



Representing Wayne State Faculty and Academic Staff

NEWSBRIEFS

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Due Process Denied:

Administration Refuses to Accept Arbitrator's Decision in SOM Partial-Tenure Case

Administration Will Fight the Inevitable in Court— Again

Charles J. Parrish

President

When the AAUP-AFT won the partial-tenure grievance in arbitration, we believed that we had turned the corner in resolving a thorny and long-standing problem. The Arbitrator, Professor June Weisberger of the University of Wisconsin Law School, ruled last March that the Administration had violated the collective bargaining agreement when it appointed PhD faculty to clinical departments in the School of Medicine (SOM) with partial tenure covering only 25% of their WSU salary. In her binding decision, Professor Weisberger directed the Administration and the union to negotiate a reasonable settlement of the issue with the union; she further stipulated that she would retain jurisdiction to resolve any disputes concerning appropriate remedies for the Administration's contract violation.

Tenure as a protection of academic freedom at the University had been successfully defended, or so we thought. The due-process procedure for reviewing the case provided for a thorough examination of the facts before a mutually acceptable arbitrator, and the Administration was duty-bound to honor the outcome.

Time passed, however, with little response to the decision from the Administration. Eventually, word spread that top administrators would refuse to recognize the Arbitrator's ruling and that the union would have to sue to get the decision implemented. A call from the Administration's outside attorney

gave us notice that this was the case and that we would have to go to court to get the Administration to comply with the Arbitrator's decision.

The standard for overturning an arbitrator's ruling is very demanding.

The court hearing the appeal will not re-hear the facts of the case; the appeal will have to be on the claim that the arbitrator made a serious legal error. Essentially, the Administration must launch an attack on the legal interpretations of Professor Weisberger. Given her standing among arbitrators and her decades of experience, this will be a very difficult standard to meet. The best the Administration can hope for is a prolonged and expensive delay before it abandons a policy it had no business implementing in the first place. The one who is likely to be happiest about this is the University's outside attorney who will clock up many hours on this case, all charged to the University.

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A Pattern of Denial

Such fruitless undertakings are not unusual for the University's General Counsel, Louis Lessem. It was on his advice that the Administration pursued the appeal of the Helene Rauch case, which also concerned the School of Medicine. Rauch had been a member of the SOM faculty before she won a wrongful discharge and discrimination suit against the University. The case could have been reasonably settled, in my opinion, before going to trial. But Lessem, who was personally held liable by the jury in the amount of \$115,000 for his actions in the affair, evidently convinced the Administration and the Board of Governors that the case was winnable on appeal. That decision cost the University an additional \$1 million or so after the Administration's appeal was finally turned down by the Michigan Supreme Court. (The University paid the money levied against Lessem.)

More recently, the General Counsel decided to pursue criminal charges against Professor Lucia Zamorano, a neurosurgeon, for an alleged misuse of a university credit card. Lessem had the WSU and Detroit police get a warrant and go to her house to "recover" equipment that she had paid for out of a sizeable grant she held. Her protests that the equipment was there so that she could work on her grant, for which she was the principal investigator, went unheeded. The General Counsel's office then referred the matter to the Wayne County Prosecutor's office to have Zamorano charged with a felony.

Since Dr. Zamorano was on a term appointment, she could have been non-renewed with no reasons specified if she was given timely notice prior to the last six months of her contract. Instead, when no action was forthcoming from the Prosecutor's office, the Administration discharged her in February for cause (after the six months deadline had passed), and detailed the charges against her in the letter of termination. The union viewed the charges as unproven since there was no hearing to review or answer them. We filed a grievance stating this. That grievance has since been amended to address the fact that Dr. Zamorano has now also been discharged by the Department of Neurosurgery's practice plan.

The firing of Dr. Zamorano from the practice plan is a particularly interesting development. The Administration has always maintained the fiction (accepted by the Michigan Employment Relations Commission in the early 1980s) that since membership in the practice plans was "voluntary," the terms and conditions of employment were beyond the reach of the collective bargaining agreement. [State law specifies that the employer in a unionized workplace has a legal obligation to negotiate only those terms and conditions of employment that are mandatory features of the job.] No matter that the chair of a clinical department is also chair of the department's practice plan. No matter that employees receive their hiring and firing notices written on stationery that has both the department and the practice plan letterheads at the top of the first page.

