



Representing Wayne State Faculty and Academic Staff

NEWSBRIEFS

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Arbitrator Rules Against Administration in Case of Dismissed Neurosurgeon

Union Wins Case Against Abuse of Power

Arbitrator Ellen J. Alexander has ruled that senior Wayne State University administrators violated the rights of Dr. Lucia Zamarano, a fifteen-year member of the faculty of the Department of Neurosurgery, when they suspended her, attempted to get the Wayne County Prosecutor Kym Worthy to indict her, and then fired her without a hearing. The union is gratified with the outcome of this long-standing grievance.

Excessive Punishment

The case began with the unauthorized personal use of a University credit card related to a grant Dr. Zamarano had secured from the Michigan Economic Development Corporation. The fault for this misuse of the credit card clearly lay with Dr. Zamarano. She mistakenly used the credit card for personal purchases and, by failing to separate the card from others used for personal expenditures, a member of her household unwittingly used it for purchases unrelated to the grant.

This admitted error could have been handled through the routine procedure called for in university regulations, but senior administrators decided, instead, to pursue criminal proceedings against Dr. Zamarano. Fortunately, the county prosecutor rejected this draconian measure. Rather than indict Dr. Zamarano, Prosecutor Kym Worthy found that there was no apparent “intent to deceive” or “intent to conceal” in the misuse of the card.

The Arbitrator likewise found that Dr. Zamarano, who had volunteered to repay the mistaken purchases when they were first brought to her

attention (the Administration would not accept repayment, but later sued her for the amount), had been denied the due-process remedies and lesser penalties that such cases normally call for. Her negligent actions could have been dealt with according to the rules that apply to the use of University credit cards. These rules allow for the University to recover any inappropriate charges from the salary of the individual and to cancel the card itself.

Arbitrator Finds Administration’s Actions Neglect Key Grant

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The Remedy

The Arbitrator ordered the University to pay Dr. Zamarano her lost salary until the end of her contract; to return all personal property seized during a search of her home; to expunge all reference to her suspension or firing from University personnel records; to grant her Voluntary Faculty status in the School of Medicine and not oppose her re-employment in the University-related physician practice plan from which she was fired as a result of the University's actions.

In addition, the Arbitrator ordered that the AAUP-AFT be reimbursed for one-half of all legal fees associated with the pursuit of Dr. Zamarano's grievance.

Professor Charles Parrish, Union President, stated that "This was a very satisfying result. Dr. Zamarano was the victim of rumor and innuendo. She was never given an opportunity to tell her side of the story by University officials, who ignored their own rules for addressing the matter. The award to the Union of legal fees is unusual and indicates what the Arbitrator thought of these officials' actions.

"We do not excuse the mistakes of Dr. Zamarano, nor does she. But any punishment must fit the offense; in this case it was wildly out of proportion. The decision cannot give back to Dr. Zamarano her reputation, but it is an important step in that direction."

It may not be a step, however, that the Administration is willing to follow. Rather than acknowledge the missteps that led to the University's embarrassment before both the Wayne County Prosecutor and the Arbitrator, the Administration has filed with the Arbitrator what amounts to (in the Arbitrator's assessment) an appeal for a re-hearing. She noted that the Administration had sent her this appeal letter before meeting with the union to discuss the matter.

Since that time, such a meeting has been held. The union insisted on implementation of the Arbitrator's decision, while the Administration argued over several provisions with which it does not want to comply. The union is now awaiting the Administration's final consideration of its position. It is to be hoped that senior administrators are not trying (as they have done

in a previous case) to lay the groundwork for refusing to implement the Arbitrator's ruling, thereby forcing the union to sue in court for implementation.

The Larger Problem

The attempt by senior administrators, principally Vice President and General Counsel Louis Lessem and the former Vice president for Research John Oliver, to have Dr. Zamarano prosecuted and fired from the University also involved the inappropriate use of the University's Office of Internal Audit.

The Office, which is supposed to be independent of the Administration and report only to the Audit Committee of the University's Board of Governors, was directed by these officials not to interview Dr. Zamarano in the course of auditing her grant. The testimony of the Director of the Office, Ms. Carolyn Hafner, was that she complied with these orders.

In addition, an Internal Audit official was sent several times to the Wayne County Prosecutor's office to support the attempt to have Dr. Zamarano indicted. Ms. Hafner was also identified in testimony by Dr. Oliver as a participant in the decision to suspend and fire Dr. Zamarano. These actions compromised the independence of the University's Office of Internal Audit.

When Dr. Zamarano sought and finally obtained a meeting with Mr. Lessem and Dr. Oliver, she was given no opportunity to explain her actions or repay any questioned purchases. Instead, Mr. Lessem told Zamarano at the start of the meeting that anything she said would be used against her in the criminal case the Administration was then pursuing. In this intimidating setting, she could not speak to defend herself.

