STATE BOARD OF HIGHER EDUCATION
MINUTES OF SPECIAL MEETING HELD IN
ROOM 338, SMITH CENTER, PORTLAND STATE UNIVERSITY,
PORTLAND, OREGON

June 20, 1985

Meeting #526
A special meeting of the State Board of Higher Education was held in Room 338, Smith Center, Portland State University, Portland, Oregon.

ROLL CALL
The meeting was called to order at 1:00 p.m., June 20, 1985, by the Vice President of the Board, Mr. Alvin R. Batiste, and on roll call the following answered present:

Mr. John W. Alltucker
Mr. Alvin R. Batiste
Mr. Gene Chao
Mr. Terrence A. Clark

Mr. Edward C. Harms, Jr.
Mrs. Janet S. Nelson
Mr. James C. Petersen
Miss Linda L. Walling

Absent: Mrs. Flanagan was absent due to illness. Mr. Perry was absent for personal reasons, and Mr. Hensley was absent for business reasons.

OTHERS PRESENT
Centralized Activities--Chancellor William E. Davis; Secretary Wilma L. Foster; Melinda Grier, Compliance Officer; Jerry Lidz, Assistant Attorney General; Larry Pierce, Executive Assistant to the Chancellor; Tim Marsh, Information Director; Pat Wignes, Assistant Board Secretary.

University of Oregon--President Paul Olum.

Oregon Health Sciences University--J. T. McGill, Vice President; Ronald Parelius, Assistant Vice President for Management Services; John Kendall, Dean, School of Medicine; Robert Bennett, Professor; George A. Porter, Professor; Bernard Pirofsky, Professor; William Jackson, Affirmative Action Officer; Janet E. Young, Assistant to the Vice President; Peter Wollstein, Assistant Vice President, Budget and Finance; Judy Loebner, Management Assistant; Martha Helikson, Management Assistant; Steve Bauer, Executive Assistant to the President; Byron Backlar, Associate Dean for Administration; J. S. Reinschmidt, Associate Dean; Marshall Rotstein, Assistant to Dean/Fiscal Affairs; Elaine Lis, Professor.

Others--Representatives of Faculty Women for Equity--Ann Hoffstetter, Elaine Spencer, Martha Thompson, Anna Penk; Candace Hagen, Student, OHSU; Carla Kelly, SKANNER NEWS.

Mr. Batiste stated that the purpose of the special meeting was to hear a retaliation grievance brought to the Board by Dr. Jane M. Siegel of the School of Medicine at the Oregon Health Sciences University. He indicated that Dr. Siegel was a plaintiff in the case of Penk vs. the Oregon State Board of Higher Education.

Mr. Batiste said each side would be given one hour to present its material and testimony, including that of any witnesses. Following those presentations, the Board would deliberate.

Prior to the start of the presentations, two matters were clarified. It was anticipated that the Board would deliberate on the issues at the conclusion of the presentations, but it would not be required to reach a decision if it were unable to do so. Time used during the presentations for questions from Board members would be subtracted from the time used for presentations so that the full presentation time would be available to each side.
Dr. Siegel requested and received permission to reserve ten minutes of her time for rebuttal, with the understanding that there would be no cross examination by either party.

Dr. Siegel and the Oregon Health Sciences University both presented a number of exhibits for the information of the Board. Copies are on file in the Board’s Office.

Dr. Siegel first reviewed the exhibits dealing with her professional experience, research, and scientific studies and publications.

Dr. Siegel stated that she did not claim, and had never claimed, that the university had an obligation to pay her salary. She noted that three different deans of the Medical School had provided her with partial support amounting to .42 FTE for a total of approximately 3.5 years of her 21 years at the institution. She said she was very grateful for the support and had always recognized it as being discretionary rather than obligatory. However, she said this had no bearing on the current retaliation grievance or on the remedy she was asking from the Board. She stated the University did have certain obligations regarding her need to raise salary. The institution is obligated to provide her with equal opportunity under established regulations to learn about and apply for any position openings that are available on the campus and to avoid any discriminatory or retaliatory behavior in dealing with her applications for salary funds.

Dr. Siegel said the retaliatory actions she would describe were the result of her challenging the status quo, not because of any specific grievance raised in the Penk lawsuit. The two grievances she claimed in the Penk lawsuit were that she and other women faculty did not have equal access to affiliate academic appointments as compared to their male counterparts, nor did they have equal access to hard money. She said all of the materials submitted from the Penk case in the exhibits from the institution were irrelevant to the retaliation grievance. The issue being presented to the Board was retaliation by means of salary denial in terms of the Gerlinger bequest to the Medical School for DMSO research.

Dr. Siegel indicated she was a fixed-term faculty member with a zero-based budget based entirely on soft money. She then reviewed her budget and the amount of money it would be necessary for her to obtain to continue her research. She noted that it was much more difficult to raise salary money than other research support because granting agencies expected salary to be provided by the institution. She said she did not challenge the dean’s discretionary right to discontinue her salary but she did question the timing of this action relative to the Penk case. She also said the complete failure of the institution to notify her in writing about any salary actions and the disparate treatment involved in denying her a raise solely because she was still involved in the lawsuit. She charged these actions were retaliatory and malicious and were intended to, and did, cause unnecessary distress. She said she presented them in the sense of establishing a climate of hostility at the university that fosters and provides the background for discrimination and retaliation. She also stated that she had been characterized by President Laster before other faculty members as a troublemaker with respect to affirmative action.

