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Board of Trustees Minutes, March 7, 1994

Eastern Washington University

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Eastern Washington University
BOARD OF TRUSTEES
SPECIAL MEETING
 March 7, 1994, 8:00 a.m.
 Spokane Center, Second Floor Mall

TRANSCRIPT

Board Members Present

Mrs. Jean L. Beschel
 Mr. Al Brisbois
 Mr. John V. Geraghty, Jr.
 Mr. Joe W. Jackson
 Mr. Michael C. Ormsby, Vice Chair
 Dr. Julian J. Torres, Jr., Chair (by conference phone)
 Mr. James L. Kirschbaum (by conference phone)

Staff Present

Mr. Leland G. Alkire, Librarian IV
 Mr. Kenneth R. Dolan, Executive Assistant to the President/Secretary to the Board of Trustees
 Dr. Marshall E. Drummond, President
 Dr. George A. Durrie, Director, Government Relations
 Dr. Robert H. Elton, Interim Dean, College of Health, Social and Public Services
 Mrs. Carol Golden, Secretary, Office of the President
 Dr. James I. Hoffman, Senior Vice President for Academic Affairs and Provost
 Dr. Russell S. Hubbard, President, Faculty Organization
 Mrs. Jane A. Johnson, Vice President for University Advancement
 Mrs. Gayle M. Ogden, Associate Vice President for Human Resources/Affirmative Action Officer
 Ms. Stefanie E. Pettit, Weekly Editor, News Bureau and Communications Services
 Mr. Michael Stewart, Vice Provost for Planning and Budget
 Ms. Leslie Younger, Media Lab Coordinator

Faculty Present

Dr. William H. Barber, Professor, Psychology
 Dr. Jeffrey A. Corkill, Professor, Chemistry/Faculty Organization Vice President
 Dr. Wayne H. Hall, Professor, Education and Mathematics
 Dr. John S. Innes, Associate Professor, History
 Dr. John M. Pooley, Assistant Professor, Business Management
 Dr. Henry-York Steiner, Professor, English/President, AAUP

Students Present

Ms. Niharika Bhasin, President, Associated Students

Guests Present

Ms. Maureen McGuire, Assistant Attorney General
 Mr. Tom Sowa, Higher Education Reporter, Spokesman Review

Call to Order and Quorum, I. and II. - Dr. Torres

Vice Chair Ormsby called the meeting to order at 8:05 a.m. Special meetings per state law can only be called for specific topics, this meeting's purpose being the faculty representative election conducted by Public Employment Relations Commission (P.E.R.C.) at Eastern Washington University on March 2 and March 3, 1994.

Executive session was called from 8:10 am to 8:30 am to meet with Ms. McGuire, Assistant Attorney General, to discuss the legal framework and guidelines needed to operate this meeting.

Reports, III.

Review Results of the March 2 - 3, 1994, Faculty Representative Election conducted by P.E.R.C.

Mr. Geraghty noted that by-laws provide for telephone participation by Board members. A quorum was present with Dr. Torres and Mr. Kirschbaum on conference call.

The Board of Trustees is in a position of wanting to acknowledge what a majority of the faculty voted for in the March 2 and March 3, 1994 election, and at the same time are in an irreconcilable position by being advised the law does not allow the board to recognize an exclusive bargaining representative for the purpose of collective bargaining. This needs to be sorted through to avoid the administration having two sets of rules to administer relationships with the employees and with members of the faculty who voted.

Dr. John Pooley, Assistant Professor, Business Management — As a junior faculty member, Dr. Pooley discussed his concern towards the long term implications of this move. The College of Business and the College of Management are strongly opposed to faculty representation and would probably seek alternative representation if they are forced to choose.

Mr. Brisbois asked: Did Dr. Pooley exercise his rights during the election process by marking the ballot box "no representation?" — **Dr. Pooley** stated yes, and he encouraged everyone in his department to vote.

Mr. Geraghty asked: Was it Dr. Pooley's understanding, going into the voting, that the union would be the exclusive bargaining agent for the faculty? — **Dr. Pooley** stated there was some uncertainty about that relationship. There was a debate in the Senate whether the union would have exclusive bargaining rights; some felt they would and others felt they would not. He was unsure on the legal aspects of this issue.

