



inTOUCH

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Collective Bargaining Information

In the wake of the 9-11 terrorist attacks, opinions about the proper U.S. response varied widely at UNC-Chapel Hill. Some people criticized the University for allowing open debate on this topic. In response, Chancellor James Moeser came out strongly in support of freedom of speech for the campus community:

From the *University Gazette*, 10-10-2001

Moeser Supports Free Expression

Moeser said that "what was not going to change at Carolina was the right of its faculty and students and staff to speak their minds -- even if people off campus don't like what they are saying."

"It is as important for him to stand up for the right of free expression on campus, Moeser said, as it is for the country, in his view, to stand up to terrorists."

"To censor voices within the University because of complaints from outside of it, Moeser argued, would be tantamount to handing over one of the fundamental rights that terrorists most despise about America -- the freedom to disagree with popular opinion and with the government itself without fear or threat."

"I do not by any means subscribe to all of the views that have been expressed in some of these forums," [said Moeser, but] "I shall continue to defend the right of those who have a contrary view, who challenge authority and orthodoxy. That is the role of the academy and the right of all of us as individual citizens."

Moeser said, "We don't want to close the campus, either to physical access or to the exploration of ideas."
(<http://gazette.unc.edu/archives/01oct10/file.3.html>)

In 2005, Chancellor Moeser linked freedom of speech with the very reason for the creation of UNC-Chapel Hill.

From the *University Gazette*, 6-22-2005

Moeser Affirms Academic Freedom Protection

"...a new and fragile democratic society needed a new way of thinking and new forms of teaching and learning," Moe-

ser wrote. "Overnight, America had transformed itself from an authoritarian society to one in which citizens had a voice. This required a new kind of university for a new kind of citizenship. That was the reason for our creation."

(<http://gazette.unc.edu/archives/05jun22/file.2.html>)

Later that same year, in his State of the University address, Chancellor Moeser again linked the creation of the University to this country's democratic ideals.

From the *University Gazette*, 9-21-2005:

Moeser Highlights Goals & Initiatives for UNC

"This University was created at the beginning of the American republic to be a laboratory for democracy. We can show America how to have civil discourse about difficult topics."
(<http://gazette.unc.edu/archives/05sep21/file.1.html>)

...except for this topic...!

In a letter to the Forum dated September 20, 2007, Chancellor Moeser refused to facilitate the publication of an *InTouch* article on collective bargaining that had been censored in July when the *University Gazette* assumed control over the content of the newsletter in its print edition. Moeser justified this action because the information presented in the article was challenging to the authority of the mission that has been set for UNC-Chapel Hill.

"This issue has nothing whatsoever to do with freedom of speech or censorship," wrote Moeser. "It is an editorial decision....The *Gazette* has a responsibility to accurately represent the University's priorities. Including the Forum's article advocating for collective bargaining in an insert published with the *Gazette* would have been in direct conflict with the responsibility....The Forum is free to post the collective bargaining article on its Web site or to distribute it to people on campus as part of the 'InTouch' newsletter..."

In this spirit, the Employee Forum *InTouch* newsletter offers its readers the full, unabridged text of the last article in its three-part series educating employees on the subject of collective bargaining.

Collective Bargaining: A Human Rights Issue?

by Raj Ghoshal

Raj Ghoshal is a UNC doctoral student in sociology with an interest in human rights and the labor movement. The Communications Committee of the Employee Forum invited him to write an article for this edition of InTouch. This is the third and last article in the Forum's series intended to inform University employees about some of the issues surrounding collective bargaining.

Advocates of workers' rights in North Carolina recently introduced a bill to the General Assembly that would lift North Carolina's ban on collective bargaining by public employees. A key argument made by supporters of the bill is that the ban on bargaining violates workers' human rights.

