

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

MINNESOTA STATE BOARD FOR)	
COMMUNITY COLLEGES, ET AL.,)	
)	
Appellants.)	
)	
v.)	NO. 82-898
)	
LEON W. KNIGHT, ET AL.; and)	
)	
MINNESOTA COMMUNITY COLLEGE)	
FACULTY ASSOCIATION, ET AL.,)	
)	
Appellants)	
)	
v.)	No. 82-977
)	
LEON W. KNIGHT, ET AL.)	

PLACE: Washington, D. C.

DATE: November 1, 1983

PAGES: 1 thru 56



ALDERSON REPORTING

(202) 628-9300

440 FIRST STREET, N.W.

WASHINGTON, D.C. 20001

1	IN THE SUPREME COURT OF THE UNITED STATES		
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5	Appellants	:	
6	v.	:	No. 82-898
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12	LEON W. KNIGHT, ET AL.	:	
13	-----	x	

Washington, D.C.
November 1, 1983

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:56 p.m.

APPEARANCES:

ERIC R. MILLER, ESQ., St. Paul, Minnesota; on behalf of the Appellants.

EDWIN VIEIRA, JR., ESQ., Manassas, Virginia, on behalf of the Appellees.

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C O N T E N T S

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EDWIN VIEIRA, JR., ESQ., ON BEHALF OF THE Appellees	31

1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: Mr. Miller, I think you
3 may proceed whenever you are ready.

4 ORAL ARGUMENT OF ERIC R. MILLER, ESQ.

5 ON BEHALF OF THE APPELLANTS

6 MR. MILLER: Mr. Chief Justice, and may it
7 please the Court:

8 I wish to remind the Court in this consolidated
9 action that there are two Appellant groups, the first
10 consisting of the labor organization, and the second
11 consisting of state officials.

12 We have agreed upon a single speaker to avoid
13 fragmentation of our presentation.

14 We do submit to the Court that the state
15 officials and the labor organizations have both common
16 interests as well as unique interests which justify
17 this Court in reversing the lower court.

18 QUESTION: Which case are you from or in?

19 MR. MILLER: Your Honor, the clients that
20 I represented in the action below were the defendant
21 labor organizations.

22 QUESTION: Thank you.

23 MR. MILLER: The primary issue in this case
24 is whether or not a state public employee bargaining
25 law violates either the First or the Fourteenth

1 Amendments where it requires a public employer to meet
2 and confer only with an exclusive representative and
3 that exclusive representative uses only its members
4 as apart of the meet and confer meeting.

5 In the alternative, should this Court affirm
6 the lower court, the second issue is if every public employee
7 is entitled to run and vote in elections for membership
8 on the meet and confer committees, do the First and
9 Fourteenth Amendments require that a system of cumulative
10 voting be utilized in those elections.

11 The fundamental facts in the case are neither
12 extensive nor in dispute. The Plaintiffs are individual
13 faculty members employed on several of the campuses
14 of the 18-campus system in the Minnesota Community
15 College system.

16 These individual faculty member Plaintiffs
17 are opposed to having the defendant labor organizations
18 represent them concerning their employment interests.

19 The defendant labor organizations consist of the
20 Minnesota Community College Faculty Association, the
21 MCCFA, which is a voluntary association of faculty
22 members within the Community College system. It is
23 the legally certified exclusive representative for
24 all of the faculty members within the Community College
25 system.

1 Its primary purpose is to represent the employ-
2 ment interest of all of the faculty members.

3 The Minnesota Education Association is a
4 state-wide voluntary association of educators which
5 is the state affiliate for the MCCFA. The National
6 Education Association is a voluntary association of
7 educators which is the national affiliate of the MCCFA
8 and the MEA.

9 The Community College Board is a state agency
10 of Minnesota charged with the management of the Community
11 College system. It is the employer of the faculty
12 members involved in this action.

13 Our Public Employment Labor Relations Act
14 in Minnesota was passed in 1971. It is a comprehensive
15 system for labor relations for public employers and
16 public employees.

17 Its stated policies of PELRA are to promote
18 orderly and constructive relationships between public
19 employers and public employees; that unresolved disputes
20 between employers and employees are injurious to both
21 the parties as well as the public.

22 The policy section further specifically indicates
23 that one of the policies is to grant the employees the
24 right to organize and choose freely their representatives.
25 PELRA specifically provides for a democratic selection

1 of those representatives in the form that an election
2 may take place every two years to determine who the
3 exclusive representative for the faculty members in
4 this particular bargaining unit shall be.

5 The fundamental framework of PELRA to achieve
6 these policies is the use of the concept of exclusive
7 representation of employees. All exclusive representa-
8 tives under PELRA are obligated to meet and negotiate,
9 that is collectively bargain the terms and conditions
10 of employment. Those terms and conditions of employment
11 are defined expressly in PELRA as being the hours of
12 employment, compensation, and the personnel policies
13 affecting the working conditions of the employees.

14 PELRA specifically indicates that there are
15 subjects which are not to be subjected to the collective
16 bargaining process. That, in our state statute, is
17 referred to as inherent managerial policy. Those are
18 areas of discretion in policy such as the overall budget,
19 the organizational structure of the employer, and the
20 selection and direction of personnel.

21 Thus, there are two major arenas of activity
22 for an exclusive representative; that is negotiable
23 areas and non-negotiable areas, and specifically as
24 to professional employees in Minnesota the exclusive
25 representative is charged to meet and confer with the

1 public employer concerning areas within the inherent
2 management discretion area. This is a right that is
3 not extended to other public employees other than
4 professional public employees in Minnesota.

5 QUESTION: Does the employer have to meet
6 with them?

7 MR. MILLER: The statute requires that it
8 meet at a minimum every four months with the repre-
9 sentative of the professional employees for meet and
10 confer.

11 QUESTION: Could the employer meet with somebody
12 else too?

13 MR. MILLER: The employer could meet --

14 QUESTION: Separately?

15 MR. MILLER: Yes. And, in fact, in this
16 case, the employer has met regularly with both the
17 individual Plaintiffs as well as other faculty members.

18 QUESTION: Could he have them in the same
19 meeting with -- Could he have them at the same meeting
20 when he meets with the exclusive representative?

21 MR. MILLER: I think they could and that
22 has taken place. The record will indicate that in
23 this case.

24 QUESTION: This statute is really about the
25 legislature of Minnesota directing its agents whom

1 to meet with, isn't it?

2 MR. MILLER: That is correct. This is a
3 statutorily created right. That is the right of meet
4 and confer.

5 QUESTION: It requires them to meet with
6 one group and its option with another, I suppose.

7 MR. MILLER: It is optional with another
8 group. There is, very frankly, Justice White, the
9 question of whether or not the employer possibly com-
10 mitting an unfair labor practice in doing that. We
11 do not believe though that that raises a constitutional
12 questions as I will explain in a moment.

13 QUESTION: You mean it is -- I thought you
14 said under the state law, if the employer chose to
15 meet with other groups, he could without violating
16 any state law.

