

FEBRUARY 21, 2012 SPECIAL MEETING

*The University of Michigan
Ann Arbor
February 21, 2012*

The regents met at 8:00 a.m. in the Regents' Room. Present by phone were President Coleman and Regents Darlow, Deitch, Ilitch, Maynard, Newman, Richner, Taylor, and White. Present in the Regents' Room were Executive Vice President Pescovitz, Vice President Rudgers, Vice President Scarnecchia, and Executive Vice President Slottow. Vice President and Secretary Churchill, Provost Hanlon, Vice President May, Chancellor Person, and Vice President Wilbanks were present by phone. Vice President Forrest, Vice President Harper, and Chancellor Little were unable to participate.

Call to Order

President Coleman called the special meeting to order. A discussion followed concerning the Regents' Bylaw Section 1.01 and the rules governing special meetings. President Coleman turned the floor over to Regent Deitch.

Regent Deitch made the following statement:

On April 21, 2011, the Graduate Employees Organization filed a Petition for Representation Proceedings seeking an election to become certified as the exclusive representatives of the University's graduate student research assistants (GSRAs) under the Public Employment Relations Act (PERA).

On May 29, 2011, the Regents of the University of Michigan adopted the following resolution: "Resolved, that consistent with the University of Michigan's proud history of strong, positive, and mutually productive labor relations, the Board of Regents supports the rights of University Graduate Student Research Assistants, whom we recognize as employees, to determine for themselves whether they choose to organize."

In 1981, the Michigan Employment Relations Commission (MERC) had ruled that GSRAs were not employees.

The Regents' resolution was predicated on its judgment that the facts had changed materially since 1981 and that those facts (including the administration's conduct) established to the board's satisfaction that the GSRAs are employees.

Currently, MERC is holding a fact-finding hearing, which is being conducted by its most senior administrative law judge, the widely respected Julia Stern.

It is unknown whether MERC will rule that the GSRAs are employees under PERA or not.

If the ruling is no, it would appear to be highly unlikely that there will be an election.

If the ruling is yes, no one knows whether the union will win a majority or not. The regents have not taken a position on whether the union should win an election or not. And, we do not do so today. The regents' decision is predicated on our support for freedom of choice for these valuable members of the University community.

Others at the University, led by the president, have expressed their opposition to the unionization. Such opposition has not been inhibited by the regents nor anyone else.

Despite the fact that the process is ongoing and the result is unknown, Senator Randy Richardville introduced SB 971 on February 15 and scheduled it for hearing today, February 21 at 11 a.m. before the Senate Committee on Government Operations.

The bill provides: An individual serving as a graduate student research assistant or in an equivalent position and any individual whose position does not have sufficient indicia of an employment relationship is not a public employee entitled to representation or collective bargaining rights under this Act.

Rationale for opposition to SB 971:

- 1) The outcome and the process of MERC's review of the facts are unknown.
- 2) There is no factual basis of wrongdoing or incompetence, etc., which could possibly justify taking away jurisdiction from MERC, a statutorily constituted state agency.
- 3) This legislation is an improper incursion into the internal decision-making processes of the University.
- 4) Adoption of this law would be tantamount to changing the rules of a game in the middle of that game. To do so would be a violation of due process which is inconsistent with the core values of the University.

For those reasons and others, I offer the following motion:

The University of Michigan hereby states its opposition to the adoption of SB 971. Cynthia Wilbanks, vice president for government relations, is to take all available action in opposition to the adoption of SB 971 into law and is to articulate the University of Michigan's opposition to SB 971 before the legislature, and if necessary, before the Office of the Governor. The term "all available action"¹ is to include, but is not limited to, testimony, development of position papers and retention of lobbyists. The vice president for government relations is to report on a regular and continuing basis to the board through the chair of the board or her designee on the progress of the opposition to SB 971.

Regent Taylor seconded the motion.

¹ Note: per comment of Regent Darlow, understood to mean all available appropriate action.

Regent Newman made the following statement:

For the record I question the emergency action of this meeting. In 17 years on the board we have never used this process to call a board meeting and we have never called a board meeting without at least 18 hours of notice as required under the opens meeting act. I would like to know what the emergency is that caused five of my colleagues to call this meeting?

To take this action without any discussion, without any public comment and without any notice seems to me to fly in the face of openness and inclusion. Even the meeting notice doesn't say what the meeting is about. I for one refused to make up the quorum to call this meeting.

There is no question that this is not an autonomy issue - it is settled law that the University is subject to PERA, otherwise we wouldn't have any collective bargaining on this campus, and we wouldn't pay minimum wage.

