

3rd DRAFT

PAPER ON THE QUESTION OF COLLECTIVE BARGAINING AND STRIKES

FROM

STRIKE POLICY ADVISORY GROUP (ROSTER ATTACHED)

This statement is to provide information for the Board of Trustees upon which to base further decisions concerning last June's Strike Policy (Board Resolution 77-3). Because the strike issue is part of the larger question of collective bargaining, this statement reviews the question of campus strikes in the general context of collective bargaining.

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I. Introduction

A. Summary of higher education collective bargaining, strike history

1. Faculty collective bargaining

The increasing interest of public-institution faculty in organizing to bargain collectively most often is the result of their fear of loss of job security, erosion of their role in governance and loss of buying power. Nationally, there has often been a perception on the part of faculty that campus administrators are helpless to prevent increasing state government control of institutional policy; and that their salary increases have failed to keep pace with either inflation or with increases in the private sector. Sometimes, faculty have felt that administrators have failed to do all they could to prevent State control. Some observers believe that legislators and government officials themselves have encouraged collective bargaining as a contractual means of control of faculty working conditions and salaries. Certainly, the public money crunch and the intrusion by state government into the institutional policies which govern their day-to-day actions have helped lead Washington State faculties and unions to promote passage of 4-year school collective bargaining legislation. Nationwide in 1976, roughly 490 of the approximately 2500 public and private institutions had faculties which were organized. Twenty-two states have mandatory bargaining laws which cover public faculties and classified staff. In Washington State, the classified staff at all public higher institutions, and the faculties at the twenty-seven community colleges are covered by existing law.

The industrial collective bargaining model does not fit academia precisely. The structure of colleges and universities is more complex than that of the industrial-model firm or agency.

Governance is at least tripartite, with faculty cast in a dual role of policy advisor and employee. Nationally, in institutions where a faculty senate is powerful and feels its role in governance is strong, collective bargaining has not generally been an issue. The recent increase in student participation in governance further complicates the issue.

It is fair to say that in Washington State the issue of faculty collective bargaining for four-year institutions will continue to be addressed by legislators until passage of a bargaining law. The factors which lead to collective bargaining are present in enough strength in enough institutions that the issue cannot be ignored.

2. Classified

Washington was one of twenty-two states in 1975 with mandatory laws for classified personnel at either the two or four-year level. Under the collective bargaining law for these employees, strikes are prohibited, but no penalties are specified.

3. Strikes

Four states provide the right to strike, while 22 prohibit strikes in at least one law covering education. Nationally, faculty have struck in more than thirty-one colleges from 1967 to 1977. Faculty strikes occurring at the community college level in Washington State include Tacoma Community College for nine days, at Green River Community College for thirteen days in 1974, one day in 1972 for the Seattle

Community College district, and 14 days at Olympic College, November, 1974. The Tacoma Community College strike in October, 1973, was, in the main, over the issues of salaries beyond the level stipulated by the Legislature as interpreted by the State Board for Community College Education, and the role of faculty in policy determination. The other strikes also involved these issues.

B. Review of Applicable or Potential Law

1. For classified staff

RCW 28B.16.100 provides that the Higher Education Personnel Board administer collective bargaining for state higher education classified employees. The HEPB determines the appropriate bargaining unit and certifies the union for election. The law allows an agency shop and dues check-off. An agency shop (a form of "union security") requires all the members of the bargaining unit to pay a fee to the union whether or not they are members. The dues check-off allows fees to be deducted automatically from the unit member's paycheck. The scope of bargaining includes grievance procedures and personnel matters, but not compensation, which is set by the Legislature. There are no specific unfair labor practices defined, beyond the requirement to bargain in good faith. The law prohibits strikes, but specifies no penalties. The Washington Public Employees Association (WPEA) was the first public employees union to call a strike, this year. It has members in various state agencies and higher education institutions. The strike lasted for three days and was ended when Governor Ray promised to meet with the Legislature on the topic of salary increases.

2. Existing legislation for community college faculties

The Community College Professional Negotiations Act (RCW 28B.52.010 - .200) covers faculty and professional employees except chief administrators and is administered by the Public Employment Relations Commission (PERC). It provides for exclusive representation by one union for an entire community college district, and also provides for negotiation on the type of union security. The scope of bargaining is very wide, and includes curriculum, text books, personnel hiring and assignment practices, leaves of absence, salaries and non-instructional duties. There are no prohibitions against strikes.