Dr. Siegel then referred to hiring violations which she stated had occurred. A position description for an opening in her department was not forwarded to the affirmative action officer and placed on the affirmative action bulletin board in a timely manner. Further, the advertisement placed in professional journals for applicants for the position violated federal law by not stating that the Oregon Health Sciences University is an equal opportunity affirmative action employer. She said she heard of the position and contacted the affirmative action officer who was not aware of the position opening in the division. A position description was subsequently received and posted on January 8, 1985, some six months after the decision to hire, and shortly after a job offer had been made to the leading candidate. She asserted the position description was a tailor-made description of the individual who already had been hired.

-181-
There was some clarification of the time frame of the position announcement and Dr. Siegel's testimony in the Penk case. Dr. Siegel stated she was not proposing a direct relationship between this action and her testimony in Penk. She was presenting the information as an example of the attitudes toward rules and violations committed by people who had been at the institution for some time.

Dr. Siegel then discussed the Gerlinger bequest, noting that it provided that the principal would be invested in perpetuity with all of the income to be used for research on collagen disease, arthritis, and DMSO. She stated she had been studying the effects of DMSO on lymph node tumors and collagen disease in mice since about 1982 and described some of the studies and results. These mice, when treated with DMSO, showed a regression of the tumors, and this research is potentially very important for humans.

There is a provision in the bequest that income from the principal may be used to provide salary support at the discretion of the dean of the school of medicine and department chairman to enable faculty members to engage in research in the areas specified. Requests for funding of research projects are to be submitted to the dean of the school of medicine, who forwards them to the research committee for review and awarding of funds.

She indicated there were over 380 faculty members at the medical school, of which 72 were women. She said she was the only one doing the kind of research specified in Mrs. Gerlinger's will. She was also the only one of the women who was involved in the Penk lawsuit. She stated the institution was fully aware of her research in this field.

Dr. Siegel said she first applied for Gerlinger salary funds on November 30, 1984, and cited the documentation and support for her application in her exhibits. There was no response, and the request was renewed on March 5 and May 4, 1985. Subsequently, the retaliation grievance was filed on May 13.

Dr. Siegel said the dean had announced recently a competition for $40,000 from the bequest for research support, to be available some time after October 1. She then referred to Exhibits VI-B and VI-H from the university which state that it was consistent with the intent of the will that the remaining funds be reserved by the new chairman of the department of surgery to further or advance research by supporting faculty in that department who are working in areas relative to the bequest. Dr. Siegel questioned the sequestering of these funds, representing the bulk of the income, to the department of surgery where they will be inaccessible to her and to many others. She stated she was the only person doing this research and the logic and fairness of this action escaped her. Further, research on arthritis and collagen disease is seldom, if ever, carried out under the purview of the surgery department. This action is clearly discriminatory and retaliatory.

In response to a question, Dr. Siegel said she planned to apply for funds under the $40,000 competition.

Dr. Siegel said it was not difficult to interpret Mrs. Gerlinger's will. She made her intentions very clear and provided sufficient latitude to insure that her wishes could be accomplished in the most efficient way by allowing for salary as well as research funds. Dr. Siegel said the institution adamantly resists using any of these funds to support her salary, the one faculty member doing the work Mrs. Gerlinger wanted done. It is further blocking Dr. Siegel's access to that salary money by reserving it without logic and without basis in merit for the department of surgery. Dr. Siegel charged that this was clearly retaliation against her for being a troublemaker on affirmative action issues and for being a plaintiff in the Penk discrimination lawsuit.
Dr. Siegel concluded her presentation by reviewing what she believed was at stake in this controversy. For her, she said it was the persistence and quality of her career as a research scientist and faculty member at the Oregon Health Sciences University. For the administration of the institution, it is a question of whether the Board would permit the institution to interpret their discretionary power as license to do anything they wish without being answerable for those decisions, including discriminatory and retaliatory acts. For higher education as a whole there are two implications. The first is the disposition of the retaliation grievance. The other is the implicit relationship of trust and good faith between the donor of a targeted gift or bequest and the recipient, in this case higher education.

Dr. Siegel said she had fully substantiated her claim of retaliation through the irrational and adamant denial to her of Gerlinger salary fund support, thus really destroying the very research which Mrs. Gerlinger intended to support. She said she had also established the environment of hostility and the disregard and contempt for equity which can foster and explain such retaliatory behavior.

Dr. Siegel asked that the Board find in her favor and as remedy award her salary from the Gerlinger bequest to continue only for as long as she carried out adequately the research stipulated in Mrs. Gerlinger's will.

Mr. Batiste advised Dr. Siegel that she had 15 minutes reserved.

Mr. Petersen asked Dr. Siegel how she became aware of the Gerlinger bequest. She replied she had learned of it from Dr. Stanley Jacob in April 1984 but had paid little attention to the matter because it would be some time before the will would be probated. She subsequently saw a copy of the will and a notice in the newspaper. The will included the provision for salary funding. To her knowledge, the institution never announced the availability of the funds until the competition was announced recently for the $40,000.

Mr. Harms asked if the essence of Dr. Siegel's retaliation grievance was that the funds were available, that the majority of the funds were unused and being held in reserve for the chairman of the department of surgery, that the university was resisting giving any of these funds to the one faculty member on the staff who was doing research in this area, and that her conclusion from these statements was that this action could only be retaliatory.

Dr. Siegel responded that this was correct, taken in the context of the time frame relative to Penk, the overt manifestations of hostility and minor retaliatory events, linked with what she perceived as a violation of the intent of the donor.

