



Representing Wayne State Faculty and Academic Staff

NEWSBRIEFS

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“Cash-in-Lieu” of Medical Benefits Restored Administration Responds to Union Grievance and Legal Challenge

As reported in last month’s newsletter, the AAUP-AFT took action to block the Administration’s unilateral termination of “cash-in-lieu” of medical benefits for members who have alternative health care coverage. In response to our grievance and the “unfair labor practice” charge we filed with the Michigan Employment Relations Commission (MERC), the Administration has rescinded its action and restored the benefit.

Our collective bargaining agreement (Article XII, paragraph D8) provides for the “cash-in-lieu” payment of \$100 a month to members who are covered under the insurance plan of a spouse or domestic partner. The Administration moved to terminate such payments in October in cases where the spouse or partner is a Wayne State employee covered by a university medical plan.

By the Administration’s count, there are 60 employees covered either by the AAUP-AFT contract or similar provisions under the contract for Graduate Employees who were, in their estimate, “improperly” receiving cash-in-lieu payments.

We filed a grievance against the Administration for this unilateral violation of past practice, and we also initiated an “Unfair Labor Practice” complaint with MERC charging the Administration with “failure to bargain in good faith.” Michigan labor law requires that in unionized workplaces the employer

has to make an effort to negotiate such changes in past practice and cannot unilaterally terminate a benefit in mid-contract. MERC scheduled a hearing for next January.

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Fortunately, cooler heads prevailed in the Administration, and on November 27, the Provost’s office issued a memo reversing the termination of benefits. According to the office of Total Compensation and Wellness, cash-in-lieu benefits for union represented employees will be restored and couples employed at WSU who enrolled in single coverage this fall will automatically be reenrolled into a two person contract and receive cash-in-lieu again.

The back-pay for the cash-in-lieu payments missed is scheduled to be included in the December 26th check. Questions regarding enrollment should be directed to Albert Bowman in the Benefits Office. He can be reached at 313-577-6353 and ab3895@wayne.edu.

We appreciate the communication from members who contacted us about the initial termination of benefits and, in the last week, thanked the union for taking action to restore them. We rely on that kind of feedback to keep on top of issues and address them as quickly as possible, so please contact us whenever you have questions and concerns.

Union Files “Unfair Labor Practice” Charge Over Administration Denial of Union Representation

The union filed another “Unfair Labor Practice” charge last month with the Michigan Employment Relations Commission (MERC) after the Administration refused an employee’s request for union representation during an investigatory interview. Prior to a meeting concerning potential discipline, the employee had asked that a representative from the AAUP-AFT accompany him/her. Department managers denied the request and said General Counsel Lou Lessem told them it was Administration policy to do so.

The refusal and the policy are, in our estimate, a clear violation of Michigan labor law. The union has no reason to oppose or accept the merits of discipline in this case, but when an employee asks that a union representative accompany him/her in such a meeting, it is a well-established “Unfair Labor Practice” to deny such representation and insist that the employee appear alone.

“Weingarten” Rights

The right to union representation in an employer-conducted meeting or interview was established by the Supreme Court in the landmark decision of 1975, *National Labor Relations Administration vs. J. Weingarten*. The Court held that an employee has a statutory right to insist on the presence of a union representative in an interview which the employee reasonably believes might result in disciplinary action.

While the Weingarten decision dealt with a private-sector employer, the principle has been adopted and applied by MERC and the state courts to public employees under Michigan’s Public Employment Relations Act.

The purpose of union representation in an interview is to safeguard the employee’s interest as well as the interest of the entire bargaining unit to insure the employer does not impose punishment unjustly. The union representative is not there to pre-judge the validity of possible discipline. A knowledgeable union representative, however, can assist the employer as well as the employee by listing favorable facts which an anxious employee may omit or not know of. The union representative can also serve as a witness.

The Union representative is not allowed to interfere with questioning by answering on behalf of the employee, but the union rep can consult with the member, can object to intimidating or confusing questions, and can raise extenuating factors at the conclusion of the interview.

Know Your Rights!

There are, fortunately, not a lot of occasions where these rights need to be invoked. Interviews that focus on instruction, correction of work methods, or problems within the department don’t usually lead to discipline and are not, therefore, covered by “Weingarten.” But when that rare and unpleasant moment occurs where discipline is at stake, it is important that faculty and academic staff know their rights.

There are two threshold requirements that must exist to invoke the Weingarten right: (1) The employee must have a reasonable belief the interview may lead to discipline, and (2) The employee must request a union representative.

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aaupaft@wayne.edu****Right to Representation**

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Applying the first requirement, the employer's statement of intention is controlling. When an employee is called in for a meeting without a union representative, the employee should ask whether it is about anything that could possibly lead to discipline. If the employer responds in the affirmative or responds in a way that allows for the possibility of discipline resulting, the employee can ask that a union representative be present.

If the employer responds that there is no possibility that the meeting will result in discipline, then the Weingarten right does not apply. If, however, during the course of an interview the employee has reason to believe that he/she is the potential target of an investigation, then Weingarten rights become relevant. The employee can request that the meeting be rescheduled with a union representative present. If the manager refuses this request, the employee should comply with a direct order to continue the meeting, but is not obligated to answer questions. The union should be informed immediately of this violation of labor law.

The second requirement is pretty straight forward. Union representation in any meeting which could lead to discipline is not automatic. The employee must ask for it. The selection of a particular representative is the right of the employee. The employer may not designate its preference of which union representative can appear.

When in Doubt, Call Us

If any member of this bargaining unit is unsure of whether and how Weingarten rights may apply, do not hesitate to call the AAUP-AFT office (577-1750) or email us (aaupaft@wayne.edu) with your concerns.

(Contributors to this article include Steve Babson, Information Officer; Gordon Gregory, attorney for our local; and attorney Frank A. Guido, author of an excellent review of Weingarten rights for public employees.)

Political Action Committee Report

By Dan Golodner

During the warmer months of fall almost fifty volunteers spread out across the campus with petitions in hand, information about prison reform, budget issues and stem cell research as well as donation forms. By the end of November they had collected donations to the union's Political Action Committee (PAC) from a record number of AAUP-AFT members. This is an important step in making our voices stronger in Lansing.

We would especially like to thank the College of Education, the Reuther Archives, and the departments of English, Psychology, and History for donating a combined total of \$1,738. Hats off to all the volunteers who participated in this great fundraiser.

Political action is imperative to elect friends of higher education and to pass or defeat ballot proposals that affect education and the members of AAUP-AFT Local 6075. The money we raised is especially im-

portant now when there are recall campaigns against Democrats and Republicans who made the hard but necessary decision to raise taxes and avoid further cuts in the state budget this fall. They are being targeted for doing the right thing, since the alternative was an unfunded budget, further chaos in state programs, and hundreds of millions of dollars in cuts to social services, healthcare, and education, including the budget of Wayne State University.

There is much more work to be done. Lansing does not sleep. Your dollars are important during the entire year to help support candidates who support higher education and collective bargaining rights. If you would like to donate to the PAC please contact the union office at 577-1750 or aaupaft@wayne.edu and we will send you a donation form.

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