



Nevada System of Higher Education Board of Regents

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MEMORANDUM

DATE: June 17, 2009
TO: NSHE Regents
FROM: Michael B. Wixom, Chair
Dr. Jason Geddes, Vice Chair
RE: Senate Bill 433 Implementation Recommendation

Fellow Regents-

At the recent Special Meeting of the Board on May 14 we heard an initial report on the budget actions of the 75th Legislature and how they would affect the Nevada System of Higher Education. One of the key points of that discussion was the impact that the System would face as a result of the passage of Senate Bill 433, an act imposing mandatory furloughs on State employees, including professional employees of the NSHE, which provides in pertinent part as follows:

“The Board of Regents of the University of Nevada shall determine and implement the method by which:

- a) The professional employees of the Nevada System of Higher Education will participate in the furlough requirement pursuant to this section; or
- b) The overall costs for the professional employees of the Nevada System of Higher Education will be reduced in an amount at least equal to the savings which would have otherwise been produced by furlough leave pursuant to this section [which would be 4%].”

We were told that the options for implementing the statute would be vetted through a System committee that would report to the Chancellor, Executive Vice Chancellor and Presidents who would then make a recommendation to the Board.

We have received that recommendation and pass it along to you below. However, some comments regarding the process seem appropriate.

The Executive Vice Chancellor appointed a diverse group of System representatives from legal, human resources, finance, academic administration, faculty senates, the Nevada Faculty Alliance and classified employees chaired by Chief Counsel Bart Patterson. That group met for about fifteen hours in four meetings over a 3-week span to develop a 16-page report with ten options for implementation and numerous possible Code changes. After receiving the report and options, the Presidents and Executive Vice Chancellor met four times over about another ten hours to review the potential options.

There is an enormous complexity in this issue as a result of our diverse institutions, our tiered employee base, our diverse sources of funding, our Code and various contract notice provisions. All of these weigh heavy on any decision. In addition it is impossible to review this matter without some discussion of "fairness" within the context of our current financial crisis. Finally, we freely acknowledge with great pride that the backbone of our institutions is in the instructional faculty that serves our students and the administration and staff that guide them make them run smoothly. We deeply value their service and understand that already over the current biennium that these groups have made financial contributions to help meet budget reversions and have expanded work hours to protect our core missions. For all of these contributions we are profoundly grateful and our recommendations below are in no way a negative comment on the work they have done or the salaries they receive, but rather a recognition of the economic reality that we face and must address.

Ultimately, however, we believe that the law and the intent of the law are clear. The Legislature expects the professional employees of the System to participate in a furlough program. They have provided an option to the extent that we are unable to do so due to some of the complexities that we have described above. Those complexities are particularly difficult to overcome in year one of the biennium because of notice and Code provisions.

With that as background we believe that there are fundamental building blocks to implementation of any recommendation:

1. The Board will not declare a financial exigency prior to July 1.
2. Changes to the code to allow implementation of SB 433 should be the least intrusive possible. While more substantial Code changes may be implied by the current financial crisis, those Code changes should be subject to a more vigorous vetting process which includes discussion with faculty.
3. Everyone in the System should have some "skin in the game." Operating budgets have been cut, programs have been reduced and eliminated, taxes have been increased, students will be asked to pay higher fees, and classified employees will be subject to mandatory furloughs. Notwithstanding the numerous arguments that could be made for exempting professional employees, many of which have substantial merit, we do not believe that approach is consistent with the letter of the law, the spirit of the law, fundamental principles of equity and fairness - - nor does it recognize the financial crisis in which we are currently mired.

4. Unless we see an economic recovery as dramatic and speedy as the current budget crisis came upon us, the 2011 session of the Legislature will once again focus on the economy, the budget, taxes, critical state services, and how state agencies have responded to and restructured their services in recognition of our current financial situation. In short, if we are not able to demonstrate to the next session of the Legislature that we understood their directive and responded accordingly, we will have a most unpleasant time two years from now.

