



Representing Wayne State Faculty and Academic Staff

# NEWSBRIEFS

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## Voluntary Early Retirement

### Union Blocks Further Use of Management “Contract” Requiring Surrender of Rights

Restored Benefit Available for this Year  
Negotiations Continue on Retiree Healthcare

The union and the Administration have successfully negotiated a voluntary early retirement program for faculty and academic staff aged 60 or more and with at least ten years of service. As under the previous contract (2002-2005), it provides tenured faculty with a three-year phased retirement at half-time. Academic staff with ESS can retire with a three-year “buyout” of \$8,500 a year for those with 10-19 years of service and \$12,000 a year for those with 20 or more years. The university will continue to provide the full subsidy for healthcare benefits to faculty and academic staff during the three-year period.

This negotiated benefit replaces the unilateral and punitive early retirement program the Administration implemented late last year without informing the union. Under the Administration’s diminished and one-sided program, faculty and academic staff not only became ineligible for full salary increases, they had to also sign a letter that surrendered their legal rights and obligated them to keep quiet about it.

Fortunately, faculty who were given this letter forwarded copies of it to the union, which moved immediately to block its continued use. For the present year, the early retirement benefit permitting a half-time phase-out for faculty and a buyout for academic staff is restored.

Negotiations continue on a healthcare benefit for retirees and on extending the early retirement benefit for each year of the contract through 2009.

In the meantime, the union has filed a grievance on behalf of those members who signed the onerous and, we believe, illegal management document that was briefly in use before the union intervened.

*"The Administration refused to agree to extend the benefit beyond this year. The rationale was that negotiations are continuing in the Health Benefits Committee .... To qualify for these benefits as they now stand, you must apply before March 1st."*

#### A Small Glitch

When the negotiations over a new contract were concluded early last year, there was a small glitch in transferring the previous language on phased retirement (Article XII, “Section I”) to the new contract: during the hectic final editing, negotiators on both sides forgot to change the date for submitting the required “declaration of intent” to retire. The deadline still read “2003,” making that particular clause technically inoperative for the 2006-2009 contract.

This small oversight could have been addressed by plugging in the new dates. But this solution was complicated by the fact that the new contract also provided for the formation of a Joint Committee on Health Benefits to make recommendations on retirement

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healthcare options. Pending the outcome of these negotiations, the Administration was faced with a number of faculty members who asked for the phased retirement plan. Deans and Chairs supported these faculty members' requests.

In response, the Administration unilaterally implemented its own program based on the provision in the collective bargaining agreement (Article XII, “Section J”) that allowed for “Special Retirement Incentives.” This “Section J” was originally intended only to allow the Administration to offer *additional* incentives to encourage voluntary early retirement.

### A Big Mistake

Unfortunately, at this point the Office of General Counsel, Louis Lessem, got involved and managed to gum up the works.

Instead of simply offering the same phase-out under “Section J” that was temporarily unavailable under “Section I,” Lessem *et al* unilaterally decided on a punitive approach (what's new?). Retiring faculty members would no longer be entitled to receive the entire annual salary increase during their three-year phase out. They would have to surrender their eligibility for the selective salary increase and would only receive the across-the-board raise.

This was the least of it. In addition to the diminished salary increases, management's “Section J” contract appended three clauses that dramatically changed the nature of the program:

**Clause 6** required the employee to confirm that he/she had not filed “or threatened to file” any claims, complaints, charges or lawsuits against Wayne State.

**Clause 7** required the employee to “fully and forever” renounce any legal claim against Wayne State, “whether founded in fact or law,” that he/she “may have had, may now have, or may hereafter have.” It then went on to list every conceivable civil and constitutional right the employee may once have had but would now have to renounce to qualify for the management version of “early retirement.” [See “Terms of Surrender” on page 3].

**Clause 8** required the employee to keep the terms of the contract “completely confidential” and to only disclose its contents to “immediate family, legal counsel, accountants, and financial advisors.” *Note that the administration apparently intended that faculty and academic staff not divulge these terms to “union representatives,” who are not included in the gag rule's list of exceptions.*

### Illegal and Unethical

We believe it is illegal to force someone to sign away their employment rights under the law, including those bargained by the union, in order to receive a Wayne State retirement benefit. We are certain that it is unethical.

It is common in legal settlements for demands to be made to hold the defendant harmless for any damages done in the *past*. The General Counsel's letter is unique in that it proposes that the faculty member hold the Administration harmless for any *future* violations of the member's legal rights. In effect, members would have to surrender their rights under the law to qualify for the phased retirement program. Our counsel advises us that the letter is illegal and that an employee cannot individually sign away rights granted by law or the collective bargaining agreement.