Arguing that the process should run its course is merely taking a side. The process and the course are not controlled and constrained by this board, but rather a matter of concern for all the citizens of the state, whether we like it or not.

The idea that a MERC process precludes legislative action reflects a basic misunderstanding of the roles of the different branches of government.

MERC is an administrative agency. In general, the legislature sets broad policy goals in the form of statutes, and then agencies (executive and independent) create more detailed regulations to carry out those policy mandates where needed. This general principle is certainly applicable to the MERC, which is charged with administering 3 specific statutes, including PERA. See http://www.michigan.gov/lara/0,4601,7-154-10576_17485-42437--,00.html.

Without the legislative policy and goals as the framework, the MERC has no business acting at all. So it can't be the case that the legislative process in setting those broad policy goals is not appropriate - it is central to the MERC's mission. To say that there is a "process" underway in the MERC so the legislature should stay out of it is misunderstanding our basic structure of government and the roles each branch plays.

At the end of all the process (and by that I mean legislative process informing administrative process), the courts can and will decide whether either branch has overstepped the constitutional constraints they are expected to abide. But the legislature certainly has a role to play in the process, and it is now, or yesterday, not tomorrow or next week.

For the U of M to argue a position which so misunderstands the basic operation of a separation of powers system would be a bit embarrassing in my view.

I also want to note that 6 regents of the University have taken the position that graduate students are employees and I respect their opinion. However, 2 regents and the president, the deans, SACUA, and 800 faculty and students disagree the University has opposed all requests to let them participate in the MERC process. As Mary Sue Coleman said in May in response to the regental resolution which passed 6-2, this move could fundamentally alter the relationship between faculty and graduate students. Research assistants are not employees of the University, but students, she said. They learn from the researchers with whom they work and go on to even greater discoveries as they take ownership of their shared scholarly study and then build on it." Perhaps the legislative process now underway will reflect the views of the larger university community and the state and therefore better inform the administrative process as well. A process that allows for competing views and operates in the open shouldn't be so scary to us, it should be what we aim for.

Discussion

Regent Richner expressed agreement with Regent Newman's comments. He found the notice for this meeting to be inadequate and would have preferred to table this motion to allow for more public input and to have a more thoughtful and broader discussion. He noted the bill under consideration codifies the current MERC rulings which pronounce GSRAs are students and is consistent with the laws in other states. The proposed amendment to PERA is consistent with the views of numerous students, faculty, deans, and the president who have encouraged the University to undertake action to protect the existing relationship between GSRAs and their faculty advisors, which has been described as that between mentee and mentor. He said that MERC's 1981 ruling concluded, "the assistantship is a form of support like the athletic scholarship which provides financial support for the student to attend school. The essential nature of the relationship is educational." He concluded that he opposed the motion and believed the board should support the legislation, rather than oppose it.

Regent White supported the motion, but expressed concerns that there should be adequate notice to hold meetings. Regent White noted it was her understanding President Coleman had called the meeting.

Regent Ilitch expressed support for the motion and noted that she firmly believes in "the freedom of choice and it is a value that I believe codifies the University of Michigan."

Regent Maynard found Regent Deitch's motion to be very articulate and possibly more detailed than required. However, she firmly believes the University should advocate against the adoption of SB 971 and she supported the motion.

Regent Newman requested clarification as to whether the vice president for government relations would continue to report to the entire board because the motion states the vice president

for government relations would report to the chair. Regent Deitch noted he would accept an amendment to clarify that the vice president for government relations would report to the entire board through the chair. Regent Taylor noted that voting on an amendment was unnecessary if this was the intent of the motion, and Regent Deitch agreed that it was the intent.

Regent Darlow commented that the context of the SB 971 legislative hearing today requires expeditious action on this motion. She noted that PERA is general legislation that is appropriate and not in conflict with the University's constitutional autonomy. However, she expressed concerns with legislation, such as SB 971, that specifically targets universities may infringe upon the University's autonomy. Regarding Regent Deitch's motion, the phrase "all available action" should be interpreted as action deemed to be appropriate and most effective by the chair and the vice president for government relations within the context of a "changing and unique legislative environment." Regent Deitch agreed that "appropriate" should be added to the motion. She expressed support for the motion.

Regent Taylor noted that there have been plenty of comments on this issue and his position is "crystal clear."

The vote was then taken, and the motion was approved, with Regents Darlow, Deitch, Ilitch, Maynard, Taylor, and White in favor, and Regents Newman and Richner opposed.

Adjournment

There being no further business, the meeting was adjourned at 8:40 a.m.