable advocating any possible consequences at this time, but would review a proposal concerning the consequences of not signing the patent agreement originating from the Administration when it is available.

VII. **Consultation with UCOP – Budget** – *Vice President Patrick Lenz*

REPORT: Vice President Patrick Lenz reported that the Regents did approve items related to UC’s support and capital needs at the last Regents meeting. UC is waiting upon the Legislature’s response to the anticipated mid-year trigger cut. He also noted that UC’s expenditure request of \$411M is quite tempered; it is less than half of previous requests. The expenditure request includes additional enrollments, a 3% compensation funding increase, deferred maintenance, and non-salary cost increases. UC's objective in providing only an expenditure plan is to wait until we see the outcome of the mid-year trigger reduction. Discussions with the Governor are encouraging in that he might entertain making this a one-time cut. The Governor's Budget will be released around January 10; the State is anticipating a \$13B budget gap all totaled. In order to partially bridge this gap, the Governor is proposing a ballot initiative that would include increases in the sales tax and income tax rates on the upper brackets. If successful, it is anticipated that this initiative would raise approximately \$7B. Governor Brown has also indicated that he is in favor of some kind of long-term funding plan for the University, but this is predicated upon the success of his ballot initiative. His Administration has indicated willingness for the State to fund its obligations to UCRP as well. The University is working on a “framework” that would apply to both UC and CSU. However, one of the challenges is reaching a clear understanding of higher education within the Governor’s Administration, as the current proposed framework language (for an agreement between the Governor and UC/CSU) does not distinguish between UC and CSU. For their part, the Regents have not focused on long-term funding; they have been primarily focused on the tuition, with less attention being paid to the cost-drivers. The current situation, in which the Legislature adjusts the University's budget every six months, is simply untenable in the long term.

DISCUSSION: Chair Parker asked about the outlook for future infusions for capital improvements for the University from the State. Lenz responded that capital improvement have been characterized by a general instability, as UC has not had a capital renewal bond since 2006. That said, UC's track record with lease-revenue bonds over the last four years have ranged from zero to \$351M (this year UC received \$56M). The University is trying to provide creative mechanisms that would allow UC to use its high credit rating for the State-funded capital projects. Given that UC's credit rating is much better than the State’s credit rating, these projects would actually save the State millions in debt service. Such an approach would also give UC much more fiscal flexibility in planning its capital projects. A draft MOU agreement to this effect remains in limbo, as the State’s attorneys have said that the State does not have the statutory authority to reimburse the University for such projects. UC is supporting bill trailer language that would support statutory authority. In any case, UC would not move forward unless the University had a guarantee from the State that it would be reimbursed for a particular project. Members also asked about the LAO's response to Governor Brown's 12-point pension plan, which seems to indicate that UC would need to fund its pension plan without the State's support. VP Lenz responded that generally, the response in Sacramento is one of surprise that the University has made so much progress on its pension issues. He is also not concerned about the University having to adhere to every point in the plan. Indeed, the University is about 75% in agreement with the Governor's pension plan. The Governor has also indicated that with or without success of the ballot initiative, he is interested in both funding UCRP and changing the way in which the University’s capital projects are

financed. The State no longer has anything in statute to refuse payment of its portion of funding UCRP; there is now a public document (the 2011 May Budget Revise) that lists UCRP as one of the State's obligations.

The current environment (Occupy movement(s), etc.) has compounded the public's and Regental view on the pressure of tuition increases on the neediest in California. In fact, the University serves the 99% quite well. In the years in which fees have been raised dramatically, the work-loan commitment actually went down by about \$1,000, as available financial aid was increased. When tuition/fees remain flat, financial aid actually falls. Unfortunately, this is not generally recognized. He also noted the applications to the University are up significantly; UC's tuition increases are not curbing demand. Another member asked about the consequences of increasing the proportion of the University's out-of-state students on UC's ability to serve poor in-state students. VP Lenz replied that the University has about 24,000 unfunded in-state students currently. Many would argue that we are not denying California students a place at the University when we increase our ratio of out-of-state students. Instead, we are trying to get back to an appropriate level of funded in-state students. Members noted the concern of ensuring that the quality of the non-resident students is on par with the quality with the in-state students. In the past, out-of-state students had to be stronger than in-state students. VP Lenz reminded members that at one point in time, the University had between 10-12% out-of-state students (late 1980s); UC is now at approximately 7%, and at one time was as low as 3-4%.

