



UNIVERSITY OF MINNESOTA
TWIN CITIES

All University Senate Consultative Committee

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SPECIAL MEETING
SENATE CONSULTATIVE COMMITTEE

December 2, 1980
9:00-10:45

APPROVED 1/15/81

Room 300, Morrill Hall

The Senate Consultative Committee, at the request of Vice President Hasselmo, held a special meeting on December 2 with Dr. Hasselmo, attorney for the University Thomas Keller, and Vice Presidents Ken Keller and Lyle French, for the purpose of a briefing and of questions and discussions regarding UMD's election of a bargaining agent, the state's Public Employee Labor Relations Act, and the Regential act suspending the Duluth Assembly and expelling Duluth from Senate membership. SCC members attending were Marcia Eaton, Chairman, Russell Hobbie, Student Pribyl, student Chair, Vera Schletzer, Skip Scriven, Donald Spring, Pat Swan, Bruce Thorpe, and Al Ward.

Vice President Hasselmo distributed to all present a packet of letters which have been exchanged between the University administration and UMDEA:

1. James Nelson, President, UMDEA, to President Magrath, requesting negotiations;
2. President Magrath to James Nelson, agreeing to prompt negotiations;
3. Provost Robert Heller to James Nelson, naming the interim committees to be continued, with attachment naming continuing committee membership;
4. Provost Heller to Nelson, attaching list of administrative advisory committees the administration proposes continuing for the interim, with continuing membership named.

The purpose of the communications was to inform UMDEA of the University's approach and to invite their questions, Vice President Hasselmo said. President Magrath is presently completing the naming of the negotiating team. The President is also appointing a group of administrators to meet and confer on policy issues with the UMDEA executive committee, and has recommended that the UMDEA executive committee meet occasionally with the SCC to discuss system-wide policy issues.

The Regents' action was taken, said Vice President Hasselmo, under the quite specific language of the PELRA law. He read the portions of that law pertaining to "meet and negotiate" and "meet and confer." The employer is required to meet and confer with professional employees in a bargaining unit on aspects of employment which are not terms and conditions of employment. Dr. Hasselmo said the mode of conferring will change, but that the Duluth faculty is not disenfranchised. Provost Heller will be meeting with the officers of UMDEA.

Professor Swan asked how "confer" is defined as used in the PELRA law. For instance, she inquired, if she came to an employee and announced a policy change, would that be regarded as "conferring?" Attorney Keller said it would be.

The law states that a public employer is not required to meet and negotiate on matters of inherent managerial policy, such as the "functions and programs of the employer, its overall budget, utilization of technology, organizational structure, selections and direction and number of personnel. Vice President Hasselmo and Attorney Keller agreed that drawing the line between "terms and conditions of employment" and "managerial policy" will be difficult and will have to be worked out between the parties. Attorney Keller said the PELRA law remains unclear in many respects, is subject to statutory inconsistencies, and is more appropriate to secondary education systems than to higher education.

Vice President Hasselmo explained that when PELRA was enacted in 1972, the Regents did not challenge its applicability to the University and hence, he believes, forfeited their chance for a successful challenge. The Vice Presidents and the attorney all agreed that while of course a challenge can be made, the time has passed when the Regents would win, if ever they even could have won.

Attorney Keller read several critical portions of the law. 179.63, Definitions, Subd. 18: "The term 'terms and conditions of employment' means the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits and the employer's personnel policies affecting the working conditions of the employees. In the case of professional employees the term does not mean the educational policies of a school district."

179.66 Subd. 1: "A public employer is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure and selections and direction and number of personnel.

179.66 Subd. 7. "The employer shall not meet and negotiate or meet and confer with any employee or group of employees who are at the time designated as member or part of an appropriate employee unit except through the exclusive representative if one is certified for that unit or as provided in Section 179.79 Subd. 1." (That subdivision describes mediation petitions and procedures.)

The law contains no provision that it shall apply only when or after a contract is in force.

Attorney Keller spoke of the great frustration brought about by the Board of Mediation Services' decree that public employers may not speak out on the controversy, while the unions are free to speak out and sometimes distort the facts. Vice President Keller called the gag order preposterous for this University.

Attorney Keller said that there really is a "meet and negotiate" aspect as well as a "meet and confer" aspect to some of the functionings of the governance bodies in question--the Assembly and its committees, the Senate and its committees. Bargaining unit faculty participation in any of those groups could run the Regents afoul of PELRA.