Mr. Harms pointed out that the provisions of the Gerlinger will were couched in terms of rather extensive discretion on the part of the dean of the school of medicine, the department chairperson, and a research committee. Dr. Siegel concurred and said there was a good deal of wisdom in that discretion. The flexibility in the provisions of the will was desirable, but exercise of discretion did not mean evasion to use that discretion as a means of avoiding the donor's intent.

Mr. Harms said he was not sure he understood the evasion because he thought he had understood Dr. Siegel to say that the department of surgery was not the best place to put the bequest. At the same time, Dr. Jacob was in that department and did the first research in this area.

Dr. Siegel said Mrs. Gerlinger endowed a chair professorship for Dr. Jacob in the department of surgery and he did not need the salary. Further, he is not doing this research and has stated that Dr. Siegel is doing this type of research and her salary should be paid from the bequest.
Mr. Harms commented that the Gerlinger will could have named Dr. Jacob as the person to make the decision with respect to the distribution of the money, and Dr. Siegel agreed.

Mr. Harms said he was having trouble following the contention that the exercise of discretion was evasion of the provisions of the will.

Dr. Siegel indicated that she distinguished between discretion, which she would define as considered judgment, and license to use the funds for other purposes less related to the immediate intent of the donor.

Mr. Chao stated his understanding of the four instances of retaliation being cited by Dr. Siegel; (1) the timing of the salary denial, (2) the withholding of money from the Gerlinger grant, (3) the denial of a raise during the litigation, and (4) the denial of equal opportunity to job openings.

Dr. Siegel responded that the denial of the raise was a little incident when she had requested a raise from her own funds because salary had been discontinued from the Dean’s fund. She was asked if she was still involved in the lawsuit, and after replying affirmatively, was told she could not be granted a raise because it would be an admission of guilt in the Penk case.

Mr. Chao questioned Dr. Siegel about the timing of the incidents, since the salary incident occurred in 1984 and the Penk case ended in 1985. Therefore, it would appear Dr. Siegel was still pursuing the Penk case. She indicated it was on appeal.

Dr. Siegel said the focus of her retaliation grievance was on the use of the Gerlinger fund. The other matters were background material depicting the climate at the institution. She said she did not feel she was in a position to establish the others as retaliatory events. She viewed them as incidents which could well be retaliatory, but she did not want to have the burden of proof on them specifically in the presentation before the Board.

Mr. Petersen asked Dr. Siegel about the reasons she might have been considered a troublemaker. She mentioned several activities concerning due process and affirmative action, including a conference with former Chancellor Lieuallen in which she discussed the lack of due process and affirmative action at the institution.

Mrs. Nelson asked whether Dr. Siegel was the only faculty member involved in the Penk case. Dr. Siegel responded that she was the only medical school faculty member who was a plaintiff. A member of the administration was a plaintiff, and a number of faculty members from the medical school and other schools were witnesses.

Mr. Petersen requested Dr. Siegel to review again the remedy she was asking from the Board. Dr. Siegel said the remedy was stated in Exhibit 39. In essence, she was requesting 75% FTE salary from the Gerlinger reserve fund to continue only as long as she continued to work in the areas specified in the bequest.

Mr. Chao inquired of the Board’s attorney whether the Board, under the provisions of the will, had authority to direct the remedy requested by Dr. Siegel.

Mr. Lidz said it was not the Board’s role to interpret the will but the Board did have the ultimate authority to direct the institution to take appropriate personnel actions. As a matter of policy and practice, the Board has scrupulously avoided getting involved in internal decisions of any institution in the sense of substituting the Board’s judgment for that of the institutional administrators.
Mr. Lidz said if the Board found that the denial of the Gerlinger funds to Dr. Siegel was indeed retaliation, then it certainly would be appropriate for the Board to take some action directing, in either general or specific terms, the institution to do what the Board considered to be appropriate. On the other hand, if the Board simply thought the institution had made a bad decision, he did not believe it would be in keeping with its role, as the Board has traditionally defined it, to substitute its decision for that of the institution. He said it was really a question of whether the salary decision was a matter of retaliation or whether it was a good faith decision about which there were some legitimate disagreements.

Mr. Chao said he was really going beyond that. In the event the Board found in favor of Dr. Siegel, he did not believe that the will would allow the Board to direct that money. The will states that the department directs the money. The Board's only recourse would be to find other money.

Mr. Lidz said the Board probably could direct the department to do what was necessary.

Mr. Petersen said he would anticipate that if the Board found in favor of Dr. Siegel, the focus of attention on the issue would prompt some responsible action on the part of the university administration without the necessity of the Board's making the decision for the institution.

Mr. Batiste noted that the comment by President Laster was made in the summer of 1983 and questioned the relevance to the charge of retaliation of an incident which occurred almost two years earlier.

Dr. Siegel said the Penk case had already started although it was not yet in court. She said such a remark by the president of the institution might have a tendency to filter down and influence subordinates.

Mr. Batiste said basically Dr. Siegel was charging that because of her participation in the Penk case, she was subject to retaliation, and Dr. Siegel concurred. However, she said it was not simply the testimony, but rather the total picture.

In response to a question concerning the continued availability of research space, Dr. Siegel indicated she had not lost any of her research space, although she had some reason for concern that it was being threatened.

Mr. Clark inquired whether Dr. Siegel had anticipated some form of retaliation because of her participation in these activities. Dr. Siegel said she did not believe that she had and was a little surprised when it occurred.