As soon as the union learned of the “Section J” contract letter, we moved immediately to block its use and replace it with an update of the original phased retirement program. After discussions with the Administration, primarily with Executive Vice President Andrea Roumell Dickson, the essential provisions of the “Voluntary Early Retirement” benefit of the previous contract (“Section I”) have now been agreed to for this year, with full salary increases and without the onerous provisions contained in Clauses 6, 7, and 8.

However, the Administration refused to agree to extend the benefit beyond this year. The rationale was that negotiations are continuing in the Health Benefits Committee and any further extension would depend on the Committee's recommendation. *To qualify for these benefits as they now stand, you must apply before March 1st.*

### An Object Lesson

When the collective bargaining agreement's language was in force, no one had to surrender their rights under the law; when an administrative glitch nullified the negotiated language, management decided they could do whatever they wanted. Salary cuts and Clause 7 were the result. Absent a union, it's all too typical of where managers want to go when they are only talking to their lawyers.

## “Terms of Surrender”: Clause 7

Reproduced below is Clause 7 of the individual “Agreement and Release” contract that the Administration unilaterally issued (see front page story). The union has since blocked its use and the Administration has agreed to honor the previous language for this year.

It is worth reading this now-discarded text. While condemning its intention (to strip the signer of every known employment right), you have to admire the breathtaking inclusivity of Clause 7 as it reels off in a single, never-ending sentence of 226 words the name of every relevant employment law passed in the twentieth century, as well as every “claim or theory” about what any of it means. Wow!

*"It is worth reading this now-discarded text. While condemning its intention ... you have to admire the breathtaking inclusivity of Clause 7"*

### Clause 7

“(Name) hereby fully and forever releases, acquits, and discharges Wayne State University, its agents, officers, and employees, of and from any and all claims, demands, action, and causes of action of every kind, nature, and description, whether known or unknown, suspected or unsuspected, and

whether founded in fact or law that he/she may have had, may now have, or may hereafter have by reason of any matter, cause, or act, or omission whatsoever, including but not limited to any claim under Title VI of the Civil Rights Act of 1964, as amended, Title VII of the Civil Rights Act of 1964, as amended, Title IX of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, as amended, 29 USC § 621 et seq., the Older Workers Benefit Protection Act, the Americans With Disabilities Act, the Health Insurance Portability and Accountability Act, the Michigan Persons

With Disabilities Civil Rights Act, the Family Medical Leave Act, the Whistleblowers Protection Act, the Michigan Wage and Hour Laws, the Michigan Employment Relations Act, the Michigan Wage and Fringe Benefit Act, and any tort, contract, common law, statutory, ordinance, Constitutional, or common law or other legal or equitable claim or theory, including all claims arising out of or in connection with his employment with Wayne, or occurring on or before the effective date of this release.”

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## “Voluntary Early Retirement”

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Unfortunately, the Administration has refused to rescind the “Section J” contract letters— including Clauses 6, 7, 8— that were already signed before the union intervened. During negotiations to restore Section I, Executive Vice President Dickson indicated that there were faculty members who had signed the Section J letter. We requested that, as a result of our agreement restoring the previous program, these Section J letters be rescinded. Dickson said the Administration had no intention of doing this, and she reaffirmed the policy on December 14<sup>th</sup>.

The union has filed a grievance to get this reversed and to bring such individuals under the terms of Section I. Individuals who signed management’s Section J letter had few options if, for whatever reasons, they wanted to take a phased retirement. In such cases, the Administration simply imposed terms to which they knew the union would never agree.

Consider what the University’s General Counsel is up to here when he pushes on our members a contract that absolves the Administration from responsibility for any future damages that its actions might cause that person. You don’t have to be too cynical to ask, “What damage do you intend to do to such a person?” We have had incidents in

which faculty or staff members have been physically threatened by students or people off the streets. We have even seen a faculty member murdered in his classroom. What if the University responded to a dangerous situation in a manner so clearly irresponsible that the person in danger was needlessly harmed, or even killed? If a faculty member had signed the General Counsel’s Section J letter, the intent here appears to be that there could be no redress under the law.

It would have been the decent thing for the Administration to voluntarily agree to rescind the individual Section J letters in compliance with the now restored language of the collective bargaining agreement. Instead, the Administration has chosen conflict over cooperation. Since we could not reach agreement on the matter, the union will take the case to arbitration if necessary.

It’s hard to believe that Administrators want to embarrass themselves again in front of a neutral arbitrator, but we’ve seen them do it before.

## Wayne State University Chapter

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