Sue Pribyl inquired by what provisions, then, could the University reinstate certain committees? The attorney acknowledged that Duluth Provost Heller may in fact be in violation of PELRA. He said it is agreed that everybody is saddled now by inappropriate rules, rules which are contrary to the traditions. But the administration and the Regents want the transition to occur without violence to the educational process, so they will not stop everything, even though PELRA dictates they should. Practices whose interruption could damage the academic process and perhaps harm the students are to be continued in the interim. The Curriculum and Scholastic committees hence are being continued for the good of the students. Search committees also must be able to proceed. The Promotion and Tenure Committee and the Grievance Committee are being continued because these two are part of the terms and conditions of employment and to abolish them would constitute an unfair labor practice by unilaterally changing existing terms and conditions.

Professor Hobbie asked what the reaction of the Duluth faculty had been when the University said it would continue those committees. Attorney Keller said they initially called it inconsistent and asked why the University didn't throw everything out. In the end they did not object, but neither did they express agreement.

Professor Eaton asked whether, if the Senate and its committees went on meeting without administrators (in other words, if employees only were meeting together), could the Senate and its committees then forward their recommendations to the administration. Attorney Keller said that would constitute a clear instance of "instrumentality" by someone other than the agent's elected representative.

Vice President Keller noted ambiguity between the stipulations "meet and confer" and "meet and negotiate." The union argues that continued Senate participation is a term and conditions of employment hence cannot be unilaterally changed. That position asks the University to give up in advance of negotiations something it is the University's prerogative to give or retain. Critics of University action would hang the University between two systems--making the University take on the responsibilities of the new system yet without the protection of the new system. It would have neither the protection nor the privileges of either system.

Professor Schletzer asked if there are no ways to carry on certain kinds of discussion, such as on the budget, system-wide. Attorney Keller said that every topic is subject to one definition or the other--"meet and negotiate" or "meet and confer." But if the union wants to convey a point of view, the administration is obliged to meet with them.

Bruce Thorpe and Vice President French raised the somewhat paradoxical question of who is permitted to decide, prior to the process, or during the process, how the meeting and conferring will take place.

Attorney Keller said it is most helpful to resolve these questions by viewing the process as an ongoing one both before and after the contract is signed. Some of the most subtle parts of the relationship, he said, are best left unwritten and to be worked out as events progress. He observed that a professional organizer for the UMEA attended meetings with the University

for two years. The one point Mr. Keck intended to achieve was that nothing that was said in those meetings be construed as a term or conditions of employment. He sought a signed statement by the participants to the effect that nothing said in these meetings bound the parties as to what was or was not a term or condition of employment.

The faculty members noted with some chagrin that retirement benefits are, by PELRA law, excepted from being a term or condition of employment. That is a particular which serves to point up the argument that the history of PELRA is irrelevant to this University. Professor Hobbie said retirement is an instance where the case should be made for the University's autonomy, since the University's retirement system is different from the state's.

Professor Swan stated her main concern in the controversy as what may or may not have been done to the Senate by these acts. Regardless of the legal status of the Duluth faculty, she feels the weight of the considerable conversation within the University through the years about the place of the Senate, and feels this suspension of Duluth as a great blow. She views it as a unilateral action by the Regents against the Senate. Vice President Keller replied that the University has not changed the nature of the Senate for those faculty who have not voted to go for a contract beyond what the Senate can provide. The Duluth faculty as a group have said that they want now to deal with the administration in a different way. Professor Swan argued that there is no question but that the Regents have altered the constitution of the Senate, because the constitution grants membership. She believes the relationship of the Senate to the Regents is thereby altered. Professor Eaton added that University faculty are now deprived of conferring with certain of their colleagues.

Vice President Keller replied that the Regents' legal right to alter the Senate has always existed. He posed the question of whether PELRA imposes a legal obligation to alter it, and said that the University has interpreted that it does have that obligation. But, said Professor Swan, the University also has an obligation to talk to the Senate about what they have had to do and what it means to the Senate's relationship with the administration and the Regents. She wishes the act could have been stated in positive terms. Most of those present indicated their agreement with that sentiment.