3. Prospective legislation for faculty collective bargaining in the four-year schools

Engrossed House Bill No. 59 passed the House of Representatives last January and was clearly a labor-oriented bill. For instance, the Purpose Section spoke of "establishing the rights of educational employees to form, join and assist employee organizations, and to bargain collectively, and to establish procedures to encourage settlement of disputes." This was in contrast to a purpose statement later substituted in the Senate Labor Committee, which spoke of "rights and obligations of educational employees and the establishment of procedures governing the relationship between such employees and their employers."

The House version of the bill passed with more than eighty votes. It included an unusual definition of supervisors which called for them to perform a "preponderance" of specified acts of authority, prohibited students from engaging in the bargaining process, and contained no "management rights" clause. It was silent on the question of past

practices and left determination of unfair labor practices to the PERC. Some of these provisions were modified in subsequent amendments passed by the Senate or Labor Committee. The bill failed to pass the Senate by one vote margin and has been returned to the House Labor Committee where it is being re-worked. It will probably be passed to the House Rules Committee prior to the 1978 Extraordinary Session. A session on the bill by a House Labor Committee subcommittee is scheduled for November 10, 1977.

4. The Role of Public Employees Relations Commission (PERC)

If House Bill 59 were passed, the PERC would administer provisions of the law. It would decide the scope of bargaining in case of a dispute between the employer and exclusive bargaining representative. It would certify the exclusive bargaining agent at an institution, determine the appropriate bargaining unit for employees, and conduct elections for exclusive bargaining agent.

The PERC would prevent people from engaging in unfair labor practices, offer services of mediation, fact-finding, and advisory recommendations, and provide binding arbitration with the approval of the employer and the exclusive bargaining representative for disputes involving interpretation or application of the bargaining agreement.

5. The Role of the Board of Trustees in the absence of legislation providing for exclusive representation

Richard Montecucco, assistant attorney general for the College, cited two Attorney General Legal Opinions in a May 11, 1977, memo to the effect that "the governing body of a state college or university does not have authority to grant formal recognition of a single employer or organization as an exclusive bargaining agent for the

faculty." Local 1823, American Federation of Teachers (AFL-CIO) of Eastern Washington State College petitioned the PERC for ruling on whether RCW 41.56, which provides for public employees collective bargaining for employees of municipal corporations or political subdivisions of the State of Washington applied to Eastern Washington State College. The PERC found that it did not, and the issue is now in court.

The environment, then, in which a strike might occur at Evergreen is one wherein faculty collective bargaining law is absent. Classified staff are covered under collective bargaining law, but have not utilized their prerogative to organize and bargain collectively.

C. Evergreen's Unionization Status and History

1. Classified

The Washington Federation of State Employees (WFSE) was named exclusive bargaining agent for the custodial employees at The Evergreen State College by the Higher Education Personnel Board on May 17, 1974, over the objections of the Personnel Director to these employees being placed in a unit "fragmented" from the College's Facilities organization. Twelve out of twenty-three custodial employees had signed a letter of intent to organize. Of these twenty-three, only five were dues-paying members. In 1976, two left the College and the other three ceased to pay their dues. Therefore, although the WFSE had been named the exclusive bargaining agent, the union apparently felt that at no time was it appropriate to call for an election. In March 1977, the WFSE asked the NEPB to decertify the Federation without an election being held.

In 1976 there were no custodial dues-paying members of the WSFE, but there were approximately seven WSFE dues-paying members on the Library staff. There are three remaining as of August, 1977.

There have also been dues-paying members of the Washington Public Employees Association (WPEA, formerly the Washington State Employees Association). The WPEA has given notice to the College of intent to organize the classified staff and intends to be on campus in that effort within the next few months.