17 MR. MILLER: The purpose of meet and confer,
18 we believe, is private consultation not only to permit
19 employees to freely express their views, which, of
20 course, is their First Amendment right, and has been
21 confirmed in this record as well as under PELRA. Meet
22 and confer obligates the employer to listen and respond --

23 QUESTION: To the exclusive representative
24 under --

25 MR. MILLER: Yes, sir.

1 QUESTION: Now, may he meet and listen to
2 others besides the exclusive representative?

3 MR. MILLER: Yes.

4 QUESTION: And he wouldn't be committing
5 an unfair labor practice.

6 MR. MILLER: Your Honor, I think there could
7 be a question --

8 QUESTION: Under state law.

9 MR. MILLER: Under state law as to at what
10 point an employer meeting and conferring with someone
11 else other than the exclusive representative may be
12 violating --

13 QUESTION: That is what I was asking you
14 awhile ago. Now, what is your answer to the question.
15 Is he in violation of the state law if he meets with
16 other people or not?

17 MR. MILLER: I believe the answer is going
18 to be dependent on whether or not that employer, in
19 fact, is exchanging views and holding private consulta-
20 tion as opposed to simply receiving the views of individual
21 employees.

22 QUESTION: Well, is there a difference in
23 subject matter between bargaining issues and meet and
24 confer issues?

25 MR. MILLER: Most definitely.

1 QUESTION: Does the statute define them?
2 MR. MILLER: The statute defines that.
3 QUESTION: Well, what is the difference between
4 the two?
5 MR. MILLER: That is a line drawn by the
6 legislature.
7 QUESTION: What is the line the legislature
8 has drawn?
9 MR. MILLER: The line that the legislature
10 has drawn is that matters of inherent management policy
11 shall not be subject to meet and negotiate.
12 QUESTION: Has that term been defined by
13 your courts?
14 MR. MILLER: Yes, it is.
15 QUESTION: What is the definition?
16 MR. MILLER: Not unlike the problems in
17 the private sector, it is a gray and moving line.
18 Part of it depends on whether or not the employer wants
19 to collectively bargain about that subject even though
20 it may be a matter of inherent management right and
21 make it a permissive subject.
22 And, we have cited several decisions in our
23 brief that indicate how that definition of a meet and
24 negotiate subject is evolving in our state. There
25 is no bright, clear line.

1 The point that I want to make in response
2 to your inquiry, Justice White, is that that line does
3 not connote, as the lower court did, some type of
4 constitutional right, because it is a line that is
5 drawn --

6 QUESTION: I think it certainly affects the
7 way I look at the case as to whether or not, under
8 state law, anybody but the -- that the employer would
9 violate state law if he meets on meet and confer issues
10 with anybody but the exclusive representative.

11 MR. MILLER: I believe the employer can,
12 either at a public meeting or as indicated in this
13 record in sessions held on campus --

14 QUESTION: Say he does -- Say he meets with
15 a group other than the exclusive representative and
16 he goes through exactly the same routine as he does
17 with the exclusive representative, and if you say he
18 must just listen, then he just listens. Now, if that
19 is all he does, he is all right under state law?

20 MR. MILLER: I believe so.

21 QUESTION: But, I understood from what you
22 said earlier that the Board could make no response
23 on any proposals that were suggested by the non-union
24 meet and confer group.

25 MR. MILLER: Again, I think the Board can

1 make a response, but the question, I believe, Your
2 Honor, is not whether or not that causes some con-
3 stitutional infringement, but whether or not it is an
4 unfair labor practice.

5 QUESTION: Apart from the constitutional
6 issue, I think the factual question that I understood
7 Justice White was making inquiry about, is what actually
8 happens? What sort of utility would be -- What purpose
9 would be served by such a meeting if all the Board
10 sat there mum while people presented ideas and there
11 was no discussion, no suggestions, no advice? Would
12 that serve any purpose?

13 MR. MILLER: The purpose of the statute is
14 to obtain the majority view of the faculty in an orderly
15 and constructive fashion.

16 QUESTION: But, that would come form the
17 exclusive representative.

18 MR. MILLER: Yes, indeed, it would.

19 QUESTION: Yes.

20 QUESTION: Well, let's put it this way.
21 Suppose the employer meets with a group other than
22 the exclusive representative. Can't he do with that
23 group on meet and confer issues precisely what he could
24 do with the exclusive representative?

25 MR. MILLER: Yes. It may freely participate

1 in dialogue --

2 QUESTION: Whatever kind of a dialogue the
3 statute contemplates on meet and confer issues between
4 the exclusive representative and the employer, the
5 employer can engage in with others. It is exactly
6 the same procedure.

7 QUESTION: That is not what I understood
8 you to say earlier.

9 QUESTION: You changed your --

10 QUESTION: I agree.

11 MR. MILLER: Your Honor --

12 QUESTION: I think before it would be an
13 unfair labor practice or arguably it would be an unfair
14 labor practice.

15 MR. MILLER: The question is hinged on the
16 fact that the exclusive representative has by statute,
17 being the majority representative, the opportunity
18 to present the majority view. In our view, there is
19 nothing to restrict the employer from receiving the
20 views of other employees as well.

21 QUESTION: Even on matters in the contract.

22 QUESTION: Oh, no.

23 MR. MILLER: I am sorry?

24 QUESTION: You mean on matters that are not
25 covered by the contract, don't you?

1 MR. MILLER: Yes. That is what meet and
2 confer involves only.

3 QUESTION: That goes for all of this.

4 QUESTION: Yes, but you just again confined
5 your answer to receiving the views. You are very evasive
6 on whether they can respond or not. I really don't
7 know your position. May the representatives of the
8 governing body respond to non-union people at a separate
9 meet and confer in your view?

10 MR. MILLER: I believe they can respond,
11 Your Honor.

12 QUESTION: Without committing an unfair labor
13 practice?

14 MR. MILLER: I believe there could be a question
15 of whether or not --

16 QUESTION: May the employer respond to the
17 exclusive representative in a meet and confer meeting?

18 MR. MILLER: That is the purpose.

19 QUESTION: I mean the employer to respond?

20 MR. MILLER: Yes.

21 QUESTION: Well, I thought you told me awhile
22 ago that he could -- The employer could go through
23 exactly the same routine with a non-exclusive representa-
24 tive group as he could with the exclusive representative.

25 MR. MILLER: The statute indicates that

1 individual employees have the right to express their
2 views so long as it does not circumvent the rights
3 of the exclusive representative. That right is the
4 opportunity to meet and confer, private consultation,
5 in regard to inherent management rights.

6 QUESTION: Why would it interfere with your
7 rights to present your views on management issues?

8 MR. MILLER: It does not, Your Honor. The
9 presentation --

10 QUESTION: For the employer to have a meeting
11 and listen to somebody else.

12 MR. MILLER: The presentation of those views
13 constitutes no problem. I am sorry for any confusion
14 on that issue.

15 QUESTION: You still don't tell us very much
16 about responding to the presentation. That presents
17 the problem.

18 QUESTION: Can they negotiate?

19 MR. MILLER: The answer is no. There may
20 not be any negotiation, just as there cannot be any
21 negotiation by a non-certified representative in
22 collective bargaining, meet and negotiate.