Her lawyer sent three detailed letters to Mr. Lessem explaining the questionable purchases. They were answered by what the Arbitrator characterized as "A short dismissive, even sarcastic, 'response'..." To the University's argument that the meeting and the letters constituted a hearing for Dr. Zamarano, the Arbitrator stated, "The University's obligation is to *'...include the opportunity for the Respondent to testify.'*" A letter is not testimony, far less an ignored/unanswered letter."

Arbitrator Finds Administration's Actions Neglect Key Grant Focus on Life Sciences Questioned

As an alternative to the traditional smokestack industries that have long been central to Michigan's economy, the "life sciences" have become crucial to our state's economic future. State grants to universities that can help "incubate" such economic initiatives by researching new medical procedures are especially important to Detroit, where the long-term decline in automaking has decimated employment in the Motor City.

Wayne State University and the Detroit Medical Center are obviously crucial to such an undertaking, and it is here that the Zamarano case may have repercussions well beyond the immediate circumstances of the Administration's abusive treatment of one of our more distinguished faculty members.

As the Arbitrator found in her ruling against the Administration, Dr. Zamarano was the key initiator in a government-university collaboration to develop computer technologies that would significantly advance the treatment of brain tumors. Her admitted financial mismanagement of expenditures certainly had to be addressed, but the Arbitrator found that the Administration's unwarranted dismissal of Dr. Zamarano was carried out with an appalling disregard for the successful administration of the \$3.3 million grant which her efforts brought to Wayne State.

In the Arbitrator's Words

The relevant passages from pages 10 and 31 of the Arbitrator's decision are reproduced here:

When grievant Zamarano joined Detroit Medical Center and Wayne State University in 1991 it was with the goal to bring in, continue to perfect, and share her experience with neurological surgical procedures using computers and imaging, including development of an "interactive image guidance (navigation) system." In concert with a team of radiation oncologists she introduced the Gamma Knife to

treat brain tumors. She started the first lab research in the Neurosurgery department, contributing the \$25,000 seed money given to her by the University. She concurrently maintained a substantial private practice as well as teaching medical students and doctors....

In 2003, following years of effort, Dr. Zamarano obtained a \$ 3,337,560 grant for Wayne State University from the Michigan Economic Development Corporation (MEDC) to be dispensed over a three year period. "In accordance with the guidelines of the Michigan Life Sciences Corridor Fund, the Grantee will develop a critical mass of interdisciplinary investigators that will significantly advance computer-assisted surgery" (CAS). The Principal Investigator would be Doctor Zamarano... Neurosurgery Department Chair Murali Guthikonda, M.D. had no role in this research\training grant until after the grievant's departure from the University and has, by his own admission, played barely any role since then, despite his nominal appointment as replacement for Dr. Zamarano...

Doctor Guthikonda candidly admits that the grievant's subspecialty is not his, that he virtually had
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"...the Arbitrator found that the Administration's unwarranted dismissal of Dr. Zamarano was carried out with an appalling disregard for the successful administration of the \$3.3 million grant which her efforts brought to Wayne State."

nothing to do with her grant activities other than, as department chair, to “oversee and sign off on some of the major activities that happen in the grant....” Even after becoming permanent chair his only grant related activities were signing papers. He “thinks the University” named him “as a very part (time) co-PI within the grant.” The other co-PI is in “the department of computers” [sic]. Guthikonda “can’t remember exactly how the process evolved” that he was named co-PI of the grant (after the grievant’s suspension). He has only “minimal involvement.” The grant requires a neurosurgeon to be involved and he is that neurosurgeon, despite this being neither his field of interest or expertise.

The Arbitrator focused on these dimensions of the case because of the insistent claim by Dr. John Oliver, Vice President for Research, that Dr. Zamarano was dismissed because the integrity of her research was automatically tainted by her mismanagement of grant finances. The Arbitrator found that there was no evidence for this assertion, and drew attention to the fact that the Administration, after firing Dr. Zamarano without adequate cause, subsequently belied its stated concern for the integrity of her research by neglecting to provide a qualified researcher as her replacement.

If wiser counsel had prevailed, Dr. Zamarano would still be working on the grant she brought to Wayne State and there would be no reason to question the integrity of the Administration’s commitment to the research. Page 4

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Dr. Oliver’s persistent rationale for firing Dr. Zamarano was that her supposed financial malfeasance called into question her research. The Arbitrator stated that one of the Union’s “most persuasive arguments” was directed against this attempt to tie Dr. Zamarano’s research to the administration of her grant. The arbitrator quotes favorably the Union’s argument, that “...without ground or reason, and without a nexus, the Employer asserted that her research was tainted. Yet nowhere in the record did the Employer show how Dr. Zamarano’s research was false, incorrect or even merely flawed.”

It is unfortunate that through the actions of wrong-headed senior officials the University has lost a well-funded researcher and an outstanding physician.

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