2. Faculty

In March, 1975, a local of the American Federation of Teachers (AFL-CIO, Local #3421) was founded at Evergreen. In the two years since that time, the local has increased its membership to the point where it now represents approximately fifty percent of the full-time faculty (including professional librarians). In cooperation with its counterparts at the other four-year state institutions of higher learning and the staff of the Washington Federation of Teachers, the union is actively lobbying for passage of a bill which would permit collective bargaining on behalf of the faculty at these institutions. During the winter and spring of 1977, the local conducted a "hard card" campaign seeking recognition as the bargaining agent. These cards, which were signed by approximately two-thirds of the faculty, were presented to the Board of Trustees in May. The Board refused recognition of the local pending passage of enabling legislation permitting collective bargaining.

D. Review of Actions in the Face of the 1975 Strike Threat

1. At the State Level

In early 1975, in the face of a imminent strike threat from the WFSE, the Department of General Administration (G.A.) issued a strike assessment planning memo calling for strike contingency planning and strike-related personnel policies. It circulated to state agencies and higher education institutions copies of proposed drafts on these topics. It called for the determination of "essential services" by agencies or institutions. It asked that strike preparation be kept low-key. It stated that a overall declaration of "essential services" would be published by the Governor's office in the event of an actual strike. The policy statement called for maintenance of normal operations to the extent that such operation was possible with the state employees' staffs available to the respective agencies and suggested that state agencies would not hire outside labor to carry on functions. It was, in short, a very low-key response without sanctions and without a replacement for striking workers.

2. At The Evergreen State College, in a March 5, 1975, memorandum from President Charles J. McCann, strike regulations were set forth. They were based on the Governor's directives and were likewise low-key, with no replacement of workers or sanctions against those who struck.

E. Review of Actions in the Face of the 1977 Strike Threat

1. At the State Level

The 1977 action was apparently construed to be a much less serious threat than the one two years earlier. The General Administration

"essential services" to the question of replacement of striking employees, that this definition is central to the determination of a course that the trustees will take on strike policy.

1. Do "essential services" include only the protection of State property? Those who answer "yes" to this exclude teaching from essential services and cite the G.A. state strike contingency plan of February 20, 1975, which stated in part that "agencies will not hire outside labor to carry out functions which would otherwise be handled by employees on strike." They argue that failure to conduct classes does not constitute a threat to the health and security of the State. They maintain that the health and security of the State is served by maintaining the buildings in condition to accommodate the resumption of teaching when the strike is concluded. The case of Port of Seattle in the early 1960s held that a strike is illegal which affects the health and welfare of public employees. Therefore, arguably, a strike by public employees is not illegal where it does not adversely affect the health and welfare of citizens of the State. Students are adults, and the suspension of classes cannot be interpreted as adversely affecting their health and welfare, as has been argued in the case of K through 12 pupils.
2. Or, do "essential services" include teaching?
 - a. Is teaching the mission of the College? Is its interruption tolerable? Arguments that teaching is essential maintain that the obvious mission of the College is to provide education to its students and that any interruption of that central mission is one that the Board of Trustees must overcome as soon as possible.

In a case which might have some applicability here, a U. S. Supreme Court decision in the case of Hortonville Joint School District No. 1 in Wisconsin affirmed the School Board's right to decide that the public interest in maintaining uninterrupted classwork required that teachers striking in violation of state law be discharged. The opinion stated that the School Board had an obligation to make a decision based on its own answer to an important question of policy: "What choice among the alternative responses to a teachers' strike would best serve the interests of the school system, the parents and the children who depend upon the system and the citizens whose taxes support it?"

- b. What is the legal effect of the contractual nature of instruction in return for tuition?

The response to this question from Richard Montecucco, Assistant Attorney General, cited eight cases and said that "the general tenor of the cases is to the effect that students do acquire a vested contractual right after they are registered and have been admitted to an institution." This vested contractual right grants to them those things which they have paid tuition and fees for, which would include regularly scheduled classes, educational programs, etc. He goes on to say that the basic question not answered is "what reasons are sufficient cause to allow the institution to cancel the contract of admission because of certain circumstances beyond its control?" Mr. Montecucco says that "perhaps the bottom line is that even though an institution is faced with the threat of a strike or work slowdown, it has a legal obligation to the extent that it is possible to continue operation

of the institution, maintain classes and provide education to the student which it is committed to do upon registration of those students. To the extent that the institution fails to meet this commitment then it must prove that the reason for closing the institution is beyond the control of the institution itself."

