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Board of Trustees Minutes, April 23, 2004

Eastern Washington University

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**EASTERN WASHINGTON UNIVERSITY
BOARD OF TRUSTEES**

SPECIAL MEETING

April 23, 2004

**Executive Session at 9:30 a.m., PUB 261
Special Board of Trustees Meeting at 10:30 a.m., PUB 263**

MINUTES

Trustees Attending

Gordon Budke, Chair
Neil McReynolds (by telephone)
Bertha Ortega (by telephone)
Nick Peyton
Paul Tanaka (by telephone)
Ines Zozaya-Geist, Vice Chair (by telephone)

Call to Order and Quorum, I. and II.—Chair Budke called the meeting to order at 9:35 a.m., and noted that a quorum was present.

Executive Session, III.

Chair Budke immediately convened the Board into executive session for purposes authorized in RCW 42.30.110:
He noted that the executive session should conclude at approximately 10:30 a.m., and that the Board would reconvene in open session in PUB 263.

Special Board Meeting, IV.

Chair Budke reconvened the meeting at 10:35.

Faculty Collective Bargaining Contract, IV.A.

Chair Budke noted that the sole purpose of this special Board meeting is to review, consider and take action related to the faculty collective bargaining contract, including but not limited to the duration provision. Deborah Danner, from the Attorney General's office would give some background. Ted Otto, President of the United Faculty of Eastern (UFE) would speak on behalf of the UFE, providing some further background. The Board would then hold a discussion.

Deborah Danner reported that in 1994 the UFE of EWU filed a petition for investigation of a question regarding representation. At that point in time PERC assumed jurisdiction, conducted a pre-hearing conference and ultimately an election. On March 11, 1994, PERC issued a certification of the election, in which it found that the United Faculty of Eastern AFT/NEA was the employees' representative for the purposes of collective bargaining with respect to wages, hours and conditions of employment. After that date the UFE and EWU negotiated an initial four-year contract. Then in 2000, at the time that that contract was about to expire, the parties completed negotiations on second

agreement. This current agreement is also a four-year term which ends June 30, 2004, if either the UFE or EWU provide the other with notice prior to the end of April, 2004, of their intent to amend, modify or terminate the contract. In the event that neither the UFE nor EWU provides such notice, the CBA is automatically renewed for a period of one year. So that would be until June 30, 2005.

In 2002, subsequent to the union being certified by PERC and subsequent to Eastern Washington University and the union negotiating these previous contracts, the Washington State Legislature enacted RCW 41.76. This statute affirmatively authorizes the faculty at four-year higher education institutions to collectively bargain with their respective institutions. While the legislature was aware of EWU's agreement, the legislature does not appear to have provided recognition of the UFE as exclusive bargaining representative of the university. As a result the UFE, like other unions who wish to become exclusive bargaining representatives for four-year higher education institutions, is required to comply with new statutory certification process as detailed in RCW 41.76. This interpretation has been verified during meetings that UFE and the University held with the executive director of PERC. During the course of those meetings the executive director verified that his interpretation was that in order for the UFE to qualify as an exclusive bargaining representative that it would be necessary for the UFE to comply with this new statutory process seeking certification. The executive director also indicated that in determining the bargaining unit PERC would examine the faculty definitions which had been previously utilized at the university.

As previously mentioned, the current contract between EWU and the faculty does maintain a duration clause. This duration clause is set forth in Chapter IX of the contract. The specific provision states as follows:

This Agreement shall take effect on July 1, 2000, upon ratification by the Board of Trustees and shall remain in effect until June 30, 2004, and for continuing periods of one (1) year thereafter unless a written notice is served by one party upon the other at least 60 days prior to the expiration of any subsequent automatic renewal period of its intent to amend, modify or terminate this Agreement.

In the event that the Board of Trustees were to elect or to vote to terminate the contract and exercise this option under the duration provision, it is anticipated that the union could and may still move forward to seek certification as the exclusive bargaining unit. Upon successful resolution of that by PERC, the university would still need to be prepared to enter into negotiations with the union as the exclusive bargaining representative.