But collective bargaining sounds technical and is not self-evidently a right in the same way we think of free speech, food, shelter, and being able to work as rights. Why do advocates see collective bargaining as important enough to consider it a human rights issue? Their position is based on seeing the kinds of situations that arise when bargaining is not permitted.

According to its advocates, in a perfect world collective bargaining might not be needed. In reality, they say, without collective bargaining, the power imbalance between employers and workers opens the door to unfair treatment, misuse of power, and discrimination. When employees are not allowed to negotiate as a group, employers can more easily set workers against each other or encourage division between groups of workers, such as setting blacks against whites against Latinos. In its advocates' analysis, the result of the collective bargaining ban is routine infringements on workers' rights.

In 2005, the International Commission for Labor Rights held hearings across North Carolina where workers described problems including the following:

- Annie Dove testified that she had been fired immediately after raising workplace safety violation issues with OSHA, the state occupational safety agency.
 - Dana McKeithan, an employee at a state psychiatric hospital, spoke of employees being forced to work 170 hours in a two-week period.
 - Dale Jackson stated that there was racial discrimination at his workplace, as evidenced by his coming to work to find a dummy hanging from a noose.
 - Numerous workers spoke of being passed over for promotion or being punished after raising concerns about health and safety issues.
- Many others stated that differential treatment on the basis of race or gender was the norm at their workplaces.

In 2006, Raleigh's sanitation workers brought collective bargaining into the news when they launched a protest against forced overtime that was often unpaid by the city government. The workers, who generally were supposed to work four ten-hour days a week, complained of regular 14-hour days. Without collective bargaining, many workers saw the allegedly "fair" agreement that existed between the city and its employees as toothless.

Since workers could not come together to push for fair practices, they were only able to address the situation—if at all—as individuals. But according to some sources, workers feared retaliation for speaking up as individuals, and therefore felt powerless to demand change. Without collective bargaining, these workers felt there was no way to safely express their concerns and get the situation resolved. The dominant view expressed by bargaining proponents in interviews with local media was that the result of keeping employees' concerns bottled up for so long was an explosion: a "garbage strike" that lasted several weeks.

Examples like these help bring into focus proponents' claim that collective bargaining is a human rights issue. Though in itself bargaining is

“only procedural,” advocates maintain that its absence helps create conditions that allow the exploitation and abuse of workers.

Most of the United States has recognized a right to bargain. Currently 78% of private sector workers in the U.S. enjoy the right to collectively bargain, while only 66% of public sector workers enjoy similar rights. North Carolina, though, retains a total ban on public employee bargaining that dates back to the 1950s. The original rationale for the ban was that expanding workers’ rights would lead to communism. Bargaining advocates see this concern as outdated and unfounded.

Some advocates maintain that the ban has fostered the myth that public employees may not join unions. And some public employers mistakenly believe that by law they are not permitted to meet and confer with groups of employees under any circumstances.

After a burst of student activism during the 1990s, The University of North Carolina at Chapel Hill recognized a need to protect workers who manufacture university-licensed products. The University affiliated with both the Fair Labor Association and the Worker Rights Consortium and adopted a Licensing Labor Code. Among the Code’s nine points is one requiring licensees to respect workers’ rights to freedom of association and collective bargaining. Bargaining advocates say that this has created an apparently paradoxical situation: The University is policing labor rights around the world, while existing in a state that does not recognize the right to bargain collectively for its own employees.

The fact that many NC public employees see themselves as facing less-than-ideal work conditions seems well-established. Would collective bargaining help address this situation?

Advocates believe that while it would not solve every problem, bargaining would help relieve some of the problems workers face. They

suggest that it gives workers and employers a fair and binding forum for addressing key concerns. Right now public employers can choose to “meet and confer” with workers (or refuse to do so), but there is no assurance that the agreements reached in such meetings will be honored. Understandably, say advocates, this creates a sense of unfairness; collective bargaining would reduce this problem.