Dr. Henry-York Steiner, Professor of English, President of AAUP Chapter at Eastern — The American Association of University Professors (AAUP) Chapter represented the only organized faculty opposition to the collective bargaining initiative. \$278 was spent on the campaign for reproduction and distribution of flyers. The AAUP was disappointed in the outcome of the election— disappointed in eighty faculty members who are satisfied with the "status quo," thus did not vote; and disappointed that a number of faculty were permitted to vote who are faculty according to the by-laws, but do not teach Eastern students and are not paid by EWU for the majority of their assignment. The AAUP feels that the faculty is deeply divided, even if the count showed 183 - 154. Most of the AAUP is not opposed to unions, but are opposed to the problems created by collective bargaining for the faculty of Eastern Washington University at this time. The problems for the administration, Board of Trustees, faculty and students far outweigh whatever benefits might accrue from collective bargaining.

Mr. Brisbois asked: What was the count on the voting (i.e., for representation, no representation, etc.). — **Russ Hubbard**, President, Faculty Organization, stated there were 352 votes cast at the election which represents 84% of the eligible faculty voters per the list established for P.E.R.C.. Of that 352, 183 voted for the United Faculty of Eastern, 154 voted no representation, and there were 15 challenge ballots. The 183 votes for the United Faculty of Eastern is a plurality of the faculty, not a majority of the entire faculty. It's a majority of the faculty voting, and it's 45% of the faculty that were on the list for P.E.R.C.. The no representation votes counted 38% of the total faculty on the list. There were 404 eligible faculty voters on the established list for P.E.R.C.. There were originally 411 and seven names were taken off the list through negotiations with the United Faculty of Eastern and the University. This does not include faculty who are currently serving as administrators.

Mrs. Beschel asked: As a representative of the AAUP, the only organized opposition, what is your opinion of what is considered an exclusive bargaining agent and its meaning during the course of formulating your opinion on whether you are in favor of, or opposed to, this. Also, do you care to comment on the areas you feel the union would be desirous of participating in a bargaining existence? — **Hank Steiner**, President, AAUP/Professor, English, stated his personal understanding that the issue of exclusive representation was very much up in the air in the absence of legislation permitting or prohibiting collective bargaining. The assumption was that there would not be exclusive bargaining because it would require legislation to allow it. If those supporting the union won, other groups, or perhaps individuals, might be legally able to negotiate with the board on their own. This was a main reason for opposition. This would create an intolerable situation for the board and a very problematic situation for faculty who would rather devote their energy to teaching, research, and their personal lives. The term "no representation" was surprising on the sample ballot as the initial impression was that the election was going to be the AFTNEA or no agent. The ballot terminology was inaccurate. On a personal position and the position of the majority of the members of AAUP, faculty is represented by and through shared governance, the Senate, the councils, and to the board and, while shared governance is not perfect, it is working and is preferable to collective bargaining.

Dr. John S. Innes, Associate Professor, History — Throughout the perspective of the past 26 years at Eastern, there is a growing need and consideration for faculty needs. The faculty voted with great experience and long consideration of the options. Addressing some of the issues was a member of AAUP national committee on university governance, Dr. Harold Goldwhite, who spoke at a faculty forum sponsored by the Faculty Organization. Dr. Goldwhite's experience and observations in collective bargaining and serving on the faculty senate at the California State University, Los Angeles, was that collegiality is improved as a result of their collective bargaining experience. Polarization proved to be a myth and the different groups within the university became more collegial and worked better than before. The experience at California State University was that the senate and the union work very well together and focus on different areas, but are in constructive consultation. Faculty and administrative relations are healthier and the faculty senate itself, as a result of union consultation, is more focused, coherent and efficient in its relations with the administration. It was also found, especially in the recent difficulties in California, there is a greater efficacy at the state legislative level; this was achieved through a united self re-enforcing triumvirate of the union, senate and administration working well together to the effect that the California State system has fared better at the hands of the legislature than the University of California system. Another point made is that Eastern Washington University is very lucky to have an administration and board that the faculty respect and is grateful to be able to work with. The collective bargaining process is part of that. The content of the subjects that the faculty union would address, i.e., wages, salary, merit pay, the right to strike, tenure, and grievances, are all considered as the primary areas for bargaining. Academic areas would still be primarily addressed by the Senate.

Mrs. Beschel asked: Regarding your comment about the gentleman from California describing the California State System, I have heard that eventually the union takes over more areas as union representation grows on the campus. These are the areas that have been dealt with in the Faculty Senate. — **Dr. Innes** responded he does not know about this issue. The California State System has had collective bargaining there for a number of years and an enlargement of the areas was not talked about.