Ted Otto, current president of UFE, thanked the Board for allowing the UFE to make a presentation this morning on the continuation of the faculty collective bargaining agreement. He noted that several members of the UFE's executive board were present to address how the UFE and the University can move forward to become certified under the 2002 bargaining law, if they will be allowed to make remarks. For 10 years collective bargaining has worked at Eastern. We have made strides and worked as a model for the rest of the state. Faculty activity plans, as a basis for evaluation of faculty, a reliable grievance procedure, formulae for addressing salary equity and compression issues, and a predictable promotion and tenure procedure are among the highlights of the current contract. We are pioneers and we are proud of this cooperative work. Therefore we are

disturbed and perplexed and dismayed by any conversations to terminate our collective bargaining agreement. Such talk should be set aside and all our efforts should be focused on becoming certified under the new law. The UFE is taking major steps to become certified. We met with President Jordan last December to discuss what kind of bargaining unit is suggested by the new law. We have met with officials of the Public Employment Relations Commission (PERC) to understand EWU's unique position under the law. We understand that the UFE has to be certified by representation election, and we are well underway toward meeting the election requirements established by the law and by PERC precedence. It is our intention to file for representation this spring quarter and seek an election in the fall quarter. We have told PERC officials that a summer election is not appropriate for faculty, and we believe that PERC has heard our position. In addition, we are well aware that our current contract with EWU expires on June 30, 2004. We believe that until the certification process has taken place our contract should be extended under Chapter IX of that contract. We are also interested in limited reopener of the contract under Chapter III to deal with faculty compensation in our current bargaining unit.

Chair Budke questioned President Otto regarding the guest speakers, noting that it was not the Board's intent to expand the UFE's presentation beyond that of Dr. Otto. The Chair agreed to allow five additional people to speak, with a limited time of three minutes each.

Susanna Milton, the UFE's Vice President of Membership, spoke first. She addressed the fact that the UFE is organizing under the collective bargaining agreement in response to the 2002 bargaining law. She said they intend to file for a broad bargaining unit based on the definition in the law, and quoted from the law (Chapter 41.06 and 41.56 of the RCW). Based on the numbers provided by Academic Affairs in October 2003, we have 315 tenured or tenure-track faculty, 111 special faculty, and 145 adjunct faculty. These numbers reflect a trend at Eastern of hiring more special and adjunct faculty. Dialogues with Eastern faculty have been pivotal in the UFE's decision to file for a broad bargaining unit. The growing numbers of adjuncts in many departments, who are used on a continuing basis, requires a closer look at the disparity that exists between tenured/tenure-track faculty and adjunct salary in terms of salary and benefits. PERC has told us that, in spite of our academic calendar, they might hold a summer election. We intend to delay our filing to May, so this is a result of faculty having expressed strong concern about decisions with far-reaching implications having been made in past years during the summer when many faculty aren't available. Thank you.

Barbara Alvin, the UFE's vice president for labor management. She spoke to the effect on faculty of any decisions made regarding the contract. In December 2003, at a meeting of the Board of Trustees, it was decided to act on proposed changes to the University's Policies and Procedures. These changes reflect the existence of a contract between the Board of Trustees and the UFE. She participated in the identification of policies that could be deleted from the Policies and Procedures. She did this with the understanding that the Board viewed the existence of the contract as a long-term condition. If the contract is terminate, there will be no regulations which address faculty appointment, retention, promotion or dismissal. Grievance procedures will not exist, but neither will there be regulations regarding faculty responsibilities in areas of teaching, research or service. The deleted policies required accountability on the part of the university administration and on the part of the faculty. In this way the policies provided some protection for the quality of education provided by the university. The termination of the UFE contract five months after deleting provisions in the

