

SPECIAL MEETING, APRIL 2, 2012

*The University of Michigan
Ann Arbor
April 2, 2012*

The regents convened at 3:30 p.m. in the Regents' Room. Present were Regent Darlow, President Coleman, Vice President and Secretary Churchill, Provost Hanlon, Executive Vice President Pescovitz, Vice President Scarnecchia, Executive Vice President Slottow, and Vice President Wilbanks. Regents Deitch, Ilitch, Maynard, Newman, Richner, Taylor, and White participated by phone. David Fink and Darryl Bressack, outside counsel from the firm of Fink + Associates Law, also participated by phone.

Call to Order

President Coleman called the meeting to order and called on Vice President Scarnecchia. Vice President Scarnecchia announced that the original purpose of the special meeting was to determine whether the University would take an official position in the challenge to the immediate effect of the GSRA bill that passed recently in the state legislature. In the meantime, she noted, the Ingham County Circuit Court has made a decision on this issue, and she read the following statement:

“The Ingham County trial court ruled from the bench this afternoon in favor of the plaintiffs, the Democratic representatives. The judge stayed or halted the immediate effect of the GSRA bill, but not the substance of the bill. We will still meet today, and the question, I believe, and we can discuss this, would be whether or not to file an amicus brief with the trial court—and today the judge said that he would allow such a filing—and then also whether we would file an amicus brief if the matter is appealed by the Republicans to the Michigan Court of Appeals.”

Vice President Scarnecchia noted that outside counselors David Fink and Darryl Bressack were on the line, and that Mr. Bressack had attended the hearing that day. Mr. Fink observed that the defendants are expected to appeal this judgment, and that it was relevant to the pending matter in that the judge had stayed the immediate effect with respect to Public Act 45. As a result, the University would again be asking the Michigan Employment Relations Commission (MERC) to move forward with the pending representation petition.

Mr. Fink also noted that the judge indicated that the legislature is not precluded from voting on the immediate effect. Thus, the legislature could conceivably take up the matter again to attempt a two-thirds vote.

Regent Taylor said that he had been prepared to make a motion directing counsel to file a friend of the court brief prior to the judge issuing his decision. However, given the fact that the judge stated he would still accept amicus briefs, he was making a motion to direct counsel to file an amicus brief in support of the plaintiffs in the Ingham County case, and in any other courts throughout the course of this litigation through any appeals. Regent Ilitch seconded the motion.

Regent Maynard stated that after careful consideration, she had decided it would not be useful to file an amicus brief, so she would not support the motion.

Regent Richner asked about the administration's view of the motion. President Coleman responded that she had made her comments last year. She noted that while the administration had not considered the issue, it is within the board's purview to decide. Regent Richner inquired whether there had been other cases in which the board had directed the administration to file an amicus brief. Vice President Scarnecchia replied that this had not happened during the time she had served as general counsel. President Coleman observed that it would be a rare occurrence but that it is certainly within the board's prerogative.

Regent Deitch observed that the board had fully supported the administration in taking the appeal of the affirmative action case to the United States Supreme Court. Regent Newman responded that this was not equivalent to the current situation.

Regent Newman commented that she does not believe it is appropriate to file a brief, since “the University’s interest is tangential, at best, and we should not be involved in legislative procedural issues.” She noted that “she finds the circumstances of this meeting to be troubling.” She believes that the topic of the special meeting should be included in the notice of the meeting, and that “there is nothing to be gained from not having public comment on the issue, and that we should have had public comment.” She said she would not be supporting the motion.

Regent Richner commented that it is not appropriate for the regents to be taking a position on either side of a political spat between the Democratic and Republican parties, noting, “I think it is unprecedented, and will have long term implications that we may regret.” He pointed out that in the past, the University has taken positions in favor of “immediate effect” of certain legislation, and that this case goes well beyond the issue of whether graduate student research assistants are public employees.

Regent Ilitch stated that she “deeply disagrees” with the observations on noticing of special meetings. “We have conducted ourselves as we have always conducted ourselves with respect to notice.” She said she is in support of Regent Taylor’s motion, and that due process is in order in this case. She stated that criticism of the board for taking political positions on legislative matters should also include the propriety of regents testifying on behalf of the legislation.

Regent Deitch commented that “the University is an institution that is about speech and protecting the right of the minority to be heard.” He observed that the rules of due process were

not followed with respect to the request for a roll call vote in the legislature. He said that “What transpired was inconsistent with our institutional values, in my judgment.”

Regent Newman stated her belief that the issue is not about due process or about the University’s principles or free and open speech. Rather, it is about House procedural issues, used by both Democrats and Republicans. She expressed her hope that in accordance with the principles of free speech, when special meetings are convened in the future, the topic of the meeting will be mentioned in the meeting announcement so that people will have an opportunity to comment on the topic.

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

Adjournment

There being no further business, the meeting was adjourned at 3:50 p.m.