Mr. Steve Pulkkinen, Coordinator of Organizing for the Washington Education Association (WEA) — In response to Trustee Brisbois' request, the issue of exclusive representation as it came up when Rich Montecucco wrote his letter saying as per the law, you cannot give exclusive representation and it is a non-issue. WEA's lawyers went over the letter and were not concerned with whether it was worth taking on. A couple of passages from our lawyers state: "*In the first place, the case is in the Attorney General's cited opinions, and the opinions themselves are relatively old. Some of them date from the early days of public sector collective bargaining and should be viewed in light of the changes which have taken place in the practice and policy of public sector collective bargaining.*" As the Attorney General materials indicate, we have no statement from a Washington court to determine these issues as far as the Supreme Court goes. Moreover, these Attorney General materials pre-date the 1978 case opinion of Justice Guy, in which he found that Eastern Washington Trustees had the power to negotiate with individual employees or a union representing these employees and enter into a contract regarding the terms of employment. If we assume, for the purpose of argument, that the faculty organization being formed at EWU would not be an exclusive representative in the classic sense, there would be very few restrictions on the faculty organization and the university. The faculty organization would not be able to prevent the university from meeting with unrepresented individuals or other representative organizations with regard to working conditions. The university would not be able to refuse to meet with represented individuals on the sole basis that it had an obligation to the exclusive bargaining representative. They could not be met with for any other reasons or policies they might have, but you couldn't use the excuse you had an exclusive agreement with WEA to not listen to whoever wanted to talk. The university would still be able to apply the negotiated terms of employment, unrepresented employees, with or without collective bargaining. The university has the power to institute policies which effect all employees of certain classifications of employees. For these reasons, the WEA attorney does not believe that anything in Mr. Montecucco's letter or company documents affect the proposed collective bargaining process at Eastern Washington University. The big issue being raised by Mr. Montecucco is not recognized by the WEA.

Mr. Ormsby: You and your council recognize that there are at least two different opinions on this issue. Basically, by presenting the argument, you would ask the board to sit as a judge as a board and say "here is the law and apply it to the facts in this case" which the board is having a difficult time doing. There is a difference of opinion as to what the board can and cannot do.

Mr. Brisbois asked: For a clearer understanding, if the board were to agree to collectively bargain, is this similar to the old meet and confer laws that used to be in the state of Washington? **Steve Pulkkinen** — Yes, this is similar. Neither party could enforce and make them sign a written contract, although that is what happened in most of the cases. That was at community colleges bargain from 1967 - 1987 and at K-12 bargain from whenever they started till 1975.

Mrs. Beschel asked: — The understanding from what you are saying is that not all faculty would have to join a union, is that correct? Even though the faculty member would not be required to join the union, would the faculty be required to pay dues? — **Steve Pulkkinen** responded that WEAs' attorney's opinion is that they cannot bargain either union shop or an agency shop which would compel payment of dues or in lieu of dues absent this specific authority to do so on the law. That is not possible so it would be voluntary membership. To answer the second question, a faculty member not wanting to join the union would not have to pay dues. This would not even be an item for bargaining at a later date. If either of the laws which did not pass the legislature regarding this had passed, it would have been legal to have them pay.

Jack Geraghty asked: Does this raise the possibility that, based on this vote, if the board recognizes United Faculty of Eastern for collective bargaining purposes and enters into it, conceivably a minority of the faculty would be, in effect, dues paying members of United Faculty, or actually, none of the faculty would have to pay dues and the board would just be bargaining with whoever the organization is? What would you like to see this board do? — **Steve Pulkkinen** noted that conceivably this could happen and there would not be a lot of members. Experience has shown that in the first year or two of an agreement of this process, there will be approximately 50% to 80% of membership of people who will voluntarily join. The WEA would like to see the board recognize the vote of the faculty through the P.E.R.C. election and would then move forward. If the board believes they cannot talk through with the Attorney General to get comfortable with the right to adopt a contract to cover all the faculty, the WEA would like to join with the board in getting things cleared up in some form of declaratory action.

Jean Beschel asked: — If this board does take the advice of the Attorney General's Office that says we cannot recognize exclusive bargaining agent, and if a declaratory judgment in court is desired, why would the board go forward to get a declaratory judgment if we are told that we cannot do this? — **Steve Pulkkinen** noted the board took a position that said they would honor the election and wishes of the faculty. The faculty voted to do so. The Attorney General has not said the board cannot bargain. His understanding is they have said the board will have difficulty generalizing a collective bargaining agreement to other faculty who are not part of the union. It is in the boards' interest, if staying with the original position, that the board is willing to live with the faculty choice on this matter. It would be in the board's interest to get this matter cleared up working with the WEA as they are not opponents.