23 QUESTION: Arguably there may be no response.

24 MR. MILLER: Under meet and negotiate --

25 QUESTION: No, under meet and confer.

1 MR. MILLER: -- the employer cannot --

2 QUESTION: Under meet and confer your view
3 is that arguably there can be no response to a non-union
4 presentation of views.

5 MR. MILLER: Yes.

6 QUESTION: But, isn't that also true of a
7 meet and confer presentation by the certified repre-
8 sentative? That isn't a negotiating session.

9 MR. MILLER: It is not.

10 QUESTION: So, is there much difference in
11 the kind of response that an employer would give to
12 two different meet and confer sessions, one with minority
13 or representatives of the other with the certified
14 representative?

15 MR. MILLER: No. In fact, Justice Rehnquist,
16 the employer may decide to simply receive the views
17 of the exclusive representative without discussing
18 them with the exclusive representative, because, again,
19 the employer has the final decision-making power concerning
20 those non-negotiable matters. Those are matters of
21 policy which they are not required or compelled to
22 come to any agreement upon.

23 QUESTION: What you are saying -- Let's see
24 if I can get it clear for myself. The employer can
25 listen to anyone.

1 MR. MILLER: Yes.

2 QUESTION: And, he can do it informally or
3 formally?

4 MR. MILLER: Yes.

5 QUESTION: And, he can mix the two groups
6 up and listen to both of them at once?

7 MR. MILLER: I think that witnesses may certainly
8 attend a formal meet and confer session, but the purpose
9 of the statute, just as the purpose of exclusivity
10 in collective bargaining, is to permit in an orderly,
11 coherent fashion for the employer to receive the views
12 of the majority representative. To permit minority,
13 dissident members at a formal meet and confer session
14 to present their views at the same time in contrast
15 with the views of the majority would very well disrupt
16 that orderly process just as it would if the dissident
17 minority members were permitted to be present at a
18 private bargaining session and indicate disagreement
19 with the exclusive representative concerning its position
20 on what the terms and conditions ought to be.

21 QUESTION: Well, do these dissidents, to
22 identify them in quotation marks, do they have the
23 same status and posture at this joint meeting as the
24 ones you regard as the official representatives?

25 MR. MILLER: If it is intended to be one

1 of the once every-four-month meetings, the answer is,
2 no, they do not have the same status. The exclusive
3 representative in this case, the MCCFA, has been demo-
4 cratically selected as the representative of the faculty.
5 For purposes of that meet and confer meeting, the employer
6 has established that it wishes to hear the views only
7 in that particular mode of the exclusive representative.
8 It does not restrict that employer, in a subsequent
9 meeting immediately after a meet and confer meeting,
10 then in receiving the views of all other employees
11 concerning any matter.

12 QUESTION: Has there ever been such a meeting,
13 a subsequent meeting, some ad hoc group?

14 MR. MILLER: Yes. The record is replete
15 that the Community College Board, the Chancellor, who
16 is the Chief Executive Officer, the local presidents
17 and other administrators have regularly held town forums
18 for the purpose of obtaining the views of all other
19 employees on all matters that are included under meet
20 and confer.

21 QUESTION: But, suppose half a dozen faculty
22 members were designated as a committee representing
23 the 18 non-union faculty members who are involved in
24 this case as I understand it and requested the opportunity
25 on specified dates regularly to present their views

1 to the Board at a formal meeting of the Board. What
2 would the consequence of that request?

3 MR. MILLER: None whatsoever. They are
4 certainly entitled to do that.

5 QUESTION: Is there any authorities to support
6 that interpretation of your law?

7 MR. MILLER: In terms of their ability to
8 do that?

9 QUESTION: Yes.

10 MR. MILLER: I would believe that the decision
11 of this Court in City of Madison would directly support
12 that, a meeting called for the purpose of obtaining
13 the input of either the faculty or the public at large,
14 that they would be guaranteed their First Amendment
15 freedom of expressing their views concerning all subjects
16 under meet and confer.

17 QUESTION: The employer wouldn't have to
18 meet with them?

19 MR. MILLER: If it calls a public meeting,
20 Your Honor, I think it certainly would.

21 QUESTION: Yes, if it called a public meeting,
22 but the difference here is that the law requires the
23 employer to meet with the exclusive representative --

24 MR. MILLER: That is correct.

25 QUESTION: -- and doesn't require them to

1 meet at all with anybody else.

2 MR. MILLER: It is exactly right. The First
3 Amendment does not require, and this Court has so held,
4 a public employer to meet and negotiate, meet and respond
5 with any public employee. The converse of that is
6 that a public employer, therefore, is free to privately
7 consult with whomever they choose.

8 In this case, the legislature in Minnesota
9 has decided that the employer shall meet and confer
10 in private consultation with the designated exclusive
11 representatives of the professional employees.

12 QUESTION: Is even that quite right? Does
13 the statutory provision dealing with meet and confer
14 expressly refer to the exclusive bargaining agent?
15 Could it not be consistent with the statute for the
16 majority for meet and confer purposes to elect someone
17 else?

18 MR. MILLER: No, I don't believe so, Your
19 Honor. The statute provides that the professional
20 employees shall select a representative.

21 QUESTION: Right. But, does it have to be
22 the same representative that represents them for the
23 other purpose?

24 MR. MILLER: Yes. Another portion of the
25 statute specifically provides that the employer shall

1 not meet and negotiate or meet and confer with any
2 employee or group of employees other than the exclusive
3 representative if one has been certified. That is
4 179.66, Subdivision 7.

5 QUESTION: Well, that sounds to me like he
6 is forbidden to meet with anybody but the exclusive
7 representative.

8 MR. MILLER: He is -- The employer is forbidden
9 to meet and confer which means private consultation.
10 It can be an unfair labor practice. That is the distinction
11 we have been trying to draw. No First -- The difference
12 does not go off on any First Amendment right, because
13 no individual employee or group of employees has the
14 right to compel government to meet and discuss and
15 respond to any subject. And, the state has created
16 that right for exclusive representatives just as it
17 has for exclusive representatives in meet and negotiate.

18 The statutory plan very simply is that all
19 professional employees may elect in a democratic procedure
20 any exclusive representative. The statute specifically
21 provides that the employer shall not meet and negotiate
22 or meet and confer with anyone, any employee or group
23 of employees other than the designated exclusive representative
24 if there be one.

25 If there not be one, the answer to Justice

1 Stevens' question is the professional employees would
2 be free to select a representative, but if there is
3 an exclusive representative, the employer must meet
4 and confer.

5 QUESTION: But, as I understand it, the minority
6 or non-union people can only communicate when such
7 a communication is a part of the employee's work assign-
8 ment.

9 MR. MILLER: No, that I don't believe --

10 QUESTION: What does that mean that is in
11 Subdivision 7?

12 MR. MILLER: That is an amendment to the
13 statute which I believe is designed to protect the
14 employer that it will not be committing an unfair labor
15 practice to receive the views of an individual employee
16 concerning matters that are part of their work assignment.

