

# UCCSN Board of Regents' Meeting Minutes October 3-4, 1991

10-03-1991

Pages 1-6

BOARD OF REGENTS

UNIVERSITY OF NEVADA SYSTEM

October 3, 1991

The Board of Regents met on the above date in the System Administration building, Conference Room, Las Vegas and the System Administration building, Conference Room, Reno, in a special teleconference.

Members present: Mrs. Carolyn Sparks, Chairman, Las Vegas

Mrs. Shelley Berkley, Las Vegas

Mr. Joseph Foley, Las Vegas

Mrs. June F. Whitley, Las Vegas

Dr. Jill Derby, Reno

Dr. James Eardley, Reno

Mr. Daniel J. Klaich, Reno

Mrs. Dorothy S. Gallagher, Elko

Members absent: Dr. Lonnie Hammargren

Others present: Chancellor Mark H Dawson

President Anthony Calabro, WNCC

President Joseph Crowley, UNR

President Robert Maxson, UNLV

President Paul Meacham, CCSN

President Ronald Remington, NNCC

President James Taranik, DRI

Mrs. Rita Gubanich for President Gwaltney,

TMCC

Mr. Ronald Sparks, Vice Chancellor

Mr. Donald Klasic, General Counsel

Mrs. Karen Steinberg, UNS

Ms. Mary Lou Moser, Secretary

Chairman Carolyn Sparks, presiding in Las Vegas, called the meeting to order at 8:50 A.M., stating the purpose of the meeting was to review the Governor's salary recommendation that salary increases for all State employees be deferred until January 1, 1992, with the possibility that such raises might be made retroactively.

1. Approved That the Board of Regents Reduce the Institution Budgets by \$1,225,429 as Identified as Necessary for Salaries for UNS Professional Employees and That Those Funds Be Used to Honor Contractual Agreements Currently in Effect.

General Counsel Klasic stated that the Governor and the Board of Examiners have requested that pay increases for all State employees be deferred until January 1, 1992, at which time a determination will be made whether to extend the deferment or to grant pay raises, possibly retroactively. He informed the Board it could either concur with across-the-board deferments applicable to all employees, whether on "soft" money or "hard" money, with the exception of DRI, or determine some other action.

Mrs. Gallagher moved that the Board accept the Governor's decision on deferral of the cost-of-living increase and that it be applied to UNS employees. Dr. Eardley seconded.

Mr. Klaich related that he had read the Attorney General's opinion issued in her letter dated September 26, 1991, which stated that the Governor, and specifically the Board of

Examiners, had the ability and were authorized by the Legislature to withhold salary increases. He added that the opinion is based on statutory language found in the appropriation bill, which does not apply to nor appear in the separate section of the appropriation bill for salaries of professional employees of the University of Nevada System.

Further, Mr. Klaich stated that he had spent better than 8 years on the Board trying to convince people of the unique status of UNS, and particularly of the unique status of UNS employees. Continuing, he added it has always been the UNS position that the comparison group for UNS employees is not other State workers, but other similar institutions with whom UNS competes. He related that by and large this is an appropriate distinction. However, in this particular instance, he did not think it appropriate because as citizens of the State of Nevada, with the State in financial problems, it is the obligation of the Board to share equally with other agencies. He stated that he felt it the morally correct action to withhold pay raises within UNS if other State employees were similarly treated.

However, Mr. Klaich stated that in his opinion, there is a fundamental difference between the salary relationship of

UNS to its professional employees and virtually all other State employees, primarily classified, and that is that UNS professional employees work pursuant to written contracts which are protected from retroactive adjustments by the United States Constitution. He related that if there was a State financial crisis or exigency, then that would be a reason to not honor the contracts. Mr. Klaich stated that the Board of Examiners and the Governor have stated pay raises must be withheld, and in the media reports on this date, the State Treasurer and Controller feel the State finances will be available for those raises, and the Secretary of State has asked that the Board of Examiners reconsider their action later in the month when new monthly tax revenue statements are due.