Jean Beschel asked: If the board were to decide not to go for a declaratory judgment under the advice of the Attorney General, would the union go ahead with this? — **Steve Pulkkinen** said he could not answer this. The WEA does not want to be put into an adversarial position with the board.

Russ Hubbard asked: When you read the letter you said you got from the union lawyer, did I understand you to say that your lawyer's position was that it is OK for the union to go ahead and bargain collectively for its membership, but that other non-members would not necessarily be included in that negotiation? If the board and the union negotiate, the agreements that they reach *will* or *may not* cover all faculty (your lawyer's opinion)? In the instance where the union and the board negotiate a salary plan would it be possible, for a group of faculty who are opposed to the plan the leadership of the union came up with, to negotiate a different salary plan with the board? — **Steve Pulkkinen** noted the concept of exclusivity is not essential to being able to bargain a contract and have that contract adopted as policy to cover all faculty. The WEA believes that they can negotiate an agreement with the Board of Trustees and when they adopt it, by the way they adopt it, they are applying that agreement to cover all faculty in the university. It is not believed to be able to bargain a provision that says some of the things that come with exclusivity of being able to bargain an agency shop provision. This puts some limitations on what can and cannot be done. They could not bargain a provision that says the AAUP has no right to address the Board of Trustees in matters that are subject to negotiations. Those kinds of rights that you might have under an exclusive bargaining unit, we don't believe we have. When there is a negotiation of a salary plan with the board, if the board says we're adopting this for all faculty it means all faculty. If the board says we are adopting this for every third faculty member and the other faculty can come forward to make their own deal, that is what it would be. The board controls somewhat on how this is applied.

Jack Geraghty: Control is the whole issue and it will be up to the board to determine. The board can negotiate based on the vote with United Faculty of Eastern and as the result of whatever negotiations are, apply them to all faculty. Or they can be applied only to whatever the bargaining unit is, based on membership, then go out under shared governance and do something else. The reason for this meeting is to move towards clarification of what, under the law, the board can do. These are new waters because there is no state law that happens to deal with faculty units of four

year institutions of higher education in the collective bargaining process. Quite frankly, for whatever reason this has come up, Eastern Washington University in this issue, is going to have statewide significance for the other four year institution.

Al Brisbois asked: Will the United Faculty union have to represent all the faculty once there is a contract? — **Steve Pulkkinen** responded legally, probably not; morally, WEA has taken the position that it will represent all faculty regardless.

Wayne Hall, Professor of Education and Mathematics — The lack of exclusive bargaining rights does in no way force the board to meet with these other people that might come forth and ask to be met with to negotiate a salary plan. The lack of exclusivity puts no burden on the board in those terms.

Bill Barber, Professor of Psychology — Prior to coming to Eastern I was on the faculty of three other universities. I was a member of administration and as a faculty member, I was active in AAUP programs. I have not been active in the collective bargaining events as I have been on sabbatical, however I did vote last week. I have thought about this from the point of view from someone who has been distant and also as a Psychologist and thought I might share with you a thought or two. I think there was some confusion about what "no representation" meant that caused difficulty. Apart from that, in those who voted in each direction, I think there was a sub group of the faculty, mostly senior people, those like myself that came here in the late 60's and early 70's, who I think feel very apathetic and very discouraged and marginal. I think they feel very supportive of what the present administration is doing, but wonder if it is too late. If the forces that are at work that are heading toward more of a slow unmovable series of events are stronger than the forces that have been put in place by our present leadership, which many of us are very supportive of and are working to further. I think there is a sub-group that would have voted on either side of this that I hope you take into account as you are thinking of how you perceived this. You hear too many people in my age group talking about retiring, too many people who are really good teachers, good scholars, and good researchers thinking about trying to do something else. You hear people talking about "*when the current group retires, we can work with the younger faculty that will be here.*" These are themes that do exist. There is a lot of support for what is being done presently. The curriculum reform movement for example, is very important and very helpful. However, some of the decisions that were made prior to this administration, have been very costly and are still playing out in our experience. This leaves a lot of faculty with a rather low morale and with a rather critical apathetic attitude which I regret very much, but I also think you should know about.