Vice President French said that he did not think the Regents intended to in any way alter the Senate's relationship with them and with the governance of the University, other than the separating of the Duluth faculty. Vice President Keller added that, in fact, one of the reasons for separating out the Duluth faculty was precisely so the Senate could continue to function in its traditional way. Professor Spring warned that, however, the perception in the University community is different. This community believes the Regents didn't legally have to take the action they took. There exists, he said, an underlying threat to the Senate structure. It could even be said that the UMD faculty created the threat. He regards it as an error on the part of the University not to have said at the outset that the Senate structure remains intact. He said that statement must be made. Vice President Hasselmo said the administration intends to use the December 4 Senate meeting to reaffirm the validity of the Senate.

Professor Hobbie said there are persons associated with the Bureau of Mediation Services claiming familiarity with PELRA who said the University did

not have to do what it did. He declared the University would be right to ignore the gag order and set the record straight. Attorney Keller said he was not certain that the BMS staff includes any lawyers at present. This issue is not relevant to the BMS. On the other hand, the University is obliged to conform to the law. Vice President Keller added that much erroneous information is about, some of it in print.

Professor Eaton said there are items which will arise in the Senate this year on which inability to participate will disadvantage members of the University community. She noted specifically the topic of policy on handling sexual harassment. She asked why participation in these cannot continue to function in the same way that grievance, promotion and tenure, and administrative advisory committees have been deemed continuable.

Attorney Keller, while admitting lack of familiarity with the Senate's committee structure, said he assumed sufficient numbers remained on the committees so that numerous viewpoints would be represented and hence lacking a few members would not severely hamper discussion in the committees. He also said that administrative advisory committees had a very different sort of task than substantive committees.

Professor Hobbie referred to the resolution coming before the December 4 Senate meeting from the Consultative Committee and Business and Rules. He asked if the University saw anything illegal about the motion. Attorney Keller said the motion was not illegal, but that its provisions would conflict with the "meet and confer" stipulations of PELRA. The inconsistency would occur in the administration's receiving such recommendations as the Senate might forward. Professor Hobbie asked about the apparent inconsistency of Tenure, etc., being continued. Attorney Keller said those participations which are presently terms and conditions of employment take precedence over PELRA. He described it as a "factual accident" that this employer (the University) has had a governance structure involving its employees.

Vice President Keller raised questions about the resolution. On the one hand, it expresses the admirable faculty desire to have the advantage of the viewpoints of the Duluth faculty. On the other hand, it requests that the Duluth faculty's voting power be reinstated, which is a legalistic matter and is not a necessary adjunct to receiving and considering opinion.

Professor Hobbie stated his understanding of the intent of the resolution as to acknowledge what the Regents and President have shown, and given that showing, to request a restoration of the status quo prior to the election. Vice President Keller described the resolution as containing an unstated whereas, to wit, "Whereas we want to restore the status quo until a contract is signed." Under the open meeting law, he pointed out the Duluth faculty can certainly be present to listen. He finds the administration in the trying position of being caught between the law on one side, and its own attempts to preserve collegial governance wherever possible, on the other side.

Professor Spring described the resolution as a statement formed in haste; the Consultative Committee met in the atmosphere of resentment on campus; the campus did not believe that the University had to act as it did, and believed the Regents were acting punitively. The SCC took the position that the Regents

believed the act was necessary. Yet just as the SCC observed the administrative reinstatement of certain bodies, in its own interest and on behalf of the Senate it wished to request the reinstatement of all the bodies.

Vice President Hasselmo recommended thinking in terms of the necessary provisions of the law, and then considering the exceptions. He recognized the desire for a mechanism to get Duluth faculty viewpoints. Professor Schletzer pointed out that even the sexual harassment issue mentioned above clearly gets into terms and conditions of employment since it allows for suspensions. She added that the faculty are not well acquainted with the law and have picked up a distorted view of the issues from UMEA. Attorney Keller agreed that more understanding and explanation of this law certainly is necessary. It is the stated purpose of the NEA, he pointed out, to make the University of Minnesota the first major national research university to unionize. They have not tried to illuminate the PELRA law.

There was a little further discussion about interpretations of particular subdivisions of the law and of what policy areas relate to terms and conditions of employment.

Professor Eaton expressed the thanks of the SCC to Vice Presidents Hasselmo, Keller and French and Attorney Keller for their assistance in giving the committee a better understanding of the complexities involved.

The meeting adjourned at 10:45 a.m.

Respectfully submitted,

Meredith B. Poppele,
Secretary, SCC