Mr. Klaich added that he would vote against the motion, and felt the UNS share of pay raises should come from other sources, primarily from the contingency plans the Presidents have presented and which the Board adopted. Further, he felt General Counsel should be directed to add a clause to the professional employees contracts which would give flexibility for the Board to respond should a like situation occur.

Answering Dr. Eardley's question, Chancellor Dawson stated Presidents were instructed that contracts be written such that the salary for the period July 1 to October 1 would be the same as last fiscal year, and then on October 1 the cost-of-living increase would take effect.

Responding to Dr. Derby's request for clarification of Mr. Klaich's remarks that the Board does not have the power to change the contracts, General Counsel Klasic stated that NRS 353.255 does give the Governor authority to require a reserve of funds if there is a financial emergency and this would presumably include the UNS. Also, he stated that he has always taken the position that under the constitutional autonomy of the Board, the Governor may ask for a reduction of funding for UNS, but cannot tell UNS how to make the reduction. In addition, the term "financial emergency" must be defined and if a conclusion cannot be reached, then the matter would be clarified in the courts.

President Crowley asked whether a State "financial emergency" would be the same as the UNS term "financial exigency", and reminded the group that if it is, the Board has policies and procedures to deal with that. He asked whether the State had such procedures or policy, with

General Counsel Klasic stating the only statute of which he is aware is the aforementioned one which requires a reserve to be established. Mr. Ron Sparks added that during the last session the Legislature defined the minimum general fund balances at 10% of the annual appropriations, which at this time is approximately \$50 million.

Mrs. Gallagher related that she did not feel anyone in the State could determine at this time whether there was a financial emergency. She added that in her opinion it would not be a prudent move to give pay raises at this time and questioned why this matter could not be postponed until January, 1992.

Chairman Sparks stated she had discussed this matter with Vice President Harry Neel, UNLV, who stated using the current 4% contingency plan approved by the Board, would be a hardship in that those funds would be from a different appropriation area and might not be replaced. President Maxson stated he did not feel withholding salaries would be a hardship, in that the pay raise would be considerably less than the total 4% originally called for.

Dr. Derby asked that someone comment on the political cost that might be involved. Chancellor Dawson stated that he

felt if the Board demonstrates it can find the funding for the pay raises from other budget areas, the Legislature may feel UNS is over-funded in those areas. He also cautioned about granting raises in this manner and then later finding out there isn't a State financial emergency.

Ms. Diane Dietrich, Unit Senate Chairman, stated that the faculty members with whom she has spoken, feel that the Governor is making them pay an extra tax that none of the other people of the State are being asked to do, and they are very unhappy about that.

Professor Jim Richardson, UNR, stated there is an amazing amount of budgetary sophistication around the System among faculty who realize the Board of Examiners' decision is to withhold \$1,700,000 from UNS, and that it was not a decision to defer UNS pay increases. This has raised some questions as to why UNS has prepared 4% contingency plans.

Dr. Richardson stated he attended the Board of Examiners meeting in which the Governor did state he was not speaking for the Board of Regents or for specific school boards that have independent authority. He produced a letter he received from UNR stating that on October 1, 1991 his rate of pay would change, and implied that this, or a similar



letter was sent to other faculty as well.

Chairman Sparks asked someone who had attended the Board of Examiners meeting to explain why they did not consider the contingency plans of the State agencies. Dr. Richardson stated that in a private meeting with the Governor and a number of faculty from around the System, they were told that while UNS contingency plans for a 4% budget cut did not require layoffs, a number of other State agency plans did, and he was trying to avoid layoffs.

President Remington, NNCC, stated that if Campuses could be assured that the reduction for pay raises, which amounts to 1 or 1 1/2% could be taken from the contingency plan in place, they would be able to accomplish that; however, he questioned whether Campuses would be asked to take an additional 4% budget cut.