Another benefit could be in savings to the State. Studies have found that collective bargaining is associated with lower employee turnover. Bargaining proponents suggest that it stands to reason that workplaces where workers have a sense that they have a voice and are treated fairly will be better able to retain skilled employees and thus will tend to function more efficiently.

If employees were allowed to negotiate collectively, the use of “divide and conquer” tactics to punish workers for trying to address health and safety issues might decline. This could help to prevent potentially costly and dangerous problems in these areas.

Finally, although concerns of unequal treatment on the basis of race and gender may be deep-rooted and not likely to vanish overnight, collective bargaining would establish a formal way for these concerns to be addressed. Proponents see this as a step forward.

In the view of its supporters, lifting North Carolina’s collective bargaining ban would help establish that the State cares about human rights within its own borders and is willing to take appropriate procedural steps to see that they are protected.

An Open Letter to Chancellor Moeser

In April 2007, the UNC-Chapel Hill Employee Forum's publications committee decided to publish a series of articles in our monthly newsletter, *InTouch*, to educate UNC employees about collective bargaining. This was undertaken both to fulfill a Forum mandate and because the International Commission on Labor Rights had recently encouraged the repeal of N.C. General Statute 95-98, which prohibits collective bargaining (CB).

Mr. Raj Ghoshal, a doctoral student in sociology with a background in labor and human rights, was invited to write the third article in this series, which was scheduled to appear in July as part of our yearly print insert edition in the *University Gazette*. The question he was asked to address was, "Is collective bargaining a human right?" While his article reported the opinions of advocates for the statute's repeal, Mr. Ghoshal maintained scientific objectivity and expressed no personal opinion.

The editor of the *Gazette* removed the question mark in the title and labeled the article "Commentary." University Relations, which publishes the *Gazette*, then refused to print it, asserting that the *Gazette* does not publish "opinions" or "commentary" (though in the same issue they published the Forum Chair's opinion favoring repeal of G.S. 95-98). They further stated that they do not publish on matters before the legislature unless approved by General Administration.

A search of their archives shows this not to be the case. In April 2001, they published an article including opinions of opponents of the death penalty. In June 2005, they published an article relating opinions of advocates for separate tuition policies for the UNC System's research universities. The article quoted at length a trustee's opinion—an opinion that was supported *neither* by General Administration *nor* by the Board of Governors.

In your letter to the Forum dated September 20th, Chancellor Moeser, you stated that the *Gazette's* refusal to print was entirely proper, because the purpose of the *Gazette* is to support the University's priorities. However, several years ago the University adopted a code to protect workers anywhere in the world who manufacture caps, T-shirts, and other products that incorporate the University logo. This code requires that these workers have freedom of association and the right to collective bargaining. Your assertion that the forbidden CB article does not accurately represent University priorities is inconsistent with these facts.

In your September 20th letter you further state that government agencies have the right to tailor their message. However, this legal principle is intended to protect agencies like the FDA from reporting the benefits of tobacco use or drug enforcement agencies, the benefits of marijuana. Invoking the "government speech" doctrine when the University has established the importance of collective bargaining as a human right is, once again, inconsistent.

The Employee Forum uses public funds to pay the *Gazette* for laying out, printing and distributing one edition of its newsletter each year. The mission of this newsletter is to inform and educate UNC-CH employees—a purpose that is clearly encompassed in the University's larger mission, which "is to serve all the people of the State." Note that the University's mission is not to serve just the *Gazette* or University Relations. Nowhere does the University's Mission statement say "to serve all the people of the State...except for State or UNC employees."

Your assertion that this has not been an act of censorship is not supported by the facts. In fact, your support of University Relations' act of censorship is contrary to your own prior statements on the importance of the University as an arena of free speech and open debate.

These are the lessons I have learned from this episode:

- Speech is not free but will be allocated based on content and on one's position in the social and political hierarchy of the university system;
- UNC employees are less deserving of human rights than other workers; and
- Academic freedom may be sacrificed when it threatens those in power.

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