17 QUESTION: That employee's work assignment?

18 MR. MILLER: Yes.

19 QUESTION: But, if he just didn't think the
20 tuition was right in the school, he couldn't talk about
21 that.

22 MR. MILLER: I think he certainly can.

23 QUESTION: Well --

24 MR. MILLER: As a matter of First Amendment
25 freedom.

1 QUESTION: But, certainly the statute implies
2 that he may not. Maybe the statute is invalid to that
3 extent of course.

4 MR. MILLER: I don't believe that the statute
5 should be interpreted that way. There is another portion
6 of PELRA, Justice Stevens, 179.65, Subdivision 1, which
7 guarantees every individual employee the right of free
8 expression or opinion so long as it does not circumvent
9 the right of the exclusive representative.

10 QUESTION: So long as it doesn't interfere
11 with the full, faithful, and proper performance and
12 so forth --

13 MR. MILLER: Yes.

14 QUESTION: -- of the exclusive representative.

15 MR. MILLER: I believe that there --

16 QUESTION: Of course, the exclusive representative
17 might think some of this dissident activity interferes
18 with his exclusive privileges.

19 MR. MILLER: It might, but that has never
20 taken place as far as I know in the State of Minnesota
21 and certainly not on behalf of the Minnesota Community
22 College Faculty Association.

23 QUESTION: Does this reference you recently
24 made to the statutory section prohibiting the employer
25 from meeting and conferring with anybody except the

1 exclusive bargaining agent lead you to qualify any
2 of your earlier answers about what the employer could
3 do with respect to meetings with people other than
4 the certified bargaining representative?

5 MR. MILLER: No, I don't believe so, Your
6 Honor.

7 QUESTION: I just don't understand --

8 QUESTION: I can't figure it out.

9 QUESTION: I can't either.

10 QUESTION: It seems to me you have given
11 answers at 360 degrees.

12 MR. MILLER: Well, I am certainly not trying
13 to, Your Honor.

14 QUESTION: I know you are not.

15 MR. MILLER: Let me try my hand one more
16 time.

17 The principle of exclusive representation
18 has been decreed in Minnesota to permit professional
19 employees to be able to not only meet and negotiate
20 but also to meet and confer. That meet and confer
21 means the exchange of views and concerns. The purpose
22 is to obtain the majority view of the majority repre-
23 sentatives.

24 QUESTION: About what subject matters?

25 MR. MILLER: Inherent management policy,

1 matters that are not in collective bargaining.

2 However, that line, as I tried to indicate
3 before, is a gray and uncertain one.

4 An example: In the collective bargaining
5 contract, class size, which has been negotiated, is
6 said that it must be reasonable. However, the actual
7 class sizes are determined through the meet and confer
8 process on the individual campuses as to how large
9 the classes shall be.

10 If an administration wants to change the
11 class size, it must do it through advance notice and
12 meet and confer.

13 If there is a violation of the class size
14 that has been determined through meet and confer, it
15 is grievable under the contract. There is a very close
16 interrelationship between -- for professional employees --
17 between those subjects that are in meet and confer
18 and those subjects that are meet and negotiate which
19 is to say that those subjects may cross the line, depending
20 on the wishes of the party or the will of the legislature,
21 because the legislature could decree that there are
22 no inherent management subjects and everything would
23 come in under collective bargaining. There would be
24 no private right of meet and confer.

25 QUESTION: The administrator would have a

1 terrible job trying to know which hat he has on, wouldn't
2 he?

3 MR. MILLER: It might very well.

4 QUESTION: Practically daily, wouldn't it?

5 MR. MILLER: Well, only with the exclusive
6 representative as to whether or not it is obligated
7 to meet and negotiate concerning a certain subject
8 or whether it is an inherent management policy right
9 that is not subject to the collective bargaining
10 obligations.

11 QUESTION: Well, could you tell me the difference
12 between meet and confer and negotiate?

13 MR. MILLER: Meet and negotiate are those
14 subjects which relate to the terms and conditions of
15 employment.

16 QUESTION: I am talking about the actual --
17 what goes on.

18 MR. MILLER: Meet and negotiate involves
19 negotiating a salary schedule, negotiating a vacation.

20 QUESTION: When you meet and confer you are
21 not negotiating?

22 MR. MILLER: That is correct, Your Honor,
23 because --

24 QUESTION: You are not?

25 MR. MILLER: No, you are not. The subjects

1 of meet and confer are reserved to the total discretion
2 of the public employer. After having met and conferred
3 over those subjects which are properly in meet and
4 confer --

5 QUESTION: Once you decide that the subject
6 is meet and confer or this is the subject of negotiating,
7 you do the same thing?

8 MR. MILLER: Yes, Your Honor, meeting with
9 the exclusive representative.

10 QUESTION: Now I am lost.

11 MR. MILLER: Maybe we can try one more approach.

12 QUESTION: Good.

13 MR. MILLER: And that is the question of
14 budget. The statute specifically says that a public
15 employer's budget is not subject to meet and negotiate;
16 that is no employee organization may attempt to negotiate
17 over what the size of the budget shall be or how the
18 budget shall be broken down. However, quite obviously,
19 when it comes to negotiating a salary schedule, how
20 much of the budget that will go toward the salary schedule
21 is clearly a subject of meet and negotiate.

22 In Minnesota, the subject of budget has regularly
23 been involved in meet and confer with the exclusive
24 representative to permit the majority representative
25 to indicate to the employer its views concerning the size of the

1 budget and the utilization of the budget, but that
2 process is not binding on the employer once the employer
3 has met and conferred with the exclusive representative.

4 QUESTION: Do I correctly read Subparagraph
5 7 to say that on a subject such as the budget the employer
6 shall not meet and confer with anyone except the union?

7 MR. MILLER: That is true.

8 QUESTION: So they can't talk to a dissident
9 group about the budget?

10 MR. MILLER: They cannot --

11 QUESTION: They cannot have a meet and confer
12 session with the dissident group about the budget?

13 MR. MILLER: Exactly, Your Honor. They certainly
14 may --

15 QUESTION: What is the state interest that
16 is served by that prohibition?

17 MR. MILLER: The state interest is the same
18 as it is for exclusive representation and meet and
19 negotiation. That is to permit the employer to have
20 the majority view, to eliminate conflicting demands
21 by various groups of employees upon the employer, to
22 eliminate the tension between employees and --

23 QUESTION: None of which are bargainable
24 subjects?

25 MR. MILLER: Pardon me?

1 QUESTION: None of which are proper subjects
2 for mandatory collective bargaining?

3 MR. MILLER: Yes. The State of Minnesota
4 has determined as a matter of policy for professional
5 employees that it wants to have the view of the exclusive
6 representative concerning those non-negotiable subjects.

7 QUESTION: Is it a matter of state interest
8 not to have divergent views on the policy type issues
9 that you have been mentioning?

10 MR. MILLER: I don't think that the State
11 of Minnesota is trying to eliminate divergent views.

12 QUESTION: But, is it contrary to state policy
13 to have divergent views?

14 MR. MILLER: It is not.

15 QUESTION: Well, it could be pretty dreary
16 for some of the administrators if they had to sit up
17 there and listen to not only all the gripes of the
18 collective bargaining representative, but all the
19 individual gripes of everybody, you know, ad nauseam.

