

From: John White <j.white@unf.edu>
Date: Monday, May 16, 2016 at 1:39 PM
To: "Delaney, John" <jdelaney@unf.edu>, "Stone, Karen" <kstone@unf.edu>, John White <j.white@unf.edu>
Cc: "Snow, Marc" <msnow@unf.edu>, "Traynham, Earle" <traynham@unf.edu>
Subject: Re: Question

John,

Thank you for your detailed response regarding the use of outside counsel. I apologize for not writing back sooner. In the spirit of dialogue and debate, I would like to suggest an alternative manner of negotiating and to clarify a few specific points.

From the start I want to make clear my belief that Leonard Carson is an exceptionally talented labor/contract attorney. As a strong advocate for his client, he is quite adept at intimidating his opponents, speaking patronizingly or dismissively to them, and in putting them on the defensive. His approach—whether innate, enacted for negotiations, or both—works to the significant advantage of his client. But that is my point. A highly adversarial approach to dealing with one's faculty—a faculty that has consistently demonstrated an exceptional willingness to work in concert with university administration—is itself inherently flawed.

I know that I risk being labeled an ivory tower idealist (such labeling is an easy way to dismiss a legitimate but different point of view), but I nevertheless eschew the notion that there must be an adversarial relationship between management and labor, *especially* at a university. The management-labor divide is a relatively modern and arbitrary social construction that pits the interests of the two sides against each other and results in polarized thinking (e.g., shareholder profits *or* increased worker pay/benefits; management rights *or* faculty governance). I would much prefer to see and to model contract negotiations as a process in which management and labor work in concert to create a better university and to define what that university should look like. In stark contrast to the adversarial approach, when negotiating from a place of mutual respect—with honest and open communication rather than posturing—no one need feel ire toward the other side. The latter approach seems all the more appropriate at a university in that so much of the 'management' consists of people who are technically still faculty. Management from Academic Affairs down (and historically even the university president) should understand the demands placed upon faculty, research-based approaches enhancing and monitoring student learning, and the everyday operations of a university. Such an approach also stays true to the historical tradition of faculty governance by giving faculty (the heart of any university) *at least* an equal share in the leadership of the university.

While the administration has both publicly and privately lauded our chapter's approach to working collegially with administration, the latter seems to hold fast to an us-verses-them approach. Contract negotiations are a good example. Neither in the recent past nor currently does our team use an attorney for the purposes of bargaining. Instead, our team

consists of faculty volunteers who bring to the table clear goals and an honest explanation of why these goals are important to the university *writ large*. Even our outside member of the bargaining team is not an attorney; he is a service representative from the United Faculty of Florida whose role has largely been to counter Leonard. My point here is that the administration's use of a top-notch outside attorney for bargaining represents an approach to negotiations that is clearly more geared toward 'winning' than toward working together. Administration not only holds a position of power in bargaining—namely, the purse strings in a “right to work” state—it uses its resources to hire outside counsel to further un-level the proverbial playing field. I propose a better way.

While I completely understand your points regarding the benefits of outside counsel for addressing many issues, I continue to question what, specifically, is untenable about having in-house counsel who can focus on contract negotiations (other than that outside counsel is 'the norm'). In house counsel would understand UNF's contexts, would be a part of the UNF community, would be local and thus more readily available, and would do the job at a much lower cost to the university. Were that person part of the UNF community, I believe we would all come far closer to working in concert (and have less acrimony). The union has, for example, dealt with in-house counsel Marc Snow on myriad contentious issues, each time without any hostility, frustration, or lingering resentments (I believe Marc would respond similarly). There is also another alternative to bargaining: forego using counsel on the bargaining team altogether (or have the 'lead' be someone other than an attorney). This is a model that has been used effectively by the administration at numerous institutions. Certainly our teams can verify the legality and legal implications of contract proposals *sans* an attorney at the table (in this case one who *prima facie* deems them untenable).

I know that you have worked with Leonard a long time and that you implicitly trust his judgment. I respect both loyalty and quality counsel. However, I propose that administration can and should give equal if not more trust to the judgment of the faculty and to the faculty/administrators on the bargaining team. In saying all of this, my point is not to criticize Leonard or your faith in him; rather, my goal is to put out there that there is a far more positive and productive way to negotiate with faculty—one that would ultimately promote a sense of faculty voice, greater shared governance, and far more efficiency.

Finally—and not to belabor the point or to push culpability on you—but I want to make clear that our chapter's bargaining team was in no way responsible for the exceptionally slow pace of contract negotiations this year (or to its correlate, the fiscal costs to UNF). Susan, John, Ari, Zornitza, and Tom were well prepared when the sessions first began; the administrative team did not even know which articles they were considering opening. My team was ready for meetings that were canceled by Leonard and they patiently waited for Leonard's calendar to open up enough to set up times to negotiate. They sat through many meetings in which Leonard responded to our proposals with nothing more than “no” (*sans* any rationale, comment, or discussion). And while we can debate our differing interpretations of Article 35 and its implications, there can be little doubt that the delay the debate engendered would have been far less likely had we been negotiating solely in

house (the article has virtually no significance to university administration but we wrestled with it primarily because Leonard wanted to prove himself “right”).