B. Legality of Strikes

The question of legality of strikes for education employees in Washington State is not consistently addressed in the various existing legislation. Classified employees are prohibited from striking, but no penalties are specified in the legislation. K-12 faculty and Washington Community College faculty and professional employees are not prohibited in statute law from striking. Classified employees in the K-12 system are prohibited from striking, but no penalties are specified. Nonetheless, case law has on several occasions found public employee strikes to be illegal.

In 1958, the Supreme Court of the State of Washington declared, in a case involving the Port of Seattle, that without legislation to the contrary, public employees have no right to strike. According to Richard Montecucco, Assistant Attorney General, injunctions based on this decision have been successful four times in public employees' strikes. Since the Port of Seattle case, the state legislature has never, by legislation, authorized public employees to strike in any segment of government, whether it be the state, a political subdivision or a municipal corporation. Conversely, there has been no legislative prohibition against strikes, except for classified employees. The pending legislation on four-year college faculty is silent on the question of strikes. Making strikes illegal has not proven an effective means of preventing them, however. If the causes of a strike are present, then the workers will generally go out, whether or not a

strike is illegal. Injunctions against illegal strikes are sometimes an effective tactic but almost never a solution to the strike itself. The decision in the end falls back upon the governing board as to whether or not to discharge an employee during a strike based on the situation in the individual institution.

C. The Special Nature of "Sympathy" Strikes

A key consideration for the TESC Board in any strike in the near future is the fact that no collective bargaining agreement is in existence with any group of employees of the College, and that any strike would be in the nature of a "sympathy" strike. Strikers would probably walk out in sympathy with an issue important to a group of individuals within the campus community, or walk out in sympathy with a strike being carried out by union members at other institutions or state agencies. The Board seems to be at a particular disadvantage here as there is no bargaining agreement to alter, or to negotiate over, so as to end the strike, and the issues are generally less clear-cut than in a strike by an exclusive bargaining agent against the employer with which it bargains.

D. The Question of Protection of Reputation and Survival

In regard to most institutions, few would argue that a strike of a few weeks or even a quarter's duration, would permanently damage the college or force its closure. In Evergreen's case, however, the fragile condition of the institution must be considered. It has been under attack from certain segments of the Legislature since its opening and may be the topic of a general study by the executive and the Legislature on closure of one of the four-year institutions. It is the special subject of a legislative study on its performance and we have seen, in the enrollment situation of Fall 1977, that its growth and continued

survival may indeed be affected by these rumors and the discussion of closure. An interruption of operation owing to a long strike might indeed damage the College beyond repair.

E. Reassignment of Administrators

1. Classified

The question of reassignment for "supervisors" who are also classified employees is a complex one. Classified supervisors who are members of a state-wide union such as the Washington Federation of State Employees or the Washington Public Employees Association would usually not be members of an individual bargaining unit on a specific campus (although they are not precluded from membership). Units which are formed under Higher Education Personnel Board rules and state law to bargain collectively do so over terms and conditions of employment other than salaries. In a strike by a recognized bargaining unit over such terms and conditions, supervisors not part of the bargaining unit could legitimately be expected to be available for reassignment as part of management.

If the union was striking over the question of salaries, however, there would be a strong pressure on all union members, including supervisors, to walk out.

The strike would not be so much against the individual institution as against the legislature and the executive. Those are the entities which determine salaries for classified employees. Although the administration might still expect supervisors to be available for reassignment and for work during the strike, it should be cognizant of the difference between a salary strike and a strike on other terms and conditions of employment and the possible effect of the former

III. Various Policy Approaches

- A. The "soft" (1975) approach (typified by no sanctions or replacement of personnel)

This section is written from the position that a strike which curtails teaching is not affecting the "essential services" of the College. Under this assumption, a strike, either from bargaining units over contract negotiation or by individual students, faculty and staff in sympathy with strikes outside the institution, should be ended only through negotiation with strikers and not involve replacement of striking employees. No sanctions or punitive administrative action apply to strikers. The students may "risk" loss of credit if they strike.