President Crowley reminded the Board that at the time of approving the contingency plans, and when those were forwarded to the Governor, it was the Board's intent to review the situation prior to any actual reductions being made. He asked whether a decision could be delayed until it is determined whether the Board of Examiners will re-

visit the issue later in the month. Chairman Sparks related she had received a number of phone calls from people who have small businesses who have urged that the Board not give pay raises. General Counsel Klasic reminded the Board that October 10 is the deadline for informing the Payroll Departments about any decision concerning the next checks to be distributed to employees.

Dr. Richardson stated he felt that the faculty would understand postponing a decision by the Board if they were notified that information is still being gathered. General Counsel Klasic reminded the Board that there are over 2000 employees and there would be no guarantee that someone would not sue for breach of contract.

Mr. Klaich reiterated that the Board finds itself in a very difficult position, but stressed the difference between UNS professional employees and all other State employees.

Dr. Derby expressed her strong concern about the "political fallout" of the situation and reminded the Board that UNS is dependent on the goodwill of the Legislature. Mrs.

Whitley stated she felt UNS should not ignore the request, but that the percentage be paid to the State in funds other than from employee salaries.

Mr. Klaich asked whether the motion could include the Board's intention to revisit the issue in January, or sooner if circumstances warrant, with Mrs. Gallagher and Mrs. Berkley agreeing.

Motion failed on roll call vote:

Aye: Regents Derby, Eardley, Gallagher, Sparks

Nay: Regents Berkley, Foley, Klaich, Whitley

Absent: Dr. Hammargren

Mr. Klaich moved that the Board reserve or reduce their budgets in an amount equal to \$1,225,429 as identified by the Board of Examiners and that the Presidents of each System Institution be directed to identify their respective share of those funds within the parameters of the Board's previously adopted contingency plan. Mrs. Berkley seconded.

In response to General Counsel Klasic's inquiry, Mr. Klaich clarified that 1) the motion refers only to professional employee salaries; 2) that the Board has no jurisdiction over the classified employees; 3) that the reserve be in

the amount of \$1,225,429 as identified by the Board of Examiners; and 4) that the amount from each Campus be on a pro rata basis.

President Calabro expressed concern for WNCC professional employees receiving a pay increase when there are so many State classified employees living in Carson City. President Meacham stated his concern for the classified employees but agreed that the Board could only make decisions concerning professional employees. Vice President Rita Gubanich stated TMCC's concern was that each Campus be given the same directive, stating there are a number of full-time employees who work for both TMCC and UNR.

Mrs. Berkley questioned that perhaps each Campus be allowed to address the problem in its own way, with Dr. Eardley replying that would only cause chaos among the Campuses.

President Remington reminded the Board that UNS has been addressing for a number of years the question of equity among faculty members, and urged that a System approach be used. President Maxson stated he would prefer including all employees on his Campus, but understood the contractual obligations.

Motion carried on roll call vote:

Aye: Regents Berkley, Eardley, Foley, Klaich, Whitley,  
Sparks

Nay: Regents Derby, Gallagher

Chancellor Dawson requested the Presidents to prepare their contingency plans for review by the Presidents' Council.

The Board asked that those contingency plans be calendared for the October 24-25, 1991 meeting, and agreed that should the matter be revisited by the Board of Examiners, or if there is some change in the financial fortunes of the State, a special meeting would be called. It was also agreed that the Chairman and Vice Chairman will contact the Governor and the members of the Board of Examiners with the UNS decision, explaining the difficulty and the unhappiness of the Board with the choices with which it was faced. Mr. Foley suggested a verbatim copy of the meeting might be distributed to the Board of Examiners.

President Crowley asked whether there should be a change in State finances and the cost-of-living is granted by the State, would the funds be returned to UNS. It was agreed that UNS could ask that they be returned, but that there

was no guarantee they would be.

The meeting adjourned at 10:10 A.M.

Mary Lou Moser

Secretary of the Board

10-03-1991