VIII. Divisional Reports and Concerns

Members did not report on Divisional concerns.

IX. Consultation with UCOP – Human Resources

ISSUE(S): Vice President Dwaine Duckett reported that the University has reached a settlement with the clerical union (Coalition of University Employees); it secures a 3% wage increase for not only 2011-12 and the next three years, along with a 2% increase for 2015-16; brings CUE employees in line with the UCRP contribution rates for the rest of the University (3.5% currently and 5% beginning on July 1, 2012); and brings CUE employees hired after July 1, 2013 into the new tier with no modifications.

VP Duckett also discussed the following issues with UCFW on the following issues:

- *Impact of Voluntary UCRP Non-Contribution Program:* This concerns the case of a legacy UCRP voluntary non-contribution program participant dating back 40 years. VP Duckett responded that this case should have been immediately forwarded to Joe Lewis and his unit, the Retirement and Administration Service Center (RASC), which would do the calculations. This particular case has in fact been forwarded to Joe Lewis.
- *Status of Joint Benefits Task Force:* This Task Force will address all health and welfare benefits across UC. The first meeting of this Task Force is scheduled for December 19; it is anticipated that this group will meet once a month. HR has asked that two Senate faculty members be part of this group (the Senate had suggested five members) so that no one group dominate the conversation. UCFW members countered that faculty can offer tremendous expertise, as opposed to only representing their employee group. The agenda for the first meeting will include a description and listing of current health and welfare plans that UC offers, an analysis of possible sub-funding scenarios, and options for UC's medical enterprises to operate as a health care provider.
- *Pension Strategies:* HR acknowledges the need for broad pension reform, but UC is already underway with its own pension reform. While its own reforms are well-aligned with the Governor's

pension plan, but there are certainly elements that are not in the best interests of the University.

- *Systemwide Payroll System:* The design and implementation of this new system is proving quite complex, as there are 980 interfaces to payroll across the system (40% of these are currently non-operative); the goal is to reduce these interfaces to 250. In addition, the University has too many data warehouses, many of which are transactional, which is bad architecture. UCOP is hopeful that the timeline will be maintained. Another issue concerns the service centers; there is a work group working on this currently. The controllers are also drafting a white paper on moving to a common accounting/financial system. However, this is not as imperative as a common payroll system.
- *Dependent Audit:* This is scheduled to begin in February 2011.

DISCUSSION: Besides CUE, there are 14 unions that are not within the new tier yet. These bargaining units cut across all parts of the University. HR consultants confirmed that some unions have not agreed to the 5% contribution rate (due to start in July 2012), which includes UPTE. Failing to get these agreements, the University would need to pay the difference, but there is always a clause in these agreements to make up for unpaid contributions. The 12% employer rate is the same regardless of tier. Members noted that there is some confusion and ignorance about a uniform employer contribution rate regardless of tier. HR consultants added that because the normal cost for the new tier is cheaper, 4% of the employer contribution can go towards paying down the unfunded liability. Another issue concerns split-funded employees; an analysis of these persons' pension situations is needed. A second issue regards the 415(m) program – in particular, some communication on how the 415(m) calculations are being made would be helpful. HR consultants remarked that there is indeed an established methodology for the 415(m), and a letter is sent out every year. It was clarified that these calculations concern the departmental obligations, and specifically, what are the practices on each of the Health Sciences campuses for distributing the 415(m) costs? Is the 415(m) being funded at the campus, school, or departmental level? How does one handle small numbers of faculty receiving 415(m) benefits? And finally, what monitoring mechanism is in place? HR consultants agreed to put together a white paper on the 415(m) calculations.