20 MR. MILLER: In terms of being able to have
21 an orderly constructive session, yes, but I understood
22 the Justice's question to be whether or not the state
23 was opposed to divergent views as a conceptual matter.

24 QUESTION: By statute it prohibits the
25 expression of them in similar meetings, as I understand

1 it, so it clearly opposes it.

2 QUESTION: Surely it does.

3 QUESTION: Statutory prohibition against
4 expression of divergent views in comparable meetings.

5 MR. MILLER: In a comparable meeting.

6 QUESTION: So, the state policy is we want
7 to hear one voice on the budget, not two voices.

8 MR. MILLER: They want to hear the majority
9 view on the state budget in a meet and confer session,
10 that is true.

11 QUESTION: And nobody else.

12 MR. MILLER: In that session that is right.

13 QUESTION: Or in a comparable session either,
14 in that session or any one patterned after it.

15 MR. MILLER: I want to make myself hopefully,
16 finally, and forever very clear. An individual faculty
17 member has the First Amendment right if the individual
18 administrator is willing -- has the time, not because
19 of PELRA -- to hear out that individual faculty member
20 concerning his views on the budget.

21 QUESTION: You are just saying that the state
22 statute then is unconstitutional.

23 QUESTION: That is right.

24 QUESTION: Because it prevents precisely
25 what you just said the First Amendment guarantees.

1 MR. MILLER: The First Amendment does not
2 guarantee that an employer shall listen and respond.
3 The state statute here does provide that same level
4 of responsibility just as it does for meet and negotiate
5 for exclusive representatives.

6 CHIEF JUSTICE BURGER: Mr. Vieira?

7 ORAL ARGUMENT OF EDWIN VIEIRA, JR., ESQ.

8 ON BEHALF OF THE APPELLEES

9 MR. VIEIRA: Mr. Chief Justice, and may it
10 please the Court:

11 I hope that Your Honors will indulge me for
12 a moment if I admit that, having heard Mr. Miller's
13 presentation, I am somewhat perplexed about what this
14 litigation has involved over the past several years.
15 He now takes the position that no one is being preventing
16 from speaking, no one is being prevented from listening,
17 everything in Minnesota is perfectly free and open.

18 That is not the reading of the statute that
19 the District Court obtained. The definition of meet
20 and confer in Section 179.63, Subdivision 15, is, and
21 I quote, "the exchange of views and concerns between
22 employers and their respective employees," rather a
23 broad concept.

24 The obligation of public employers in Section
25 179.66, Subdivision 3, is the obligation to meet and

1 confer with professional employees to discuss policies
2 and those matters relating to employment not included
3 under Subsection 18 of 179.63. That is the matters
4 of inherent managerial policy.

5 Section 179.66, Subdivision 7, then tells
6 the public employer that if an exclusive representative
7 has been selected, the public employer shall not meet
8 with any person or representative other than the exclusive
9 representative; that is the statute creates an expansive
10 definition of meet and confer as the exchange of views,
11 obligates the public employer to meet with public employees
12 to discuss this broad subject matter.

13 QUESTION: Well, Mr. Vieira, you speak as
14 though the public employer and the Minnesota legislature
15 were two different entities. I don't see this case
16 as any different than if each of these public employers,
17 each of these presidents of Bemidji Junior College
18 or whatever it might be, decided on their own to do
19 exactly what the statute said. They are all creatures
20 of the state and when the state tells them to do something,
21 they do it.

22 MR. VIEIRA: That is right, sir. I believe
23 if they decided on their own to set up a policy in
24 terms of regulation or a practice in these particular
25 community colleges, we would have the same First Amendment

1 and Fourteenth Amendment problems.

2 QUESTION: It doesn't remove the First Amendment
3 analysis at all, but I just question your -- Perhaps
4 I drew the wrong implication from what you are saying
5 as if these administrators would somehow complain about,
6 the administrators rather than the faculty members
7 could complain about being imposed upon by the state.

8 MR. VIEIRA: No, sir. I think it is clear
9 that the legislature is creating a system involving
10 the administrators which is intended, or at least has
11 been applied -- let me not say intended, because I
12 believe there is a way this statute could have been
13 applied constitutionally if the Board and the MCCFA
14 had chosen to do so.

15 But, this statute has enabled them to apply
16 the meet and confer process in a systematically dis-
17 criminatory fashion against all non-members of the
18 MCCFA for --

19 QUESTION: Mr. Vieira, if there had been
20 no statute at all and you had a school board adminis-
21 trator who simply decided that he was willing to confer
22 with a single faculty member whom he liked and admired
23 and he wasn't going to talk to anybody else on matters
24 relating to the subject of the meet and confer law
25 and just chose to talk to that individual. Is that

1 a First Amendment violation of the rights of any other
2 faculty member with whom the administrator does not
3 choose to confer?

4 MR. VIEIRA: As a matter purely of his personal
5 interest in the views of this individual or seeking
6 the views of this individual for the purpose of somehow
7 effecting or influencing the exercise of his official
8 powers?

9 QUESTION: Influencing policy.

10 MR. VIEIRA: Oh, yes, absolutely. Absolutely.
11 I think once he opens up the process of conferring
12 to any one of those faculty members, he has an obligation,
13 unless he can come up with at least a rationale distinction
14 among them for opening it up to all of them.

15 QUESTION: What case supports that argument?
16 You are talking about the First Amendment I take it.

17 MR. VIEIRA: Well, I am talking about the
18 equal protection clause. That is at a minimum we have
19 a case where there is discrimination as Justice O'Connor
20 has suggested. Some faculty members are not allowed
21 to discuss in an attempt to influence the public employer's
22 exercise of his duties and this one particular --

23 QUESTION: They can attempt but he won't
24 listen.

25 QUESTION: There is no case --

1 QUESTION: They think there is a constitutional
2 right that the administrator has to listen, is that
3 right?

4 QUESTION: What case is it?

5 MR. VIEIRA: Well, I suppose it depends upon
6 how you define listen. If we go back to the Pickering
7 line of cases, it has certainly been held that a public
8 employee has the right to speak provided that that
9 speech does not substantially interfere with the exercise
10 of his own obligations and the exercise of the --

11 QUESTION: But no case has ever held the
12 employer has to listen. Those are two entirely proposi-
13 tions.

14 MR. VIEIRA: No, but in this particular case,
15 the statute has told the employer that the employer
16 has to listen. The statute has first said in 179.73
17 that the State of Minnesota wants input from all of
18 its professional employees to the employers for the
19 purpose of aiding those employers in performing their
20 functions.

21 QUESTION: And, it says that it will happen
22 in a particular manner through the collective bargaining
23 agent.

24 MR. VIEIRA: Then we come to the question
25 as whether that discrimination attached as an ex post

1 facto condition to the grant of this right --

2 QUESTION: What are you talking about, an
3 ex post facto condition in a civil case? For the --
4 The ex post facto clause applies only to criminal cases.