Mr. Petersen inquired concerning the tone of the efforts to negotiate a settlement. Dr. Siegel indicated there had been very little time for verbal negotiation although there had been an exchange of proposals and counter-proposals. It became obvious both sides were so far apart that an agreement could not be reached.

Dr. McGill, in making the presentation for the institution, said he would deal with four issues: (1) the withdrawal of salary support from the dean's discretionary funds; (2) the use of the Gerlinger money, particularly with respect to the denial of those funds to support Dr. Siegel's salary; (3) the contentions regarding the hiring of a new faculty position; and (4) her request for an equity increase in salary.

Dr. McGill indicated he would deal first with the equity increase. He said it was a fact that the response to the request was that there was some uncertainty as to whether the salary equity could be dealt with while Dr. Siegel was involved in the Penn litigation. Dr. McGill said that when he learned of the matter, he consulted the Board's counsel on Penn and obtained concurrence for the position he intended to take. This position was that at
any time an equity issue regarding salary or anything else becomes known in the institution, irrespective of whether the individual is a plaintiff or witness in Penk, the matter would be dealt with as would any other equity matter. He then advised Dr. Siegel to follow the usual routes for dealing with a salary equity issue and make a specific request to her immediate superior. He said it was his understanding she had not pursued the salary equity issue any further. Although there was some link in the discussions regarding Penk, there was no retaliatory or discriminatory action taken in that regard. Dr. Siegel has available all of the informal and formal processes of the institution to do this.

Dr. McGill said the charge of retaliation was an extremely serious matter and he wished to convey his personal concern, as well as that of all of the responsible officers of the institution, that prohibited discrimination was not condoned and would not be condoned. If such acts occur, or are alleged to have occurred, there are formal and informal processes to address those charges. He indicated that neither he nor Dean Kendall was aware that Dr. Siegel felt that she had been retaliated against until the claim was filed with the Board.

Dr. McGill said he had reviewed personally the written record regarding the allegations and interviewed the parties involved in the retaliation complaint to determine whether any retaliation or prohibited discrimination had occurred and, if so, to discover remedies to deal with it. He said he had found no basis for concluding that any retaliatory action was taken against Dr. Siegel. He said he had discovered some lapses in the processes, which he would identify in the presentation, but these were not, in his view, retaliatory in any way.

In the matter of the faculty position, he said Dr. Siegel should have been aware of the position because the information was generally available in the department of medicine and in her division. She did not apply for the position, and she was not qualified because the position was for a physician.

With respect to the Gerlinger bequest, Dr. McGill said this was a major gift and opportunity for the school of medicine, and the institution is attempting to determine the best use of those funds within the intent of the donor. Part of that money will now be used for the competition that has been announced and is open to all eligible faculty in the school of medicine.

With respect to the temporary salary money request from the dean's fund, Dr. Siegel has had such temporary support from the dean's office for a longer period of time than any other faculty member, at least in the recent history of the school of medicine. This has been the case even though it was made clear at the time of employment and at other times that she was responsible for generating her own salary support. Dr. McGill then requested Dean Kendall to address the organization and financial complexity of the school of medicine.

Dean Kendall described the administrative structure and noted that Dr. Siegel was one of several faculty members in her division. She is on a fixed-term appointment and is not tenured. There are approximately 30 faculty members in the department of medicine. Of this number, 85 have M.D. degrees and the other 5 have Ph.D. degrees. The primary responsibility of the medical doctors is for the clinical teaching of medical students. They may also engage in research. They are supported by a variety of funds, but primarily hard dollars linked to clinical teaching. These hard dollars are enduring dollars provided by the state through the legislative process and from some recurring endowment funds. Faculty members are also supported by soft dollars, nonrecurring, linked primarily to research, and by practice dollars from seeing patients in the hospital and clinics.
The Ph.D. faculty engage primarily in research and are required to finance themselves. Such faculty members are on soft dollar support and may apply to their department head or the dean's office for temporary interim support until the next opportunity appears for them to obtain a grant. They are told explicitly that this kind of temporary support cannot be continued indefinitely. These funds have been limited in recent years.

Dean Kendall then described how faculty members obtain grant support through national competition. He indicated the school of medicine followed much the same procedures in its competition for research funds. Peer group review is a key element in the process of evaluating the requests. The research committee and peer review will be used for the competition for funds made available from the Gerlinger bequest in the amount of $40,000.

In response to questions concerning the competition, Dean Kendall said the availability and guidelines had been published. The competition will close on August 15, and the money will be available for expenditure on October 1.

Mr. Petersen requested Dean Kendall to explain how the decision was made to set aside a substantial amount of the bequest for the department of surgery.

Dean Kendall said he had sought the concurrence of the president to set aside money for the chair of surgery because of the extraordinary importance of that position in the university. The amount has not actually been applied for that purpose, but is available to assist in recruiting the highest quality chairman who can be obtained. Later, in clarification, he explained the money was not for the chair of surgery itself but for the person to have available to enhance research in the department of surgery.

Dean Kendall indicated that by reserving the Gerlinger funds for use of the new chairperson in the department of surgery to further support for research by faculty in that department, the money would be unavailable for Dr. Siegel's salary. However, the final decision has not been made on the distribution of the funds other than the $40,000.

Mr. Batiste then inquired whether there were other individuals currently at the medical school who were engaged in these areas of preferred research. Dean Kendall said there were and mentioned several individuals. In response to further questions, he indicated some of them were interested in newer areas of exploration in these fields and that they would have to meet the same criteria as were established for the competition for the $40,000 amount. The same principles will be applied, although all of the funds may not be distributed through the research committee.