1975 DRAFT POLICY

The Evergreen Board of Trustees recognizes the following conditions, rights and obligations which pertain to employee and student strikes:

- (a) The Board must maintain and protect the physical plant so that it is in a condition to support normal operations when they resume.
- (b) The Board must maintain operations in a normal manner during scheduled working hours for the duration of a strike to the extent that such operation is possible with the staff available.
- (c) People in managerial positions at Evergreen will not attempt to influence, either by public or private statements or by other means, an employee's decision to participate or not participate in a strike. Exempt administrative staff, classified officials and managers and academic deans will be expected to report to work in the event of a strike. Sick leave for these individuals must be verified by a medical certificate and annual leave authorized prior to the strike will be cancelled for the duration of the strike. Authorization for annual leave may be granted only by the appropriate Vice President in special cases.

- (d) Those who choose not to report to work as scheduled during a strike will receive no pay unless they are on annual leave authorized prior to the strike or sick leave verified by medical certificate. Those employees absent without having made prior arrangements for use of medical leave or without a medical certificate for sick leave will be considered to be on leave-without-pay status for the duration of their absence.
- (e) Those who choose to report to work during a strike will not be stopped from doing so by any participant in the picket line or any participant in other strike-affiliated activity.
- (f) Employees who report to work during a strike may be assigned to duties outside of their normal work assignments.
- (g) Faculty and students will be expected to carry on their academic work but faculty members who elect not to perform their academic functions during a strike should so notify their dean of group and take leave of absence without pay for the duration of their lapse in duties. Students who elect not to participate in their academic functions during a strike must recognize that they are subject to losing academic credit related to the period of the strike and delaying the evaluation of other activities for credit.

Information on all aspects of the strike and strike policy and procedures will be available through the Strike Information Center.

B. The "hard" (1977) approach (typified by resolution 77-3)

The tone and content of Resolution 77-3 (below), suggests that faculty or other employees will be replaced, as it states that: "the college has a duty to make every effort to see that regularly scheduled classes are conducted "and that "a strike by state employees is illegal".

THE EVERGREEN STATE COLLEGE

RESOLUTION NO. 77-3

RESOLUTION OF THE BOARD OF TRUSTEES OF
THE EVERGREEN STATE COLLEGE
DELEGATING CERTAIN POWERS AND DUTIES
TO THE PRESIDENT OF
THE EVERGREEN STATE COLLEGE
IN THE EVENT OF AN EMPLOYEES' STRIKE

WHEREAS, a strike by state employees is illegal and

WHEREAS, the Board of Trustees of The Evergreen State College finds that a strike by The Evergreen State College employees would create an emergency situation, and

WHEREAS, it is the paramount duty of the Board of Trustees to ensure that the efficient operation of the college is maintained and the primary purpose of the college of offering effective educational opportunities to its students is effectuated, and

WHEREAS, the college has a duty to make every effort to see that regularly scheduled classes are conducted, and

WHEREAS, the Board of Trustees finds that in an emergency situation such as a strike the best interests of the college are served by delegating to the President the power of the Board of Trustees, and

WHEREAS, under RCW 28B.10.528 the Board of Trustees has the power under law to delegate to the President or his designee any of the powers and duties vested in or imposed upon the Board of Trustees by law:

NOW THEREFORE, be it resolved that, in the event of a strike or work stoppage or work slowdown of any nature or kind, the Board of Trustees hereby delegates to the President and Vice Presidents the power and authority to adopt, suspend, modify, and/or repeal any and all rules and policies of the college, and

BE IT FURTHER RESOLVED, that the Board of Trustees hereby delegates to the President and/or Vice Presidents the complete and absolute authority to make any and all personnel decisions, including, but not limited to, decisions to fire, discipline, demote, hire, transfer, reassign, and/or otherwise effect the employment of persons at The Evergreen State College.

BE IT FURTHER RESOLVED, that the Board of Trustees hereby delegates to the President and Vice Presidents the responsibility to determine when a strike, work stoppage or work slowdown of any nature or kind has occurred.

Adopted 6-22-77

C. Possible Compromises between (A) and (B)

One problem with either approach is that each commits the administration to a particular stance before the strike occurs, thus reducing flexibility to react to the actual circumstances of a given strike. Whether the key consideration for the administration in a strike is to keep the college operating or to return it to operation as soon as possible with minimal damage to its program, the college will need the ability to choose among several options. For example, a strike with an "unemotional" issue might well be ended sooner by not replacing workers, rather than by replacing them and perhaps increasing the determination of the strikers to stay out.