5 MR. VIEIRA: I wasn't using it in that sense.
6 I was using it in after the fact, in sense of the logical
7 construction of this statute was first to set up the
8 concept of meet and confer as the desideratum of the
9 legislature and then to come on afterwards and say
10 if an exclusive representative has been selected, that
11 representative will be the meet and confer representative,
12 because you will notice the statute says if an exclusive
13 representative has not been selected, nevertheless,
14 meet and confer will go forward through some representa-
15 tional process not involving --

16 QUESTION: What is the discrimination you
17 are talking about?

18 MR. VIEIRA: Well, the discrimination in
19 this case, as the statute has been applied, is that
20 the only individuals among the faculty members of the
21 community colleges who have been permitted to participate
22 in any manner whatsoever in the selection of meet and
23 confer committees or serving on the meet and confer
24 committees have been members of the MCCFA.

25 QUESTION: Well, I know, but that -- I would suppose

1 you would still be attacking the statute on the same
2 grounds if the meet and confer committees had included
3 non-union members as well. If that is the discrimination
4 you are talking about, that is certainly different
5 than saying that only a certain group of employees
6 may talk to the employer. After all, the people the
7 statute says the employer must meet with are the elected
8 representatives, are the exclusive representatives.
9 They are then not just faculty members, they have been
10 elected as exclusive representatives and they represent
11 everybody in the bargaining unit, don't they?

12 MR. VIEIRA: That is correct.

13 QUESTION: So, how is it discriminatory at
14 all?

15 MR. VIEIRA: Well, the question here is whether
16 or not we have a policy justification for limiting
17 the individuals who can actually participate in the
18 meet and confer session.

19 QUESTION: Under the statute, how do you --
20 Who goes to the meet and confer meetings now the way
21 they are run?

22 MR. VIEIRA: The way they were run.

23 QUESTION: The way -- Who goes to the --
24 Yes, the way they were run, the way that you objected
25 to.

1 MR. VIEIRA: The MCCPA selected through some
2 internal procedure on the various campuses the individuals
3 who would participate in the campus meet and confer
4 committees.

5 QUESTION: I thought you say the employer
6 couldn't meet with anybody except the exclusive repre-
7 sentative.

8 MR. VIEIRA: Well, it designates these people
9 as its representatives.

10 QUESTION: Those are people other than the
11 exclusive representative, aren't they?

12 MR. VIEIRA: That is not the way the Act
13 is applied in Minnesota, no. Of course, the exclusive
14 representative is a non-human entity. It has to have --

15 QUESTION: The exclusive representative could --
16 Suppose they chose 15 people, half of them non-union
17 and half of them union. That would not violate the
18 statute, I suppose.

19 MR. VIEIRA: Well, there is certainly a possibility
20 whereby this statute could be applied through the
21 exclusive representative. Again we go back to the
22 language of the statute. Public employers shall not
23 meet and confer with public employees except through
24 the exclusive representative. It doesn't say only
25 with the exclusive representative. They could have

1 applied this statute originally so as to allow all
2 of the faculty members to participate in the selection
3 of the members of the meet and confer committees.

4 In fact, prior --

5 QUESTION: Well, they now do, is that right?

6 MR. VIEIRA: Excuse me, ma'am.

7 QUESTION: Now non-members can vote for the
8 representative.

9 MR. VIEIRA: Under the District Court's orders
10 non-members are allowed to participate in the voting
11 process and they are allowed to stand for election.

12 QUESTION: But your adversaries challenge
13 that on appeal, don't they?

14 MR. VIEIRA: Oh, yes, sir, they definitely
15 challenge that remedy. There is no question about
16 it.

17 Historically, if one goes back, as the District
18 Court recites in its findings and its opinion, you
19 had a faculty government system in these Minnesota
20 community colleges prior to the application of PELRA's
21 meet and confer structure and that faculty government
22 system involved all of the members of the faculty equally
23 participating in voting, all having an equal opportunity
24 at least to set themselves forward as candidates.

25 This statute, if we can look at it in a

1 practical sense, really in the academic context codified
2 that system. These professional employees are now
3 going to have a statutory mechanism for meeting and
4 conferring with their employers. We have the same
5 thing they did prior to the Public Employment Relations
6 Act, discussing academic standards, academic policies,
7 the question of inherent managerial duties. But, the
8 statute added a new wrinkle and the new wrinkle was
9 that this advantageous condition, the election of an
10 exclusive representative for the purpose of meet and
11 negotiate was now going to, as it has been applied
12 at least, block off from participating in faculty govern-
13 ments one distinct class of faculty members.

14 QUESTION: Mr. Vieira, I wonder if the state
15 wasn't operating on a premise that deserves a little
16 more recognition than I think you give it. It is one
17 thing to have a faculty senate get together and pass
18 a bunch of resolutions, but I remember the remark of
19 a colleague of mine in a former employment who had
20 been a member of a law faculty. He said that the only
21 thing worse than the meetings of the law faculty were
22 the meetings of a full faculty, that the meetings of
23 a full faculty simply never ended.

24 If you are talking about a meeting of people
25 to get together and pass a resolution when everyone

1 there is voluntarily present it is one thing, but to
2 require the administrators to sit and attend something,
3 I think the state has a right to say you channel it,
4 you don't have to listen to every single individual.
5 Now, that is not interfering with the right of petition,
6 but it is just the idea of the administrator being
7 on the scene and kind of reacting. He can't be there
8 for five or six days.

9 MR. VIEIRA: Well, we are making no argument
10 that is inconsistent with that view, Justice Rehnquist.
11 We are not attacking the structure of meet and confer
12 in the sense that it sets up a regularized procedure
13 whereby individuals are chosen to serve on these committees.
14 We are saying that is fine. If the state wants to
15 have such a regularized procedure, that is excellent,
16 but at least have all of the professional employees
17 in the relevant unit allowed to participate in the
18 selection of those representatives and allowed to stand
19 for election.

20 The Board in this case will meet with the
21 same number of meet and confer committees as were extant
22 prior to the District Court's order.

23 On the particular individual community college
24 campuses, the same meet and confer committees will
25 function. The only difference will be the composition

1 within those committees. From the Board's point of
2 view, it makes absolutely no difference. They are
3 running the system precisely the way it has always
4 been run. They are following the same orderly
5 regularized procedure.

6 From MCCFA's position, it makes a great deal
7 of difference because now people will have a different
8 perspective on academic questions, now people whom
9 the Chief Justice perhaps correctly called dissidents
10 in the sense that they dissent from MCCFA's policies,
11 now those individuals will have some small voice in
12 the official mechanism of communication to their employers.
13 And that is what is at the heart of this case.

14 QUESTION: So, you are not saying then that
15 every faculty member has a right to be present and
16 speak at this meet and confer session? You are only
17 saying that they should have a right to cast a vote
18 for the election of the representative who is there
19 and --

20 MR. VIEIRA: Absolutely and to stand personally
21 for election if they can receive sufficient votes.
22 That is what we asked the District Court to declare
23 and that is what the District Court --

24 QUESTION: You wouldn't be satisfied if the
25 employer said, well, you people who are disaffected

1 or who are non-union members, I will meet with your
2 representatives too separately. You go ahead and get
3 together and elect me a half a dozen people and the
4 next day after I meet with the exclusive representative
5 I will meet with your representatives.

