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Another day of dodging in Senate

Monserrate talks, walks; judicial merry-go-round

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First published: Friday, June 12, 2009

ALBANY -- The battle for the state Senate remained in stalemate Thursday despite numerous political and legal developments, as breakaway Democrat Hiram Monserrate continued to keep both sides wondering where his shifting loyalties will settle.

Republicans had hoped to receive a final answer to that question at the first legislative session to be gavelled in since Monday's dramatic coup, in which Monserrate and fellow Democrat Pedro Espada Jr. joined the chamber's 30 Republicans to elect GOP Sen. Dean Skelos as majority leader and Espada as president pro tem.

But after Republican members managed to make their way past angry protesters and enter the chamber, the session lasted less than 20 minutes.

Addressing the chamber, Monserrate -- the last member to arrive -- stood with Espada amid a sea of empty chairs on the Democratic side of the hall. "My understanding and agreement to coalition government was under certain criteria," Monserrate said. "I also understood the following: that for us to be an effective, bipartisan body, we need cooperation from both sides."

"I spent the last two and a half days speaking to several of my Democratic colleagues, and it is unfortunate that they have decided not to join us," he continued. "But the reality is that we need to continue to give them the opportunity to participate. This chamber must not remain divided."

Monserrate is under intense pressure statewide and in his Queens district to rejoin the larger Democratic conference; recruiting additional members of the Democratic conference to the insurgent coalition would provide a degree of political cover to him as well as Espada, whose Bronx district is also heavily Democratic.

"I still remain committed to my party as a loyal Democrat, and I will continue to ask them to work with us," Monserrate said.

When he was done speaking, Monserrate walked out -- leaving the Republicans and Espada one vote shy of the 32 members required to enact legislation.

Monserrate's conflicted loyalties continued to be on display outside the chamber, where he refused to tell reporters whether he supports Skelos as majority leader.

After his departure, the Republicans adjourned after noting that the desk containing the legislation scheduled for debate had been locked by ousted Democratic staffers. The next session was scheduled for 3 p.m. Monday.

Although Senate Democrats stayed away from the chamber on Thursday, they remained active in two different courtrooms.

Just before the abortive legislative session began around 11 a.m., a state Supreme Court justice in Troy denied a motion filed by lawyers for Democratic Leader Malcolm Smith for an injunction to resolve the leadership standoff.

Andrew Celli, representing Smith, said the senator was elected to a two-year term as leader in January. He said no resolution was made in committee to replace him, nor did insurgent senators make a "privileged" request.

"There is no vacancy. Sen. Smith remains the temporary president," Celli said, referring to the opposition as "Sen. Espada and his confederates."

Celli also told the judge that Sen. Neil Breslin, the Democrat who was presiding over the Senate at the time of the coup, said Republican Sen. Tom Libous was out of order when Libous called for a change in leadership on the Senate floor. He said Libous never tried to challenge Breslin's statement.

John Ciampoli, a lawyer for Espada, told the judge that the majority of the Senate voted for the change in leadership, adding, "What Malcolm Smith is asking you to do is step in and substitute yourself for the 32 senators who represent the majority of the Senate."

Saying he doesn't have the authority in the issue, Supreme Court Justice George B. Ceresia criticized both sides for not being able to work out an agreement. "I think the people of the state of New York are the ones suffering from this," he said. "It's not indicative of good government -- it's indicative of anything but good government."

The question arose in court of the possibility of a senator without ties to either Smith or Espada opening the session. During a break, lawyers for both sides met behind closed doors, but failed to reach an agreement.

"There's not one person that they both liked -- is that what you're telling me?" Ceresia asked Ciampoli.

"Maybe not enough," the attorney replied.

In the afternoon, the Democratic legal team appealed their complaint in Kingston before state Supreme Court Justice Karen Peters of the Appellate Division, who issued a temporary restraining order removing Espada from the line of succession that would make him governor in the event that David Paterson becomes incapacitated.

Smith's marginal legal relief may be short-lived: A state Supreme Court justice will hear arguments at 9 a.m. today in Albany.

James M. Odatto, Irene Jay Liu and Casey Seiler contributed to this report.