

**MINUTES OF MEETING OF
COMMITTEE OF THE WHOLE**

**Trustees of The California State University
Glenn S. Dumke Conference Center
400 Golden Shore
Long Beach, California**

March 17, 1999

Members Present

William Hauck, Chair
Joan Otomo-Corgel, Vice Chair
William D. Campbell
Martha C. Fallgatter
Bob Foster
Harold Goldwhite
Laurence K. Gould, Jr.
Eric C. Mitchell
Ralph E. Pesqueira
Frederick W. Pierce IV
Ali C. Razi
Charles B. Reed, Chancellor
Michael D. Stennis
Anthony M. Vitti
Stanley T. Wang

Members Absent

Ronald L. Cedillos

Chancellor's Office Staff

David S. Spence, Executive Vice Chancellor and Chief Academic Officer
Richard P. West, Executive Vice Chancellor and Chief Financial Officer
Douglas X. Patiño, Vice Chancellor, University Advancement
Christine Helwick, General Counsel

Chair William Hauck called the meeting to order at 10:25 a.m.

Consent Agenda

The minutes of September 16, 1998, were approved as submitted.

Discussion Items

Litigation Report No. 9

Chair Hauck asked Christine Helwick, general counsel, to present the item. Ms. Helwick presented the biannual report on the status of significant litigation confronting the CSU. She noted four cases.

Monterey Mechanical Co. v. Pete Wilson, et al. General Counsel Helwick reported that this construction case had been brought by a contractor seeking to invalidate the public contract code requiring CSU and other public agencies to give preference to minority and women bidders. In an appellate ruling, she stated, that statute was declared in part unconstitutional. The CSU has reformed its bidding process in response to the ruling and the case went back to the trial court. She informed trustees that the case has now been resolved for an amount less than the potential attorneys' fees exposure that CSU faced resulting from the appellate ruling.

California National Organization for Women, et al. v. Board of Trustees. General Counsel Helwick recounted how CSU had entered in to a consent decree in 1993 compelling the university to meet certain gender proportionality requirements in participation and funding in athletic departments at schools that participate in NCAA competition. She reported that this year is the deadline for reaching compliance with the terms of the consent decree. Last year's accomplishments for the 1997-98 year, she continued, demonstrate that five CSU campuses are now in full compliance with the decree; several others are very close to compliance, or are in compliance with either the participation requirement or the financial. She asked President Welty, chair of the CalNOW compliance committee, to provide the board with further information about progress made in the years that CSU has been working to accomplish compliance with consent decree requirements.

President Welty reported that the decree essentially had three major elements, requiring that: (1) female participants in athletics will be within 5 percent of the percentage of female students who are NCAA-eligible; (2) grants-in-aid awarded to female athletics will be within 5 percent of the percentage of female students who are NCAA-eligible; and (3) total athletic expenditures for women's NCAA sports will be within 10 percent of the percentage of female students who are NCAA-eligible. The president reported that in the past four-year period that CSU has worked on complying with this decree, major progress has been made. Systemwide the number of women participants in intercollegiate athletics has increased from 37 percent to 48 percent; expenditures for women's athletics have increased from 35 percent in 1994-95 to 45 percent in 1997-98; and grants-in-aid allocated to women in intercollegiate athletics have increased from 39 percent in 1994-95 to 45 percent in 1997-98. President Welty reiterated that five CSU campuses are now in full compliance with the decree, three other campuses have achieved compliance in both expenditures and grants-in-aid, and a few other campuses have achieved compliance in one of the three categories. All campuses have either made or are currently making changes that should bring them into compliance with the decree by the end of this current year. President Welty noted that, across the system in this four-year period, CSU has added 37 women's sports systemwide and has spent millions of dollars on upgrading or adding new facilities to support women's intercollegiate athletic programs.

He commended all campuses for the outstanding work that they have done moving toward compliance and told trustees he hoped to be able to inform them next year that CSU has reached full compliance with the consent decree.