In closing, I want you to know that I very much enjoy working with you and the people in your office. My colleagues and I appreciate all that you do for UNF. My response above is sent in the spirit of debate, discussion, and a shared goal for the success of this wonderful institution. I continue to wish, however, that we could all forego much—if not all—of the contrivances of political maneuvering when working to create a contract and, more importantly, work in concert to determine the direction of the university.

Warmest regards,
John

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John W. White
President
United Faculty of Florida, UNF Chapter
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EndFragment

From: "Delaney, John" <jdelaney@unf.edu>

Date: Friday, May 6, 2016 at 12:39 PM

To: "Stone, Karen" <kstone@unf.edu>, John White <j.white@unf.edu>

Cc: "Snow, Marc" <msnow@unf.edu>, "Traynham, Earle" <traynham@unf.edu>

Subject: Re: Question

John, Karen forwarded your email.

There are many reasons to use outside counsel. Occasionally, we want someone with a high degree of a particular expertise. Leonard is one of the state's best labor attorneys and among the top handful at that. His entire career has involved labor contracts, and he has forgotten more than I know. Technically, there is no one better in Florida and I have been doing this for a long time.

I know he may have gotten caught up in the spokes on sever-ability and the guidelines, and though he may have been technically correct, I needed to manage those aspects of the negotiations better. Those issues are on me.

Sometimes we want to balance the work load. As I have said to you before, the attorneys that Karen have hired are absolutely terrific lawyers, which is why we had to move to retain them when all three were looking at other jobs. But they cover a wide array of work due to the small size of the office.

When I was General Counsel and then Mayor for the City of Jacksonville, I had 40

lawyers working for me and we still occasionally used outside counsel. For example, the Better Jacksonville Plan required the acquisition of massive amounts of land. We had several land use, real estate, and condemnation attorneys on staff, but we contracted with three outside firms to help handle the load.

On other occasions, we had some sticky and potential high exposure litigation, I likewise hired outside counsel. On two particular occasions with the City, I wished I had hired a higher quality litigator than we had in-house as we lost or settled two expensive cases we should have won.

To some extent, we need our in house attorneys to be able to be nimble to respond to legal issues as they pop up, and tying up one of lawyers in drafting would limit that.

Finally, if we kept the negotiations in house, it could cause tension between the Union and the Office of General Counsel staff. As you know, negotiations can occasionally be tough if not nasty in a labor context, and I would rather insulate the employees from UNF from that conflict with colleagues. Thus the ire directed toward Leonard is better placed there than at Karen or Marc. In the end, we always work it out.

When I was Mayor, I reached the same conclusion and hired Leonard to deal with the City's five unions. None of the other universities other than UF (which breathes different oxygen than the rest of us mortals) hire outside.

We have two other unions as well. The costs of course are a direct reflection of how quickly we can come to agreement. I think both the Union and me as President share some responsibility for that.

Sent from my iPad

On May 4, 2016, at 9:38 AM, Stone, Karen <kstone@unf.edu> wrote:

Begin forwarded message:

From: "White, John W" <j.white@unf.edu>
Date: May 4, 2016 at 11:33:32 AM EDT
To: "Stone, Karen" <kstone@unf.edu>
Cc: Susan Perez <drsusanpr@gmail.com>, "Hatle, John" <jhatle@unf.edu>, "Dinsmore, Daniel" <daniel.dinsmore@unf.edu>
Subject: Question

Karen,

First I want to let you know that it was a pleasure meeting you yesterday. I have heard many good things about you these past years. I also appreciate you having taken the time to introduce yourself and to include me in the meeting and materials!

I have a two-part question that I'd like to ask (and that I realize will probably go 'up the chain'):

- 1 do we have any attorneys who are adept at contracts and contract negotiation (I would assume the answer is obviously a yes)?
- 2 is there any inherent conflict in having university counsel serve as lead counsel of a bargaining team?

In other words, in the era of tight budgets, I continue to wonder how we justify paying big money to an outside attorney when we have three (formerly four) full time attorneys on staff and when one of those attorneys sits on the bargaining team anyway. Having requested Leonard's bills to UNF, I see that it has cost us over \$220,000 to bargain the current CBA (a number that does not include the costs for the other members of the bargaining team). At the same time, Leonard is very busy with other work and scheduling sessions has thus been very difficult; it has taken ten months to ratify the ONE change to the CBA.

I have on a number of occasions said to President Delaney that I think UNF would be better served were we to work "in house." Our team does not bring in an attorney for bargaining nor do we often consult an attorney for our issues in bargaining, so why does the administrative team have (and pay for) two attorneys on their team?

John

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