ACTION: The feasibility study of the voluntary opt-out (from UCRP) DC plan for new hires at the medical center campuses and the contribution plan on additional negotiated salary will be scheduled as agenda items for the January UCFW meeting.

VII. Consultation with UCOP – Academic Personnel – Vice Provost Susan Carlson

ISSUE(S):

- *Hiring and Separation Data:* Vice Provost Carlson presented hiring and separation data on faculty from July 1, 2010 and July 1, 2011. In 2010-11 there were 189 new faculty appointments and 428 faculty separations. She remarked that isolating separation trends from this data alone is difficult, as this data only covers one year. In addition, new hires since July 1 may not have been counted, so the timing of the collection of the data is crucial. That said, she observed that new appointments are down and separations are healthy. For instance, UC made 379 new appointments in 2009-10, and 607 in 2008-09. In terms of separations, 342 faculty members left the University in 2009-10, and there were 329 separations in 2008-9.¹ The reasons for separations are collected through a separate mechanism; these will be brought before UCFW at a future meeting. Members agreed that while these numbers may be technically correct, they may not accurately represent the true impact on academic departments. Regarding separations, formal exit interviews are not conducted for faculty members, as they are for staff. It was felt that the separations data are probably more accurate than

¹ Appointment and separation data from 2008-09 and 2009-10 were recorded in October following each year.

the appointments data. Members opined that this data should also be expressed as a percentage of ladder-ranked faculty at each campus. Chair Parker summarized that the policy question concerns whether the University is losing faculty over time. Indeed, this table may underestimate the hires more than it underestimates the separations. The age of “retirements” may also reveal if some of these separations are actually resignations. Consultant Carlson remarked that she would like to wait until the new October data is available before drawing any concrete conclusions regarding separation trends.

- **APM 133:** Vice Provost Carlson noted that this item concerns the proposed revisions to APM 133, which states that certain faculty titles are banned from reappointment after a denial of tenure for five years. She articulated that this policy is too restrictive for some campuses and departments. In short, the proposal recommends the following revisions to policy: 1) Shortening the bar on return from five to three years; and 2) granting Chancellors exception to policy authority under the following circumstances – programmatic need and resource allocation for the appointment, different appointment criteria, and a search and recruitment is conducted for which the former appointee may be considered as a candidate. She added that this policy would only apply to a very small group of people. It does not apply to people who resign before they are denied tenure. Some titles were also taken off the list of prohibited titles that faculty cannot be rehired into within the initial three years. These include the health sciences clinical professor series, supervisor of teacher education, lecturer, senior lecturer, coordinator of field work, field work supervisor, and field work consultant.

DISCUSSION: Members were concerned about some of the “prohibited” titles within APM 133. It was argued that both “Lecturer with SOE” and “Lecturer with potential for SOE” are comparable to “Health Sciences Clinical Professor,” and should be off the “prohibited” list. The principal issue is that some faculty members, who may have been denied tenure at one campus, may be very attractive to other campuses. A related issue concerns inter-campus recruitments; UCFW has opined in the past that each campus should have the independence to make its own hiring decisions regardless of the actions of other UC campuses. Members opined that the entire policy should be reviewed, as it does not make sense – particularly for late-bloomers. In the end, UCFW recommended eliminating APM 133 because it is simply too restrictive and cannot be justified at this time.

ACTION: UCFW recommends the rescission of APM 133.

VII. Further Discussion/Executive Session

Minutes were not taken for this portion of the meeting.

The meeting was adjourned at 3:30 p.m.

Attest: Bill Parker, UCFW Chair
Prepared by: Todd Giedt, Committee Analyst