Dr. McGill stated this bequest afforded the school of medicine an unparalleled opportunity to do something significant. Money first became available in October 1984 and receipts have been coming in periodically since then.

Dr. McGill said the basic philosophy has been a very deliberate, careful consideration to determine the best use of these funds to enhance the research efforts in the school of medicine. The process may seem lengthy, but it is not unusual for the school of medicine. He cited other examples and commented that these substantial gifts to not occur very often. The institution wished to make the best possible use of the opportunity provided. It is important to demonstrate to potential donors that their gifts can make a real difference.

Dr. McGill said Dr. Siegel was correct in saying the money was available, she was eligible, and it had not been given to her, but he rejected her conclusion that this was retaliatory. He noted that an alternate use of the money would be to endow a chair in the areas of preference stated in the will. If this were done, the competitive monies would not be available in the future.
Mr. Batiste inquired whether some of these alternative plans would foreclose any use of the Gerlinger money for Dr. Siegel. Dr. McGill responded that she would have access to the $40,000 now available for competition. It was quite conceivable that, aside from that, these monies might not be available in the future. If it were decided to endow a chair in these specific areas of research, that position would be open to anybody, including Dr. Siegel. Dr. McGill said the institution did not believe it appropriate to give the funds to a person just because they were needed and the person was now on the faculty and eligible. However, whatever is done in distributing the money would be done fairly and in a non-discriminatory way.

Mr. Petersen inquired whether Dr. McGill was contending that this had been the case in many situations within the faculty, both research and clinical.

Dr. McGill responded affirmatively. He said the dean has a balancing act in terms of money. Some funds can be given on a competitive basis for research. The dean must also have the flexibility and ability to exercise judgment in the use of discretionary funds in key areas requiring assistance, such as equipment, temporary funding of salaries, and other needs. He said Dr. Siegel has been supported through these discretionary funds for a long period of time.

Mr. Petersen asked whether it was likely this had closed out other faculty members too and was not unique. Dr. McGill said this was correct.

There was a further brief discussion of the use to be made of the funds by the new chairperson in the department of surgery. It was emphasized that the money would be available for that person's use within the department for research purposes consistent with the provisions of the will.

Miss Walling referred to Dr. McGill's comments concerning prudent use of the funds to demonstrate to potential donors the benefits which could result from their gifts. She said Dr. Siegel's royalty-sharing agreements in her exhibits seemed to indicate more promising results than the examples of other research cited by Dean Kendall.

Dr. McGill said that in terms of showing potential benefactors a good use of donated funds, the new research institute in molecular biology was a prime example. It provided the impetus for a whole series of leveraging moves which would add, not just a person, but an entire new major addition to the fabric of the medical school, the university, and the State of Oregon. While the Gerlinger funds may not be the starting point for that kind of an addition, the ultimate objective is to add something of substantial value to the institution.

With respect to the royalty-sharing agreement, Dr. McGill explained that it was a standard recovery agreement between the Board of Higher Education and the investigator. He described the process of determining whether a discovery is patentable and of commercial value. Dr. Siegel's discovery was reviewed by Research Corporation to judge whether the company wished to take it and market it commercially. It was determined that this particular chemical was patentable for use with mice but it could not be extended to humans without further work being done on humans.

Dr. Siegel was treated no differently than a number of other people during the past year in getting discoveries before patent attorneys.

Miss Walling said her point with respect to Dr. Siegel's work and that of other investigators was that it was prudent to take care of work that has already begun, particularly when it has reached this level, rather than beginning new projects.
Dr. McGill then discussed the recruitment of a faculty member in the division of immunology. Dr. Siegel had stated she did not know the position existed and the university did not go through proper procedures to make known the availability of the position. She further stated that an offer was made in June 1984, which Dr. McGill said did not correspond with the facts available to him.

Dr. McGill said in mid-1984, a reorganization of the department of medicine was undertaken. At that time, it was decided to hire a second rheumatologist. This position was discussed in the executive council of the department of medicine and the minutes of the executive council included material that indicated a position was open. These minutes were distributed to all faculty in the department, and the position also was advertised in a professional journal in the field in which Dr. Siegel works. Even though she did not know of the position, Dr. Siegel should have been aware of it. A search committee was constituted, nine applications were received and evaluated on paper, and three persons were invited to the campus for interviews. One was a woman. Following the interviews, a tentative decision was made to hire one of the three candidates.

The policy of the institution with respect to affirmative action requirements is in the operations manual. It states quite clearly that the person authorized to conduct recruitment is to confer with the affirmative action officer and file a position description plus other information concerning salary, title, and rank. This was not done in a timely fashion in this instance. However, Dr. McGill emphasized that substantive recruitment, the search itself, and the procedures followed were the standard procedures of advertising, bringing people to campus, and having them rather widely exposed to other investigators on campus. Once a tentative decision is reached on hiring a person, the affirmative action office is involved. The hiring person must indicate the reasons why any woman or minority was not offered the position if the tentative decision is a white male. The affirmative action officer reviews this disposition document for the applicants to determine if affirmative action has been violated in any way. If this were the case, recruitment would stop, and a decision made on how to rectify the violation. This review has been completed for the position in question. The affirmative action officer has reviewed the documents and found the search to have been conducted with no violations of affirmative action or equal opportunity.

The final step in hiring a person is the filing and signing of a notice of appointment, and that has not been done as yet for this position.