With these basic points in mind, it is our recommendation that the Board consider the following actions in implementation of SB 433:

1. For the first year of the biennium each institution should be required to demonstrate an equivalent reduction in the overall cost for professional employees in lieu of a mandated furlough program. Any other year one implementation strategy would require significant Code changes and/or declaration of a financial exigency. This "equivalency reduction" is consistent with Section 3(5) (b) of SB 433.
2. For the second year of the biennium all System professional employees who may legally have their salary reduced should be subject to mandatory one-day a month unpaid leave (furlough). The only group exempt from this recommendation is tenured faculty who, according to our legal analysis, has a vested property right in employment and salary which cannot be abridged without significant legal peril.
3. For those tenured faculty not subject to the unpaid leave option above, it is recommended that their workload be increased by an equivalent amount (with an option of taking unpaid leave). Given the diverse nature of System institutions it is recommended that implementation of this workload increase be delegated to the President of the respective teaching institution who shall report back to the Board regarding the implementation of this workload increase requirement.
4. Institutions are directed and authorized to develop voluntary programs to "back up" the mandatory furloughs whereby employees at their option may "spread" the unpaid leave days over a two-year period rather than a one-year period. For example, an employee could elect to take one or more voluntary unpaid days in year one of the biennium and thereby reduce for each day so volunteered the mandatory unpaid days in the second year of the biennium. The Chancellor and Presidents may develop and offer other voluntary programs consistent with the Board's direction.
5. Authority to develop implementing procedures for the mandatory programs enacted above should be delegated to the Chancellor in consultation with the Presidents. The Chancellor should periodically report to the Board with respect to such implementation.
6. We note that SB 433 contains "trigger" language whereby the mandatory furlough days imposed by that legislation are reduced in the event that certain levels of revenue recovery are attained over the biennium. We recommend that those triggers be incorporated into this proposed action so as to reduce the impact of the mandatory furlough program in the event such revenues are achieved.

7. The above recommendations have limited applicability to DRI and its entrepreneurial business model. The mandatory program indicated above would be limited in its applicability to all DRI technologists and other professional staff who are not directly funded by a grant or contract; included for pay reductions are those on full or partial state funding and those funded through indirect cost recovery or other miscellaneous institutional funds.

In addition to adoption of the foregoing recommendations and order to implement them, the following Code provisions must be adopted by the Board at its June meeting:

Title 2, Ch. 5, Sec 5.5.7 Salary Adjustments

~~Notwithstanding Title 2, Section 5.4, as the 75th Session of the Nevada Legislature has explicitly appropriated a lower amount for NSHE salaries than would otherwise be authorized and appropriate according to NSHE salary policies, the Board of Regents does hereby and for the 2009-2011 biennium only, temporarily reduce salaries through the use of unpaid leave in an amount equivalent to the amount of legislative salary cut for FY 2011. The Board shall, to the extent feasible, devise methods that protect base compensation and benefits and may offer tenured faculty an alternative of unpaid teaching workload increases in lieu of unpaid leave. The various Presidents shall consult with their respective faculty senates regarding the implementation of this section. Unpaid leave or temporary workload increases required by this section is final and not subject to appeal, grievance or reconsideration. **The provisions of this section shall constitute constructive notice to all nontenured faculty and no individual notice to any such faculty member shall be required hereunder to implement the foregoing.** To the extent of any conflict or inconsistency between this and any other section of the Code, the provisions of this section shall control. This section will terminate on June 30, 2011.~~

See Attached

cc: Chancellor James E. Rogers
Executive Vice Chancellor Daniel Klaich
NSHE Presidents

Board Approved Language

Title 2, Chapter 5, Section 5.5.7 Salary Adjustments (Unpaid Leave/Furlough)

Notwithstanding Title 2, Section 5.4, as the 75th Session of the Nevada Legislature has explicitly appropriated a lower amount for NSHE salaries than would otherwise be authorized and appropriate according to the NSHE salary policies, the Board of Regents does hereby and for the 2009-2011 biennium only, temporarily reduce salaries through the use of unpaid leave in an amount equivalent to the amount of legislative salary cut for FY 2011. The Board shall, to the extent feasible, devise methods that protect base compensation and benefits and shall offer tenured faculty an alternative of unpaid teaching workload increases in lieu of unpaid leave. The various Presidents shall consult with their respective faculty senates regarding the implementation of this section. Unpaid leave or temporary workload increases required by this section are final and not subject to appeal, grievance or reconsideration. The provisions of this section shall constitute constructive notice to all faculty and no individual notice to any such faculty member shall be required hereunder to implement the foregoing. To the extent any conflict or inconsistency between this and any other section of the Code exists, the provisions of this section shall control. This section will terminate on June 30, 2011.