6 MR. VIEIRA: I think that is an unfair labor
7 practice. I think the statute precludes that. I think
8 the employer is under a duty not to do that.

9 QUESTION: I know, but suppose the statute
10 were declared unconstitutional in its present form
11 and instead of having an election like the District
12 Court, it said the employer should meet with the repre-
13 sentatives of the minority. Would that satisfy you?

14 MR. VIEIRA: Well, Your Honor, it might very
15 well satisfy me, but I don't know how this Court or
16 the District Court would rewrite --

17 QUESTION: I am only asking you. The District
18 Court rewrote it at your behest considerably I must
19 say.

20 MR. VIEIRA: I think it simply struck the
21 exclusive representative's prerogative --

22 QUESTION: You mean that whole voting system
23 is just simply striking something?

24 MR. VIEIRA: Well, initially -- Recall initially
25 all the District Court said was that the MCCFA had

1 to hold a selection process whereby all the faculty
2 members could participate equally. It was only when
3 the MCCFA and the Board developed their so-called vote-for-
4 six rule which required an individual, if he was voting
5 for one of the dissidents, also to vote for some of
6 the union members. The Court took a second look at
7 this and said, well --

8 QUESTION: And rewrote the statute a little
9 more.

10 MR. VIEIRA: Excuse me?

11 QUESTION: And rewrote the statute a little
12 more.

13 MR. VIEIRA: Well, I think they created a
14 remedy that maybe somewhat extraordinary in the sense
15 that we can't find a direct precedent for it, but it
16 derives from the conduct that had to be dealt with.

17 QUESTION: What if it derived a remedy, not
18 in that form but in the form of saying that the employer
19 shall meet with the committee representing the minority?

20 MR. VIEIRA: Well, we are perfectly willing
21 to accept the proposition that the employer would be
22 burdened to the extent that he has to meet or it has
23 to meet with more than one committee.

24 QUESTION: Well, would you be litigating
25 then if he agreed to do that?

1 MR. VIEIRA: If he had agreed originally?

2 QUESTION: No, if he agreed right now to
3 meet separately with your representatives rather than --

4 MR. VIEIRA: In the full meet and confer
5 sense?

6 QUESTION: No, no, no, separately.

7 MR. VIEIRA: What I mean is meet and confer
8 is this process whereby the employer treats this input
9 as something more than simply advantageous statements
10 from a friendly faculty member, but as a view of a
11 group with some recognition.

12 QUESTION: Sure.

13 MR. VIEIRA: And, if he meet with these people --

14 QUESTION: And on matters that are that are not
15 wages, hours, and working conditions, the usual collective
16 bargaining process.

17 MR. VIEIRA: Yes, sir, on inherent managerial
18 questions.

19 QUESTION: Mr. Vieira, are you basically
20 satisfied with the order of the District Court?

21 MR. VIEIRA: I think the order of the District
22 Court remedies the meet and confer problem that we
23 had which was the inability of the non-union members
24 to participate in any meaningful -- in any way whatsoever
25 in the process. I can live with it. I can accept.

1 They can accept. I am certainly not here asking that
2 one go beyond that.

3 I would just point out one thing with respect
4 to Mr. Miller's emphasis on the fundamentality of this
5 exclusivity principle here.

6 The purpose of this statute, as stated in
7 179.73, is not to obtain simply a majority view. It
8 is to obtain the view of all of the professional employees.
9 I think this is particularly critical in an academic
10 setting where it is quite clear that most faculty
11 members are chosen for their complementary to the whole,
12 each one fulfilling hopefully an unique nitch in the
13 system.

14 It really is not terribly rational to super-
15 impose on that type of a system some majoritarian theory
16 of representation.

17 And, that is why the District Court, and
18 I believe correctly, emphasized the academic freedom
19 nature of the communications and issues that are
20 involved in this case.

21 We are not, as the Chief Justice, I believe,
22 correctly emphasized, dealing with wages, hours, and
23 those other terms and conditions of employment that
24 fall within the meet and negotiate category, those
25 more or less fungable or in some sense or other hopefully

1 objective questions.

2 The District Court pointed out, again I believe
3 correctly, that in the area of meet and confer you
4 are dealing with intangible questions inherently and
5 when you are dealing in an academic setting you are
6 dealing with questions that involve rather personal
7 interactions.

8 QUESTION: Let's just assume that the meet
9 and negotiate provisions are valid and that the employer
10 may be required to negotiate only with the exclusive
11 representative and that he is forbidden to meet with
12 anybody else and negotiate on those things. Now, if
13 that is a valid situation scheme, why isn't this one?

14 MR. VIEIRA: Well, I think there are a number
15 of reasons. The first one is the subject matter of
16 these two areas is completely different.

17 QUESTION: I would think you would think
18 the meet and negotiate subject matter would be far
19 more important to you than the other.

20 MR. VIEIRA: Well, we do. We appealed that
21 question.

22 QUESTION: Well, you lost it.

23 MR. VIEIRA: Well, it wasn't argued. We
24 didn't brief it.

25 But, the subject matter is --

1 QUESTION: I just say assume that we had
2 taken that case and affirmed it. Say we just affirmed,
3 that that was a completely constitutional scheme on
4 meet and negotiate items to exclude anybody but the
5 exclusive representative.

6 MR. VIEIRA: Well, of course --

7 QUESTION: Why wouldn't that govern this
8 case?

9 MR. VIEIRA: Because for two reasons. First,
10 the subject matter is different. This Court is the
11 source of the distinction in First Amendment jurisprudence
12 between wages, hours, and working conditions, the
13 collective bargaining trilogy, and other matters.
14 If we go back to the Abood case, we discover that for
15 some reasons collective bargaining politics is different
16 from other forms of politics.

17 All right. For purposes of analysis I accept
18 that kind of distinction. Well, let's use it here.
19 It seems to me there is greater distinction between
20 wages, hours, and working conditions subject to exclusivity
21 and discussion with a public employers, an arm of govern-
22 ment, over inherent managerial policy questions. I
23 think if you can say somehow wages, hours, and working
24 conditions have to be put down here in the scale in
25 terms of talking about their political ramifications

1 and the rights of individuals to be coerced into
2 supporting that kind of activity, then on the other
3 side you would have to say the inherent managerial
4 questions have to be looked at somewhat more seriously.

5 QUESTION: I would think an employer would
6 have much more freedom to choose whom he wanted to
7 talk with with respect to inherent managerial things
8 than about wages, hours, and working conditions.

9 MR. VIEIRA: But, they have chosen.

10 QUESTION: Yes.

11 MR. VIEIRA: The statute says --

12 QUESTION: And you think it is unconstitutional.

13 MR. VIEIRA: Well, if you are getting to
14 the question of whether the exclusivity principle can
15 be carried over, the first problem, from my perspective
16 in looking at it, would be that there is no procedural
17 similarity in the two situations. That is if you accept
18 the validity of the concept of collective bargaining
19 through exclusivity, it does hinge ultimately, it seems
20 to me, on the practical necessity of having one collective
21 bargaining agreement.