Mr. Chao inquired when the M.D. degree requirement was articulated. Dr. McGill was unsure, but said the advertisement was published in a journal of allergy and rheumatology. The readers of that particular journal assume a rheumatologist is a clinician with a medical degree.

In response to questions concerning the timing of the position description and the identification of the person to fill the position, it was indicated the official job description went to the affirmative action officer in early January and the person was identified on January 30. Interviews started in September or October of 1984. Dr. Porter indicated the official position description substantially followed the original notes taken of the executive council meeting and were closely tied with what was the understanding of the executive committee about the job description and how it would be funded.

Dr. McGill commented that although the paper work was not filed in a timely fashion, in accordance with the guidelines, the testimony and evidence supported the fact that the failure to do so did not result in a recruitment that was discriminatory or retaliatory against Dr. Siegel.
Dr. McGill discussed salary support for Dr. Siegel, noting that there was a clear understanding in the letter offering her a position that she was responsible for generating salary funding for her position. She has acknowledged that understanding. He then reviewed her support from the dean's discretionary funds and her own gift account. He also reviewed her grant applications and the success of those applications.

Mr. Petersen inquired whether the salary support for Dr. Siegel from the dean's discretionary funds could be characterized as more, less, or about the same as that given to the other faculty members doing research.

Dr. McGill responded that it was more. For the period from 1979 to the end of February 1985, her salary was supported in part for a total of 43 months at a cost of nearly $60,000, plus the related OPE, which is probably conservatively estimated at $15,000. In response to a further question, Dr. McGill said the average faculty member support would be six to twelve months and cited examples of two persons assisted for 18 and 19 months. They were probably at the upper time limit of typical faculty support. In terms of the retaliation grievance, Dr. McGill said Dr. Siegel knew and agreed to generate her own salary support and did so for a period of time. For whatever circumstances, she became less able to do this in the past 3-4 years and has received temporary support from four different deans over this period of time. She has been treated at least as well, if not better, than other faculty members in terms of access to these temporary funds during that period. He commented on other gift funds available to support her salary. These private gift funds were for the support of her research and that of her husband and were handled through the foundation.

Miss Walling requested Dr. McGill to comment further on Dr. Siegel's statement that she was not communicated with on the termination of her salary.

Dr. McGill said that in most cases she was communicated with directly in terms of the temporary nature of the salary support and the fact that she would have to generate her own salary. There was one exception. He referred to specific exhibits. Dr. Siegel was not notified directly of the extension from June to December of 1984. She should have had specific written notice. In efforts to resolve this matter short of coming to the Board, an offer was made to Dr. Siegel to carry her salary forward from March 1985 for a few months in recognition of her not having written notice.

Mr. Alltucker asked whether there had been any time during Dr. Siegel's tenure at the university when she did not have outside support available and the dean had not provided temporary support.

Dr. McGill said he believed that was accurate except for a period of time when her total salary support went from a full-time to a half-time salary and that loss was not covered by the dean.

In summarizing, Dr. McGill said there were four issues. The request for an equity increase in Dr. Siegel's salary in March or April 1985, at which time Dr. Siegel was told that consideration of a salary increase would not be prohibited just because she was a plaintiff in the Penk case. With respect to the recruitment of faculty members, Dr. Siegel knew, or should have known about the position, and she was not eligible, in any event, because it was for a clinician.

Dr. McGill said Dr. Siegel was requesting the institution to give her ongoing salary support, essentially in perpetuity, with the proviso that if she discontinues her work in the preferred research areas, the salary support would cease. This is the equivalent of tenure and hard money.

He indicated Dr. Siegel was alleging retaliation because the school of medicine has not placed her salary on Gerlinger funds. Dr. McGill agreed the funds are available, she is eligible, and they have not been allocated to her, but that does not constitute retaliation.
Mr. Batiste clarified the point that Dr. Siegel had been nominated for the Gerlinger funds and indicated her intention of applying for them under the new procedures, but she had not yet done so and, therefore, had not been denied those funds.

Dr. McGill said that Dr. Siegel is alleging that there had been retaliation because her salary had not been placed on the Gerlinger funds, which represent hard money. He said the issue here is basically one of hard money versus soft money support of Dr. Siegel's appointment. He said this was exactly the issue argued in the Penk case, and he referred the Board to the testimony of Dr. Pirofsky in the Penk case. The testimony stated that it was always the understanding Dr. Siegel would generate her own salary. He then cited Judge Frye's findings with respect to the hard money/soft money issue in Dr. Siegel's claim, indicating that she could not prevail on this issue on the basis of the evidence presented in the case.

Mr. Batiste asked for clarification of the status of the Gerlinger funds as hard money or soft money. Dr. McGill explained that the competitive grant would be soft money. If the decision were made to endow a chair from the remainder of the funds, that would be hard money at that point. The institution would open a position and recruit for it, and Dr. Siegel would have every opportunity to be a candidate. If she were the successful candidate, she would then have hard money support.

Mr. Petersen asked whether this testimony was given to the Senate Education Committee when they held hearings. Dr. McGill said it was not. He said he had been informed by Mr. Lemman that neither he nor anyone else representing the Board really had an opportunity to go into any details on the testimony from some of the plaintiffs in the Penk case that was given to the full Senate Education Committee.

Mr. Batiste declared a recess. Upon reconvening, he asked any Board members who had discussed any matters concerning the grievance before the Board, particularly with institutional people, to report their discussions so that Dr. Siegel would have an opportunity to respond during her rebuttal.