University's policies and procedures which would protect the quality of education at Eastern, would send a negative message to faculty, students, prospective faculty and prospective students. Many faculty are not active in either the Faculty Organization of the UFE. These faculty work hard in areas of teaching, research and professional service. Conversations with many of these faculty indicate they trust their welfare and the welfare of the institution is in good hands—the hands of an administration and Board who act fairly and in the best interest of the University. A decision reached at this time to terminate the contract, at a meeting that was not announced to the members of the community until the UFE President announced it to UFE members, would seriously damage that trust. A decision to terminate the contract would have a serious effect on the morale of the faculty. There are at least several faculty who serve on councils who argue against all proposals for change. The attitude of these faculty is that neither the administration nor the Board is willing to work with faculty and include them in decisions that will affect them. Then there are others who see problems with the degree to which we have been seriously included or consulted, but who want to believe in the possibility of positive change. I've seen a positive change during the last nine months—with the invitation to faculty to participate in the development of the academic strategic plan I thought I was seeing more of a willingness on the part of the administration to work with faculty; all faculty, not just a select few. Thank you.

Tony Flinn, President of the Faculty Organization, said he believes the university needs the UFE even more than the faculty does. The composition of the Faculty Organization presidents over the last ten years indicates an overwhelming majority of them have been UFE members, which is because UFE members tend to be the more activist faculty; interestingly the ones most eager to collaborate and work in partnership with the administration. The union allows us a sense of security so that we don't have to worry about arbitrary decisions from the administration. We know and believe that all of that can be put aside so that we can concentrate on the well-being of the university. His work with the Provost over the past year, and earlier, on academic strategic planning has depended on the fact that I don't have to worry about whether faculty welfare is protected. If the contract is threatened, all of that easy collaboration will go away. The faculty does not want to be distracted from the essential work of academic planning, and any threat to the UFE will do exactly that. Adjuncts are the most vulnerable faculty—it's obviously the right thing to do that they should be protected.

Nick Jackson, Vice President for Affiliate Relations of the UFE. The executive committee of the UFE has learned that many tenured faculty are concerned about the proliferation of adjuncts in their departments, and would like the UFE and administration to pursue contract language that encourages the appropriate use of adjuncts. The American Federation of Teachers (AFT) adopted a resolution in 2002 called Standards of Good Practice in the Employment of Part-Time Faculty. The complete document can be reviewed on the AFT website. He then identified a list of current practices in at least some departments at Eastern, however, that run contrary this resolution. Including adjuncts as part of the bargaining unit would benefit them in many areas, including working conditions and professional development, but there would also be benefits to the students of Eastern. For example, regular office hours and regular assessment of teaching for adjuncts would help assure a consistently strong academic experience for the students of Eastern and their families. Including adjuncts as part of the bargaining unit would reinforce Eastern's mission to be a student-centered university in which students build professional and sometimes life-long relationships with faculty. We understand the

challenges of adequate compensation in the current fiscal climate, but believe this situation should not preclude the recognition of adjunct faculty as valued and respected members of the Eastern community. Including adjunct faculty as part of the bargaining unit at Eastern would constitute a giant leap in that direction. Thanks for your attention.

Lavonne Reeves, Professor of English and former grievance chair for seven years. The University changed its grievance process when the contract came into being. Prior to that if the faculty filed a grievance a faculty panel could not advocate for the faculty member herself, but simply had to propose to the president. At that time, then, the president had the right to decide whether or not the faculty member won the grievance. During the time I was on grievance, prior to the UFE contract, not one faculty member whose panel I served on won a grievance. That concerned me greatly, so I allowed myself to step forward and become grievance chair, and I worked with them for seven years.

She then spoke to the need for gender equity on campus, quoting figures from faculty headcount broken down by rank and gender within each rank, and expressed her disappointment in the treatment of women in general on this campus. She believes that the UFE can satisfy the requirements to insure that women are receiving fair treatment on the campus—in the professoriate as well as in the administration.

Chair Budke noted for the record that trustee Kris Mikkelsen unable to attend because of a last-minute out of town commitment, and trustee Jo Ann Kauffman was unable to attend because of a long-standing commitment. The other six trustees are present either in person or by telephone. He pointed out that Nick Peyton, our student trustee, can participate in the discussion but is not allowed to vote on any motion pertaining to personnel matters.