Russ Hubbard asked: My understanding of our current by-laws is that if the faculty choose to go to collective bargaining and if the Board of Trustees agrees, those things which are **not** collectively bargained remained in our shared governance. The question for me as President of the Faculty Organization as I need to give a report to my colleagues this afternoon, deals with the question of exclusivity. If there is a group of the faculty with whom the board agrees to collectively bargain, does that mean that the rest of the faculty remain under shared governance and would continue status quo in terms of Faculty Affairs Council, Business Affairs Council, the Senate, etc.?

Mike Ormsby : That is part of the issue that is being dealt with here. The problem is, speaking personally, the board wants to acknowledge what a majority of the faculty voted. The difficulty being faced is that the board turns to the administration, and really to the faculty leadership, to manage the institution on a day by day basis. There are more than one set of administrative rules and policies to follow, this puts our President in is a very difficult situation. Therein lies the difficulty to this whole discussion. Whatever mechanism the board uses, whether it's collective bargaining or shared governance, it would be very difficult to have more than one set of ways to resolve the same issue. We could have two different sets of procedures to resolve different issues. If you have for example a salary dispute or whether the merit pay plan ought to be implemented, to have that issue determined for union members one way and non-union members a different way would create inconsistencies that I doubt the faculty would want. This would also cause an

administrative nightmare for the President, faculty leadership and others. This is really the issue the board is trying to come to grips with. How can we reconcile those two different issues? The discussion today has been helpful, but does not solve the issue.

Jeff Corkill, Professor of Chemistry, Vice President of Faculty Organization, and member of the Steering Committee of the UFE — I would like to encourage you to find out what the implications of the ballot were and having worked with a lot of people to encourage them to vote, people were fairly aware of what the issue was. This issue was whether we were voting on to allow UFE to exclusively bargain with the Board of Trustees. I think the issues were fairly well laid out during the election and I would urge that the Board of Trustees examine with the legality of the exclusive bargaining agreement.

Action Items, IV.

Motion #3-01-94: *"I move that the board acknowledge the vote based on the votes as cast; that in effect a majority of the faculty voted for representation under the United Faculty of Eastern; that we acknowledge that vote; and that we ask the Attorney General's office for further clarification of the issue with respect to exclusivity."*

Motion by Mr. Geraghty; second by Al Brisbois; approved unanimously.

Executive Session, VII.

Vice Chair Ormsby called an executive session from 9:25 a.m. to 10:00 a.m. for the purpose of discussing legal matters with the university attorney. Mr. Ormsby reserved the right for the board to take further action based on the executive discussion if necessary.

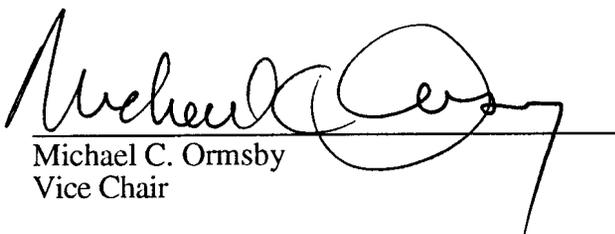
Information Items, VIII.

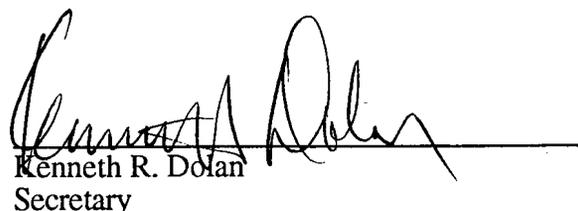
Vice Chair Ormsby reported that the board has completed its executive session and meeting with the university attorneys and discussing the next step. While the board does not intend to take any further action at this time, the board knows this is an issue that is important to everyone in the room. The board is going to phrase some question/issues about how they can proceed and what they can and cannot do. These will be presented to the Attorney General's office in the process of asking for guidance. The next step after that has not yet been determined because of those questions and their possible response from the Attorney General's office, but the board is approaching this in a problem solving mode and have acknowledged the vote of the faculty. The board now wants to see how the vote can be implemented, if it can, and through that process would not discourage any further input or comments that people interested in this might have.

Dr. Torres, Dr. Drummond and Mike Ormsby have been directed to come up with the list of questions and issues to be presented to the Attorney General's office.

Adjournment, IX.

Vice Chair Ormsby adjourned the meeting at 10:05 a.m.


Michael C. Ormsby
Vice Chair


Kenneth R. Dolan
Secretary