Miss Walling indicated she had asked for a clarification of some of the material on the chart which she had been unable to see.

Mr. Chao said he had sought clarification of whether Dr. Siegel knew that the temporary grants would be terminated at the end of 1984 because she was not copied on that communication. Dr. Pirofsky said Dr. Siegel had known it was terminating at the end of December but they were able to extend it to February. He also inquired about her knowledge of the job opening and asked whether a person working in Dr. Siegel's field of interest would be reading that journal. Dr. Pirofsky responded affirmatively and also indicated he had discussed the job opening with her and the fact that it required the M.D. degree.

Mrs. Nelson said she had also been present during part of the above conversation which was followed by some discussion of the Gerlinger bequest. Dr. Pirofsky said that although he had supported Dr. Siegel's request, he could see that Dean Kendall would have been faulted by others within the institution if he had simply responded to that one request without opening the funds to other people as well. Mr. Chao also heard that portion of the conversation.

In the rebuttal, Dr. Siegel said the whole issue of her salary history had nothing to do with her qualifications for the Gerlinger fund and the application for the Gerlinger money for salary. It is totally irrelevant. The length of support was appreciated. She suggested that perhaps consideration should be given to the length of time a person has been at the institution and the percent of time they were supported.
She said the statement that to support her from Gerlinger money would be instant tenure was no more valid than for her to assume Dr. McGill had implicit tenure by virtue of his salary support from state funds, which are hard money.

Dr. Siegel said her application for Gerlinger salary funds fell within the realm of her necessity to apply for soft money funds, because the Gerlinger fund is in the category of soft money. She commented that the diversion of the Gerlinger money to surgery would indeed take money from the only individual doing this particular research. This is retaliatory. She noted that Mrs. Gerlinger had been very specific in her intentions stated in the will. She questioned the use of the funds for the preferences of the institution rather than for those of Mrs. Gerlinger.

Dr. Siegel said there were two sections to the will. The first discussed salary money to be disbursed by the dean and the chairman. It did not say anything about the research committee, which normally gives out research funds and is not involved in faculty salaries. She said this was an inappropriate commingling of these two aspects of the will to refer the salary decision to the research committee.

Dr. Siegel suggested that a certain confusion had been created by the university in suggesting that the $40,000 is or should be available for faculty salaries, because that is not a stipulation of the will. She said she perceived the $40,000 as a research pool and the residue being diverted to surgery as money available for other Gerlinger-associated wishes. She said the institution's latitude of interpretation of the will was far beyond what she read into it.

Dr. Siegel again questioned the procedures on the position description and the process of advertising and whether the requirement for a clinician was stated early in the procedure.

Dr. Siegel also discounted the statement that objections would have been raised had she been awarded the funds because she was the only person doing this research.

With respect to the hard money/soft money issue, Dr. Siegel commented that male faculty members are more often shifted from soft money to hard money than are the female faculty members. She said putting her on Gerlinger salary, when she was the only person qualified for it, would be perfectly legitimate in terms of pattern and practice for the whole history of the institution.

Mr. Batiste inquired whether there was a distinction between being the only person actively engaged in research or the only one being qualified.

Dr. McGill said he had intended to say that Dr. Siegel was eligible for use of these funds because she does research in these areas. He did not believe he had said she was the only one either doing research or having the potential to do research in one or more of these areas.

Mr. Batiste then asked if there were any questions. There being none, he declared this part of the hearing over and opened the Board hearing. He said there would be no further questions of either Dr. McGill or Dr. Siegel. The Board would begin discussion on the hearing.

Mr. Harms stated that the Board must start with the premise that the burden of proof was on Dr. Siegel in the charge of retaliation. He added that any statements or decisions were not, and should not be considered as, a reflection on her capabilities or the value of her research, or her long association with the Oregon Health Sciences University. He said she stated that retaliation was the issue and the means was the failure to provide access in view of the importance of the research to the multi-million Gerlinger trust.
Mr. Harms said that in listening to the evidence, he did not find there was any substantial evidence that there was retaliation in the form of temporary salary support or, in view of the qualifications required, the failure to make the position referred to in the hiring matter available to her. He said Dr. Siegel testified that she did not know of the opening and it had not been made available to her. But that decision could not be retaliatory if, as the evidence appeared to show, a medical doctor was required for the position because it was clinical.

Mr. Harms said he thought it did come down to the institution's interpretation of the Gerlinger trust, and that it would require some rather selective reading to reach the same conclusion as Dr. Siegel. He noted that the will said 60% of the income was to be used for medical research within the school of medicine with preference given for research on collagen disease, arthritis, and DMSO. The will also stated that such income might be used to provide salary support to enable faculty members to engage in research in the areas specified at the discretion of the dean of the school of medicine and the department chairperson or chairpersons of the school of medicine with administrative responsibility for the particular area or areas of medical research concerned. The will stated that requests for funding for research projects shall be submitted to the dean of the school of medicine who shall forward the grant requests to the research committee of the school of medicine for review and the award of grant funds.

Mr. Harms said that provision does not say, as it could have said, that 60% of said income is to be used for salary support for faculty members engaged in research in the specified areas. He said he must assume the testator was adequately represented by counsel and knew exactly what the meaning of that provision was. It could have been clearly stated if it were to be interpreted as Dr. Siegel believes that it should be interpreted to restrict 60% for salary support.

However, Mr. Harms said the issue was whether the Oregon Health Sciences University was interpreting the will in this way for purposes of retaliation against Dr. Siegel. He said legal arguments with respect to interpretation of the will are not pertinent unless the interpretation is for purposes of retaliation against Dr. Siegel by reason of her participation in the Penk case.

