

Kamehameha Schools Faculty Association

Teachers gather at Pā'ina to ask hard questions

KSBE faculty members got together Friday afternoon in the Performing Arts band room to listen to music, dig into a hearty stew, socialize and ask some hard questions about unionizing. Performing Arts staff provided music and Tom Chun cooked up a tasty curry stew, with the help of others on Thursday night. Darrell Schuetz offered shave ice for dessert.

Most of the meeting was a question-and-answer session that lasted until after 6 p.m. KSFA attorney Dean Choy and UH professor William Puette fielded the questions and offered encouragement. Both agreed that Kamehameha faculty will be moving in a dynamic new direction by week's end. The following responses are those of Dean Choy and Dr. Puette.

What is a drawback to unionizing?

Union members sometimes complain that union leadership is insensitive to their concerns. There are good unions and bad unions, no doubt about it. Teachers can lose control of their professional lives in two ways. One way is not to have a union. The other way is to have a union but not to be involved in it. The answer is to make sure that the organization you create is as democratic as possible, and then to become involved in it. In fact, consider involvement a professional obligation. However, even the most unresponsive union offers its members a just cause provision and a grievance procedure, usually with binding arbitration by a neutral third party.

Some teachers are afraid of an overly-rigid negotiated structure that might damage positive lines of communication they have built with some administrators over the years.

FRIDAY, MARCH 13

6:30 TO 7:30 a.m.

AND

2:30 TO 5:00 p.m.

AUDITORIUM LOBBY

PLEASE VOTE!

HSTA teachers came to the same conclusion and built flexibility into their negotiated agreement with the state. Some basic contract provisions apply to all public school teachers, but other issues are left to "association policy committees" at each site. These committees meet every two months with their respective site administrators and resolve issues that are specific to each different location. Whatever these association policy committees negotiate becomes part of the contract at each site. Thus, contracts within the DOE can vary quite a bit from school to school, depending on the concerns of teachers at each site.

Nothing prevents you from using Nā Kumu as a model, and transferring some of its vision and precedents to the structure you create. It's important to develop and maintain a common understanding of the critical issues, the reasons you began your struggle to be recognized and empowered.

How about the loss of flexibility in setting school policy?

Negotiated union contracts do eliminate a certain kind of flexibility, but it is the kind of flexibility teachers usually want eliminated. Don't forget: your fellow teachers are negotiating the contract, and the faculty needs to ratify it. The flexibility some school administrations usually want is the power to be arbitrary and capricious without having to answer to the legitimate, professional concerns of the faculty.

When we are talking about flexibility, don't forget who usually ends up having to bend, or more accurately, having to be bent: the faculty. If a new administration comes into power, or in your case, a new president and/or new trustees, you may see even more of the bad kind of flexibility, and end up even more bent out of shape than you are now.

What difference would a union make in my day-to-day professional life?

A union is normally transparent, sort of like a mortgage document. It just sits there until a problem arises. One thing a union does is to provide a structured mechanism to resolve disputes. Belonging to a union will not stifle communication between faculty and administrators on a day-to-day basis. Ordinary activity continues. Communication continues.

Can a union negotiate things like whether the school goes to a semester or trimester system?

No and yes. The law defines areas left to the control of the school administration. A union is allowed to bargain wages, hours, benefits and working conditions, but many other issues are the responsibility of the school administra-

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tion.

However, teachers in the HSTA have established “professional development committees” that do not address negotiable issues, but that do give teachers an advisory role, a legitimate and recognized voice. Because these committees represent an entire faculty of professionals, their voice cannot be dismissed easily.

Will having a union give us freedom of speech?

No. You won’t really experience the benefits of a union until you have a negotiated contract ratified by the bargaining unit. You might want to consider a freedom of speech clause in the contract. Until then, you have certain legal protections if you engage in union-related activities (like publishing a KSFA newsletter). “Concerted activity” is protected, which is why it is so important to stick together.

Labor law does not protect “disloyal speech.” An example of disloyal speech is saying that the fast food joint that employs you puts horsemeat in its hamburgers. Disloyal speech involves a reckless disregard for the truth, but it is not the same as speaking out in order to improve your institution, such as the state librarians did when they publicly expressed concerns about Bart Kane and about the condition of the library system.

Can we end up with a worse contract than we have now?

After the election when your negotiating team sits down with the administration’s representatives, anything can appear on the table. However, your employer cannot legally bargain in bad faith or discriminate against you simply because you have formed a union. These are unfair labor practices and could result in a complaint to the NLRB. In order to reduce your benefits or pay, your administration would have to prove to the NLRB that they are not engaging in bad faith bargaining and that there is a solid economic reason to reduce teacher benefits and pay. Given the financial resources of KSBE, this isn’t likely.

What can teachers look forward to after the election?

Your administration has shown restraint so far and we hope this will continue after the election. You intend to bargain in good faith and should expect the administration to do likewise. Once a union is voted in, the school cannot legally issue individual contracts. It can send out “letters of intent” to current employees promising employment next year.

What contract are we going to work under until the first negotiated contract?

The status quo, which is determined by past practice. Any agreement in force now will just continue as it is. Your

step scale will remain in force, and teachers will receive their normal step increases, just as they did before. Unfortunately, the things teachers don’t like, such as the Employee Handbook, will also remain in force.

Can we really go up against the deep pockets of the Bishop Estate?

Sure. We would be lying if we said it is easy, but don’t ignore your own strengths. You have consistently taken the high road in your dealings with the administration, and people respect you for that. Don’t ignore the tremendous public support behind you. If the administration tries to act in a way that is less than professional, it would be subject to a great deal of intense public scrutiny.

If we form a union, what are the membership options?

Three options are available: *union shop*, *open shop*, and *agency shop*. A *union shop* means that every teacher and librarian eligible to vote must become a dues paying member of the union. An *open shop* means that membership and the requirement to pay dues is an option for each individual. Individuals refraining from membership and dues payment, however, still enjoy the benefits of the union contract.

The *open shop* model causes the most disharmony among peers due to perceived freeloading. An *agency shop* means that union membership is an option for each individual, but the requirement to pay is not. For individuals choosing against union membership, a service fee is assessed to cover the benefits enjoyed under the union contract. The *agency shop* model prevails in Hawaii.

The type of shop that will apply is a subject of bargaining. Assume KSFA proposes an *agency shop* and the administration proposes an *open shop* during contract negotiations. KSFA rejects the administration’s proposal and the administration does not budge. What happens next? Both sides have a legal duty to bargain in good faith. KSFA states that the *agency shop* provides a choice, but not at the cost of economic ruin. The administration must present legitimate, non union-busting business reasons for its *open shop* stance. If those reasons are lacking, the administration will have legally violated its good faith bargaining duty with enforcement available at the NLRB; all occurring under keen public scrutiny.

What will the election itself be like?

You will check in with the NLRB representative and may need to produce identification. You can vote only if you are on the list of eligible voters. You will be assigned a booth and a ballot, just like a regular election. The question will read, “Do you wish to be represented for purposes of collective bargaining by Kamehameha Schools Faculty Association? Mark an ‘X’ in the square of your choice.” (yes/no)