In the Zamorano case it is clear that the practice plan fired her on orders from the University Administration. This evidence should be useful to the union when MERC revisits the matter of collective bargaining and the practice plans.

For the Administration, a big, nasty fly flew into the ointment when the Wayne County Prosecutor, Kym Worthy, issued a statement declining to prosecute Dr. Zamorano. Ms. Worthy's conclusion is worth quoting:

Dr. Zamorano signed a cardholder agreement giving Wayne State University the right to receive re-payment for the charged expenses from her paycheck. Although this may be an unenforceable agreement it is relevant to Dr. Zamorano's intent. If she believed it was enforceable then she would also believe any improper purchases made by her would be deducted from her paycheck.

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“Dr. Zamorano provided all the receipts for the alleged improper purchases to Wayne State University. The fact of the existence of the agreement combined with no intent to conceal the purchases made it impossible to show intent to defraud. ... It should be noted that per the agreement with Wayne State University Dr. Zamorano gave a check for \$1900 that the University cashed in August 2004.”

Further, Ms. Worthy, while criticizing Dr. Zamorano’s uses of the credit card, criticized the Administration’s management of the matter, stating:

“I would strongly urge all institutions with similar policies to be much more diligent with their oversight and bookkeeping. It is imperative that there are checks and balances in place. Otherwise, the most obvious solution is to eliminate the practice of issuing employee credit cards entirely.”

The union is proceeding with the Zamorano grievance with every expectation of winning it.

Jousting With Windmills

Why the Administration continues to tilt with legal windmills is difficult to see. There seems to be the view abroad among some in the Administration that bluster is an effective substitute for careful thought when it comes to legal matters. There may also be an echo-chamber effect among those who discuss contract issues that relate to the School of Medicine. Administrators talk among themselves, and only among themselves, and over time they convince themselves that their position is right. Over the years, I have further noted that when SOM’s administrative leaders make up their minds, it is difficult for those in the central administration to summon the fortitude to dissuade them from one or another course of action.

Perhaps in the cases discussed here, that is a partial explanation. But one wonders, what is the University getting for all that money paid to our General Counsel and the attorneys to whom he farms out cases? Millions of dollars are involved in this process each year. Shouldn’t there be more bang for the buck?

Librarian Wins One for Constitutional Freedom

The U.S. House of Representatives on June 15 voted to protect intellectual privacy by limiting FBI access to library lending records. Voting 238 to 187 for the Freedom to Read Amendment, legislators—including many Republicans—sent a message that the USA Patriot Act, which allows what some regard as invasive access to citizens’ private reading habits, may have gone too far and must be curtailed.

Noting the “chilling effect” that Patriot Act measures have had on patrons interested in borrowing controversial material from libraries, many college and university librarians, including Patty Bentley, chapter president of United University Professions (UUP/AFT) and a board member of the New York State United Teachers (NYSUT), have become key players on this issue. A reference instruction librarian at the State University of New York-Plattsburgh, Bentley was

instrumental in organizing the “We the People” campaign through the unions of NYSUT, UUP, the Professional Staff Congress/AFT (at the City University of New York), and the state community colleges.

For a week in spring, 2004, schools and colleges all over the state hosted panel discussions and displays about protecting the First Amendment and privacy rights and questioning the Patriot Act. The AFT is a longtime player in the movement to guard against Patriot Act violations of civil liberties, and passed a resolution at its 2004 convention to protest the invasion of privacy wrought by broad federal access to personal records.

(From the AFT new service, Inside AFT)

To All Faculty in the School of Medicine

To better represent you, we need your input in the confidential survey that is being sent to your home address this month. The survey is being conducted by the American Arbitration Association (AAA) on behalf of the Wayne State chapter of the American Association of University Professors — American Federation of Teachers (AAUP-AFT).

There are 16 questions focusing on issues of tenure, term renewals, bridge funding, retirement, and workload distribution between academic and non-academic activities. Your answers will remain in the possession of the AAA, which will convey only the summary results to the AAUP-AFT.

Given the ongoing restructuring of healthcare in general and WSU and DMC in particular, we need your input to develop an understanding of the evolving mission of the School of Medicine and the relevant priorities for upcoming negotiations for a new collective bargaining agreement.

Please take a few minutes to complete the survey and return it unsigned in the accompanying envelope to the American Arbitration Association.

Thank you.

Wayne State University Chapter

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