22 QUESTION: If this statute was completely
23 silent on the meet and confer aspect, had just the
24 traditional labor relation negotiating provisions,
25 is there anything that you know of in federal or state law

1 that would prevent the management at the top from calling
2 on a committee or any group of employees they wanted
3 to discuss the subjects of management that you are
4 talking about and policies if they wanted to do it?

5 MR. VIEIRA: Well, I think if you carry that
6 principle to its logic of conclusion, you run into
7 a whole host of what I would call one-man, one-vote
8 or political equality cases and a number of First Amend-
9 ment cases that essentially teach --

10 QUESTION: Do you think the First Amendment
11 allowed the Minnesota administrators to talk with anyone
12 they want about problems of management including their
13 own employees, not only statute.

14 MR. VIEIRA: Well, if they had a rational
15 work-related reason for consulting with particular
16 employees about particular management problems, that
17 is one thing. We are not attacking the concept that
18 employers should be allowed to talk with employees.

19 QUESTION: Well, no employer is here attacking
20 the Minnesota statute on that basis either. This is
21 an attack by people who want to talk to the employer,
22 not an attack by the employer who claims his First
23 Amendment rights are being denied.

24 MR. VIEIRA: That is correct. I agree with
25 you one hundred percent. The employer is on the other

1 side.

2 But, all the people here, all of the employees
3 on both sides are in the same position with respect
4 to this rational basis analysis. All of these employees
5 are similarly situated with respect to the employer
6 in terms of the usefulness of contributing information
7 about their work assignments or the managerial questions
8 that come up in the course of the discussions that
9 go on in meet and confer.

10 The distinction that is being made in this
11 statute is here we have a private organizations, MCCFA,
12 that has been selected for this purpose, negotiation,
13 which concededly requires one separate negotiating
14 entity. And, carried over from this we discover the
15 application of this statute to preclude all the non-members
16 from participating in a scheme of communications in
17 which they all could participate equally and did prior
18 to PELRA participate equally without any necessity
19 for having a single private organization determine
20 the content of those committees.

21 That is why I can't understand their complaint
22 that somehow the result that the District Court came
23 up with is an interference, number one, with the meet
24 and confer system, because the meet and confer system
25 operates in essence the same way it always did with

1 respect to the employer.

2 Or, number two, that somehow it delegates
3 from the position of this union as the exclusive representative
4 with respect to negotiations. They are the representative
5 with negotiations and the meet and confer committees
6 form the same structure, at least with respect to the
7 Board, as they did prior to the District Court's order.
8 What is the difference? The difference is the dissidents
9 have come out to say something to their own employer
10 and to their own government. That is the difference.
11 They have been allowed to do the thing that before
12 PELRA came into existence was taken for granted as
13 part of the right of an academic.

14 QUESTION: That is what I meant when I asked
15 you why you needed any statute at all to have meet
16 and confer sessions under the Minnesota statute.

17 MR. VIEIRA: Well, excuse me, Your Honor.
18 That is right. I think as a practical matter you wouldn't.
19 I think any enlightened administrator running a community
20 college or other system of higher education would have
21 these interactions with the faculty.

22 QUESTION: But, the meet and confer statute
23 limits the authority of the administrators to discuss.
24 I mean, that is what this case is all about really,
25 isn't it?

1 MR. VIEIRA: Well, it limits their authority
2 in terms of the entity or individual with whom they
3 may have the discussion.

4 QUESTION: Yes.

5 MR. VIEIRA: That is right, exactly. That
6 discrimination is what the case is all about.

7 QUESTION: Well, you call it discrimination.
8 It is at any rate a limitation on that authority.

9 MR. VIEIRA: All right. And, our position
10 is first, under the statutory scheme, there is really
11 no rational basis for it. All these employees are
12 similarly situated. Why do we have one group excluded
13 simply because they have chosen not to join this private
14 organization.

15 And, secondarily, there is absolutely no
16 interference in the result that we have obtained and
17 are arguing for with any part of the statutory --

18 QUESTION: The statute doesn't dictate to
19 the exclusive representative to choose only union members
20 to go to the meetings.

21 MR. VIEIRA: No, sir.

22 QUESTION: That is a private choice of the
23 union. How are you going to blame the state for that?

24 MR. VIEIRA: Because the state gave this
25 organization the authority to do that.

1 QUESTION: But, it certainly didn't order
2 them to do it and I don't understand how you can say
3 it is state policy that the union is doing it that
4 way.

5 MR. VIEIRA: Well, they are operating under
6 color of the statute, A; and, B, certainly the Board
7 has been cooperating with them since they began running
8 meet and confer this way. The Board is sitting on
9 the other side of the case here as Mr. Justice Rehnquist
10 pointed out. They are certainly not challenging MCCFA's
11 application of this statute. And, they could certainly
12 do so.

13 QUESTION: They couldn't challenge it.

14 MR. VIEIRA: Excuse me?

15 QUESTION: They couldn't challenge it. An
16 administrator of a state institution has no right to
17 assert against a command of the state.

18 MR. VIEIRA: No, but what they could have
19 done to the MCCFA was to say to them this statute does
20 not require you to limit participation in these meet
21 and confer committees to your members only. We are
22 not going to meet with you until you bring us a balanced
23 committed or show us that you have tried to do so and
24 if you don't like it, file an unfair labor practice
25 against us.

1 QUESTION: That would have been consistent
2 with the statute, I take it.

3 MR. VIEIRA: Yes, sir. It would have been
4 consistent with the statute and then we might have
5 gotten this same result, but instead the Board turned
6 around and said we are very happy with this, we are
7 perfectly willing to meet with you to the extent --

8 QUESTION: But it still was the union decision
9 about how to structure its committees. It wasn't a
10 state decision about how to structure.

11 MR. VIEIRA: Well, it was the MCCFA's claim
12 that it was entitled to select individuals from its
13 membership only based upon -- It is based upon 179.66,
14 Subdivision 7. That is what they have been arguing.
15 They have authority in directly there to it because
16 the public employer can meet only through them and
17 they are the exclusive representative, not as a matter
18 of private action. They were designated as such under
19 the statute. That is where they gained that authority.

20 QUESTION: The decision to exclude your client,
21 that was purely a union decision or a private decision.

22 MR. VIEIRA: Well, it was a private decision
23 acquiesced by this Board. It was a private decision
24 taken under the color of the statute.

25 CHIEF JUSTICE BURGER: Thank you, gentlemen,

1 the case is submitted.

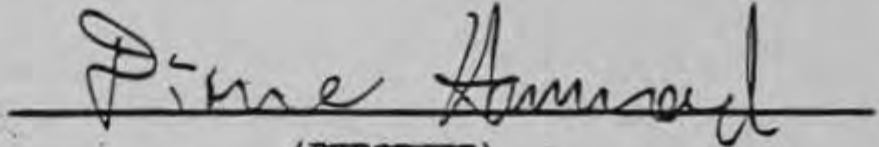
2 (Whereupon, at 2:56 p.m., the case in the
3 above-entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:

#82-898 - MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES, ET AL., Appellants v. LEON W. KNIGHT, ET AL., and #82-977 - MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, ET AL., Appellants v. LEON W. KNIGHT, ET AL., and that these attached pages constitute the original transcript of the proceedings for the records of the court.

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