Neal, et al. v. Board of Trustees of the CSU, et al. General Counsel Helwick informed the board that this law suit had been brought by the wrestlers at CSU Bakersfield who argue that eliminating wrestling or placing a cap on the number of participants to comply with the CalNOW consent degree constitutes discrimination. She reported that plaintiff had been successful in getting the court to agree and issue a temporary restraining order prohibiting CSU Bakersfield from continuing any cap in place. CSU then argued a preliminary injunction motion which the court kept under submission for almost a year; but, after trustee agenda materials had been prepared, the court did issue its order. The court has ruled in favor of the plaintiffs, and entered once again an order restricting CSU Bakersfield from being able to limit the number of male participants on the wrestling team. This makes campus compliance with the CalNOW consent decree that much more difficult. General Counsel Helwick stated that this order does not affect any other campus. It's an order that the university considers incorrect; and, it is inconsistent with six other opinions throughout the nation, including a very recent case involving male wrestlers at Southern Illinois University. CSU has pursued an immediate appeal to the 9th Circuit and will keep trustees informed on the progress of that appeal.

Board of Trustees v. TCI Cablevision of California, Inc. General Counsel Helwick reported on the new case brought in the name of the trustees against TCI Cable Vision for its failure to provide educational programming for CSU Hayward in accord with their contract. CSU petitioned the court for a preliminary injunction requiring the cable company to provide programming, and the court initially indicated it would rule in CSU's favor but wanted to allow the parties some time to negotiate a resolution before a formal order was entered. General Counsel Helwick reported a successful resolution giving the Hayward campus expanded educational programming has been negotiated, and the agreement reached is for a longer period of time than that allowed under the original contract.

General Counsel Helwick opened the meeting to questions.

Trustee Vitti asked for clarification on CalNOW requirements, in particular with regard to discrepancies allowed. President Welty replied that, under the decree and as CSU is implementing it, there are certain expenditures that have been identified as non-comparable between men's and women's sports. For example, he explained, it costs more to outfit a football team than it does a women's volleyball team. Those expenditures, he stated, are removed from calculations, so as CSU seeks to reach the 10 percent goal, non-comparable expenditures are excluded.

Trustee Campbell asked if there were ways to handle cases such as the wrestling suit at CSU Bakersfield that would be less costly. He asked why it was necessary to litigate such a matter. General Counsel Helwick replied that, as the defendant, CSU was unable to control the filing of the litigation. Trustee Campbell asked about the process before the suit was filed, stating that there had

to have been prior disagreement. General Counsel Helwick acknowledged that there had been an ongoing dispute at CSU Bakersfield about wrestling and much effort had been made to work with the wrestling coach, including the expansion of the sport to include women at his request.

There were a number of things done, but negotiations were unsuccessful. Chancellor Reed reminded trustees that discussions had prohibited a suit from being filed at CSU Fresno on behalf of the baseball team. Trustee Fallgatter informed trustees that the case at CSU Bakersfield was a little more complicated than the issue of compliance with CalNOW. She stated that currently college wrestling is a dying sport and many campuses have cancelled their programs making meets difficult. That's why the lawsuit is so important to the wrestlers, she remarked; they are looking to make a nationwide statement. President Tomas Arciniega stated that *Neal* insists CSU cannot limit squad sizes. He argued that limitations are a very basic part of any and all college athletics. He proclaimed it absolute nonsense to state campuses cannot limit squad sizes. He felt the basic issue is that CSU Bakersfield is being used as an example to draw attention to a national problem as seen by the wrestling association. The campus administration had done everything possible to try to mitigate the circumstances, but, he continued, in the final analysis, it was just not possible. The important thing for the board to remember, he stated, is that CSU Bakersfield would be in complete compliance with the CalNOW decree except for the problems created by the wrestling lawsuit. Wrestling has been a long tradition at CSU Bakersfield, and the campus wants to continue that tradition. But, he stated, wrestling is a sport that has been reduced across the country. There are no longer multiple, strong Division I, II and III squads throughout the nation. For all intents and purposes, there is only one basic division. Wrestling and swimming are the only sports on his campus that are Division I.

Adjournment

The meeting adjourned at 10:35 a.m.