It is conceivable, then, that the Board may wish to define essential services to include teaching, but leave the decision as to whether or not to replace workers until a strike is in progress, rather than committing itself to that decision in advance of any strike. If a strike of sufficient duration would so interrupt the continuity of enrollment growth and so damage institutional reputation that normal operations could not be resumed upon its end, the Board might wish to have the latitude to delegate sweeping powers to the President after an amount of time that, in its judgment, the strike would begin to cause irreparable damage to college enrollment and continuity.

If the Board decides to adopt the concepts expressed in this paragraph as part of its strike policy it should take care to thoroughly examine the logistics of Board decision-making during a strike. In a situation which can change drastically from hour to hour, the Board must insure that it has the capability to reach decisions quickly and to bring itself together in conformance with requirements for adequate meeting notice so that it can make timely decisions concerning delegation of authority to the president.

A strike policy, therefore, might begin with the assertion that it will be up to the judgment of the Board to determine whether the College will remain open, whether there will be a closure or lockout, and if the College remains open, whether or not faculty or classified employees will be merely encouraged to return to work or replaced. Further, the policy might state that the Board will review from time to time during the strike the effects of its initial judgment and decide whether to continue or to change the course of action.

Other elements of such a strike policy might include:

1. A statement of commitment on the part of the Board and the President to work in good faith toward the resolution of any disputes between potential strikers and the College.
2. A commitment on the part of the Board to act in the best interest of the College as a whole according to the Board's best judgment.
3. A commitment on the part of the Board and President to keep lines of communication open prior to and during a strike and work for its resolution with the least possible disruption to the institution or to its employees.
4. An avowal from the Board that it would use its vested power to suspend personnel or other policies, or delegate that power to the President, only as a last resort, and in the face of what it judges to be dire and irreversible consequences to the institution.
5. A statement defining "essential services"

IV. Strike Aversion Methods

Strikes generally occur at a point when all other means of resolving a dispute seem to have failed. Dolan-Greene, Gerry and Kelly in the Hand-

book of Faculty Bargaining (1977) assert that a "strike can only gain substantial support among the faculty as a whole when the faculty perceive the Administration as being wholly unreasonable on some issue of major importance to them" (Page 349). Begin, Settle and Alexander in Academics on Strike (1975), Page 3, assert that "strikes will be more likely to occur where there is greater generalized faculty discontent in respect to salaries, benefits, working conditions and degrees of participation and decision making." And further on the list as the major causes of strike action: 1. The failure of the bargaining process to resolve the faculty concerns which led to bargaining in the first place, and 2. the perception by the faculty that they have lost or are losing control over resources necessary for the acquisition or maintenance of professional status.

These comments on strike causes make it plain that strike causes are evident far in advance of strikes, and that reasoned negotiations and bargaining over disputes in good faith is the way to strike aversion. Frequent, candid discussions with union leadership on disputed issues should be policy and practice of the administration.

V. Strike Resolution Methods

A strike by members of a faculty collective bargaining unit concerning contract negotiations would be resolved according to procedures adopted by the Public Employees Relations Commission (PERC). Resolution might be attempted with the assistance of PERC-approved impasse resolution personnel or by mutually agreed-upon procedures and persons. Strikes by classified employees over salary issues would be resolved by the Governor's Office and/or the Higher Education Personnel Board Office personnel and procedures. The College might attempt to resolve strikes by employees and students which were not related to contract negotiations but in sympathy with off-campus strikes by conducting negotiations or discussions with individuals or the leadership of identifiable groups of striking employees or students.

Successful strike resolution would depend heavily on a well-thought-out strike plan flexible enough to accommodate a decision on the Board's part as to whether the institution would remain open or closed during the strike.

The strike plan should incorporate the following elements: an information center or rumor center, a strike coordinator, a team of key administrative personnel responsible for implementing the strike plan, coordination with the Union officials on picket line procedure and strike conduct, arrangements for observers on the picket line, liaison with law enforcement agencies and communications agreements with them, and frequent provision of information to all members of the college community on the strike situation.

It is critical for everyone involved with the strike to remember that upon its resolution all of the parties involved have to work with one another again. Civility and the attempt to understand the commitment of various groups in the college community to positions concerning the strike is an attitude to be strived for.