Mr. Harms said he could not agree with Dr. Siegel's conclusion that failure to give her the Gerlinger salary money could only be retaliatory. He said the only evidence that would tend to support that as a matter of hard fact was her Exhibit VI, the Laster troublemaker statement. However, there is no evidence that Dr. Laster took part in the salary decision, except to concur with the reservation of the funds.

Mr. Harms commented that Dr. Siegel had stated the terms of the will were being evaded, but he did not think that the evidence given to the Board really explained how the exercise of discretion could be an evasion of responsibility for purposes of retaliation against her, except that she disagreed with the conclusion.

Mr. Harms said the Board's responsibility was to agree or disagree with that conclusion. To overcome the discretion granted to the school of medicine and the department chairperson or chairpersons, and in the case of funding for research projects the discretion of the committee, would require that reasonable persons really could not differ on that decision or state it another way. In other words, no reasonable person could decide as Dean Kendall did, and hence there is retaliation. He said if the funds were used for a purpose clearly unrelated in violation of the trust, the inference could be quite strong that the use might have been for retaliation. Mr. Harms said he found no such evidence and the money has not yet been spent. He said for him to be convinced, he must find some evidence that no other reasonable conclusion could be reached as to the appropriate use of these funds.
Mr. Harms said that understandably Dr. Siegel would prefer to secure funding which would allow more time for her research, but the refusal to grant specific funds does not constitute retaliation.

Mr. Petersen said he was not convinced during the testimony that the Oregon Health Sciences University had intentionally retaliated against Dr. Siegel. He was concerned, however, that there appeared to be some slippage in terms of how the institution handled personnel matters, which they admitted in the testimony. He said he would assume the deliberations in this matter would result in furthering the cause of following the Administrative Rules procedures. He said that regardless of the decision concerning Dr. Siegel, the Board should instruct the institution to ensure that in the future personnel policies will follow affirmative action principles precisely. Mr. Petersen said he could not draw a conclusion that these lapses were intentional in the case of Dr. Siegel and would lead to a conclusion that what occurred was retaliatory.

Mr. Clark said he did not believe that there had been retaliation. The errors in the job description would have affected everyone in the same way so they would not have been retaliation against Dr. Siegel specifically. He said he questioned whether the institution had the responsibility of providing information concerning the position specifically to Dr. Siegel when it was available to her and others on the same basis.

Miss Walling said she had not been convinced by the evidence presented of retaliation by the institution against Dr. Siegel for her participation in the Penk case. She said she was personally embarrassed by the errors in procedure and the delay in providing the job description to the affirmative action officer. In addition, when a person's salary is being terminated, that person should be notified in writing.

Miss Walling said the decision regarding the will was poor judgment. It is clear the person wanted the money to be used for research in the stated areas, and there is a moral obligation to fulfill the wishes of the deceased. She said she was convinced the area of surgery was not appropriate to the intent of the donor. Nevertheless, she said she did not believe it was in retaliation against Dr. Siegel.

Mrs. Nelson said she had a certain amount of sympathy for Dr. Siegel, particularly in the minimal amount of communication she received and the poor communication with respect to salary matters. She said she also sensed that the intent of the will was directed toward the specified areas. Mrs. Nelson said she was unable to prove a case for retaliation.

Mr. Batiste said he could understand Dr. Siegel's frustration in seeking funding. He said he did not think that she had been damaged permanently. He noted that she could apply for the competitive funds and had expressed her intention of doing so. He said he did not find from the testimony that the institution was arbitrary or capricious.

Mr. Harms moved that the Board find adversely to the grievant, Jane M. Siegel, that it is not proven that the personnel decisions complained of were made for purposes of retaliation by the Oregon Health Sciences University because of Dr. Siegel's participation in the Penk case, and that findings of fact be entered upon the record consistent with the evidence in the Board's findings based upon that evidence as commented upon here.

Mr. Petersen suggested a statement in the motion referring to the lapses in personnel matters that became apparent during the testimony.

Mr. Harms said it had not been covered in the motion. He said he would prefer not to have it in this motion but it would be appropriate as a separate motion. Mr. Batiste said the Chancellor had indicated that he would take cognizance of this matter also.
The Board approved the motion as stated by Mr. Harms, with the following voting in favor: Directors Alltucker, Chao, Clark, Harms, Nelson, Petersen, Walling, and Batiste. Those voting no: None.

Mr. Batiste thanked those participating in the hearing.

Mr. Petersen moved that the Board express its concern about the personnel practices and state that the Board will be watching very carefully the practices at all of its institutions to ensure that personnel matters follow the Administrative Rules.

Miss Walling said she was concerned that the motion was not strong enough. These statements are made and mistakes still occur. She said she was not satisfied that the Board does enough to ensure that these things do not continue to happen again and again. She said perhaps she needed to know more about the Board's role in being responsible for what the institutions do and for their mistakes. She asked what such a motion actually meant in terms of possible Board action.

Mr. Petersen said he apparently did not word his motion strongly enough because he agreed with Miss Walling. He said that to him it meant that in evaluating the institutional presidents, these matters of equity and practice would be major criteria.

After further discussion of the importance of this issue, the motion was withdrawn to provide an opportunity to formulate something that would address this issue on a systemwide basis.

ADJOURNMENT The meeting was adjourned at 5:25 p.m.

Louis B. Perry, President

Wilma L. Foster, Secretary