He then asked for thoughts or comments from the trustees. Trustee Tanaka asked about how things would be handled if there was no contract. President Jordan responded that his assumption would be that, at least for a period of time, we would continue to adhere to the provisions of the contract with respect to the most important aspects while we work out how a new unit can be certified and an election held, and a contract negotiated. It would be absolutely necessary to adhere to those provisions for a period of time and give that a chance to work through. If we go through a period with no unit certified as the exclusive bargaining agent, the Board at some point in time would have to make a decision about putting into place a set of policies that would provide those same protections. Because you're absolutely right, those are absolutely essential for the faculty... Trustee Tanaka then asked for confirmation of Ms. Danner's statement that in October 2002, when the statute became effective, the UFE could have begun the process of certification. Ms. Danner replied that yes, that statement was correct. Trustee Tanaka then asked for President Jordan's perspective and/or comments.

President Jordan said that obviously an action like this is—on the one hand the Board is fulfilling its fiduciary responsibility to be active participants in the process. An action like this is one that raises great issues on a university community. If the Board was to make the decision to terminate the contract, he would urge the Board to do it conditionally—in a way in which was conditioned upon the union making a request for certification to PERC by June 30, and that if they submitted a request

to PERC the Board would withdraw its termination and the contract would be continued for one year while a unit was determined and voted on by the faculty and a contract was negotiated. He would urge the board, if they were going to move forward with something, that they take a middle ground that provides the opportunity for us to work through these processes. He said the faculty have raised some important issues about the nature of the unit, but he believes that is an issue to be resolved in the context of certification of the unit. Clearly what the Board is looking at today is continuation or non-continuation of a contract that does not apply to that group that they would like to see added. It's an important issue that needs to be discussed but I don't think that is a part of today's conversation.

Trustee Tanaka said he appreciated the faculty comments. He said he is troubled that the Board is in this position, being asked to make a decision or not on this matter, but in order to preserve the Board's legal options as best we can and to the benefit of the university, it is with regret that I make the following motion.

Motion 04-01-04: *I move that the President be directed to give notice of the Board's intent to terminate the contract with the UFE effective June 30, 2004.*

Motion by Trustee Tanaka; seconded by Trustee McReynolds with the comment that we have a new ballgame since the last contract, and he appreciates the faculty comments on intent but doesn't think if we're really and truly fulfilling the Board's fiduciary responsibility we don't have a choice. We have a new statute that went into effect in October of 2002 that everybody acknowledges, that spells out a process and nothing has happened in terms of certifying a bargaining agent. We as a Board can only negotiate with a certified bargaining agent, so we need to move ahead with that process.

Chair Budke called for further Board discussion. Trustee Ortega called for the question.

President Jordan urged for one last time consideration of a middle ground to allow the opportunity for us to work through these issues. We're on new legal ground, but we need to be careful about how we proceed. On my part, I want to make it clear that I am prepared, absolutely, to negotiate a contract with whatever unit is certified by the faculty. This is not a statement about my views about the bargaining process. We have bargained in good faith over the period of time I have been here, and it is my hope that the Board is equally committed to this issue of bargaining with whatever unit is determined to be the appropriate unit to represent the faculty.

Chair Budke added that, presuming this motion passes, the Board wants to—it's a definition problem. We don't know who we're potentially negotiating with. Right now we can't negotiate if the bargaining unit has not been certified.

Roll call vote:

Paul Tanaka—aye

Bertha Ortega—aye

Neil McReynolds—aye

Ines Zozaya-Geist—aye

Gordon Budke—aye

The motion passes.

Chair Budke said, on behalf of the Board and the administration, we do want the parties to continue to work together under the managerial core principles of the contract—tenure, hiring, promotion, etc.

Adjournment

Chair Budke adjourned the meeting at 11:10 a.m., thanking everyone for their participation and attendance.

Gordon Budke, Chair

Stephen M. Jordan, Secretary