



Representing Wayne State Faculty and Academic Staff

# NEWSBRIEFS

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## P-CARDS AND PROSECUTIONS

By Charles J. Parrish, President

When the administration introduced the Procurement Card (P-Card), most faculty thought it a very useful step. The card provides a handy payment mechanism for researchers who need to make frequent purchases, but this convenience has sometimes been compromised by poor administration and sloppy record keeping.

Faculty can expose themselves to serious financial liability and, in extreme cases, prosecution if they run afoul of the P-card's rules. Several of these cases have required the Union's intervention, and what follows is an overview of the appropriate steps that faculty can take to prevent or address difficulties if they arise.

### Uneven Oversight

Prior to the creation of the P-card, the University had a well-earned reputation for being slow to pay vendors—so slow that in some cases vendors refused to deal with the University. The P-Card was issued to principal investigators and helped to solve this problem as a credit card for purchases of up to \$1,000.

Unfortunately, the weak and unreliable administrative structure of the University undermined efforts to introduce reliable fiscal controls to the P-Card system. Each department was supposed to appoint a P-Card officer who would oversee expenditures by researchers in their departments. Regrettably, there has been a lack of commitment in a number of departments to the implementation of this system. The result was a very uneven application of official P-Card policy across campus.

This uneven application was exacerbated by sloppy administration by a number of the principal investigators who were issued cards. There were those who did not keep accurate records of their expenditures or who were not careful that expenditures were credited to the appropriate grant.

Each person being issued a P-Card was required to participate in a briefing on its legitimate use before receiving a card. Users were notified during this briefing of two penalties for abuse of card privileges. First, questionable expenditures could be disallowed and recovered from the salary of the card holder. Second, the card could be cancelled.

### Prosecution

There is no question that the Administration has the responsibility for assuring the fiscal integrity of the P-Card program. Usually, this does not lead to prosecution. Principal investigators who are called in for questioning about P-Card expenditures feel that they have done nothing wrong (usually they haven't) and that all they have to do is to respond to the administrator's questions. Indeed, in many instances this may work.

There is good reason to be cautious, however, for the Administration has gone beyond its own regulations and attempted to bring criminal charges against a faculty member for improper use of the P-Card. In the case of Dr. Lucia Zamarano, the University Auditor actively supported the efforts of senior

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administrators who were seeking to have Dr. Zamarano indicted by Wayne County Prosecutor Kim Worthy. On several occasions, a senior auditor went to the Prosecutor's office to assist in these efforts.

Worthy refused to indict Dr. Zamarano after finding that there had been no criminal intent in her misuse of the P-Card. As a result of a Union grievance, the Administration was forced to apologize to Dr. Zamarano. Hers was an extreme case, but others have been singled out for serious questioning regarding their use of the P-Card.

**An Ounce of Precaution**

When called to meet with a University official about P-Card expenditures, you should contact the Union for assistance in clarifying your rights under the collective bargaining agreement and the relevant laws that regulate these kinds of cases. There are two rights established by the U.S. Supreme Court that are especially relevant here: "Weingarten rights," and "Garrity rights."

The right to union representation in an employer-conducted meeting or interview was established by the Supreme Court in a 1975 decision known as "Weingarten." The Court held that an employee has a right to insist on the presence of a union representative in an interview which the employee reasonably believes might result in disciplinary action.

If you request union representation at a meeting concerning P-card administration, "Weingarten" establishes your right to such assistance. After some prodding from the Union, the Administration has recently acknowledged this right.

"Garrity" refers to the Supreme Court's interpretation of constitutional law regarding public employees who are questioned in a context that might lead to discipline or even criminal charges. In the case of *Garrity v New Jersey*, 385 US 493 (1967), the Supreme Court provided protections for public employees who are required by their employer to answer questions on matters that might become issues in future court actions.

In short, under Garrity the employer can require a public employee to answer questions, *but must first provide* a guarantee that the answers will not be used in a later criminal action.

These "Garrity rights" apply in cases that include the following three aspects: 1) the employee is being ordered to answer the employer's questions, 2) there is the potential of job loss, and 3) there is the potential for criminal prosecution. In cases where the employer refuses to guarantee the protections provided for under the Garrity ruling, the employee may refuse to answer questions on the grounds that the information obtained may be brought against them in future court proceedings. If the employee is disciplined because of the refusal to answer the questions put, then the Garrity rule is violated.

***"When called to meet with a University official about P-Card expenditures, you should contact the Union for assistance in clarifying your rights..."***

**Sample Garrity Warning**

In a recent case in which a dispute over the use of a P-Card was at issue, a faculty member was called to a meeting with the University Auditor. The faculty member was accompanied by a representative of the Union. As the meeting began, the Union representative asked the Auditor to sign the following Garrity warning:

*This questioning concerns administrative matters relating to the official business of Wayne State University. I am not questioning you for the purpose of pursuing a criminal prosecution against you or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates that you may be guilty of criminal conduct in this matter, neither your self-incriminating statements nor their fruits will be used against you in a criminal proceeding. Since this is an administrative matter within Wayne State University, you are required to answer questions truthfully and completely.*

University Official: \_\_\_\_\_

I understand this statement:

Faculty Member: \_\_\_\_\_

# Things Worth Knowing: Summer Edition

It's Summer time and you should know about...

...the AAUP-AFT Collective Bargaining Agreement for 2006-2009

## “Any Purpose Days”

Article XIII (C)(3)(e) provides for personal days (AKA “any purpose days”):

*After six months of service, a member of the bargaining unit may take up to two days for personal reasons during a fiscal year (October 1 to September 30). One additional day for personal reasons shall accrue for those with more than ten years of service. Sufficient prior notice shall be given to the unit administrator prior to taking a personal leave day. It shall be the responsibility of the bargaining-unit member to discuss with the unit administrator coverage of the bargaining-unit member's essential duties during the period of absence.*

## Vacations

Article XII (L) covers vacations:

*Full-time twelve-month employee members of the bargaining unit are granted earned vacation days at their regular rate of pay after an initial four months of service, amounting to twenty-two working days per year. Vacation days do not accumulate when the bargaining-unit member is in an unpaid status of any kind. Vacation days earned, but not used, may be accumulated up to twenty-three days. However, bargaining-unit members whose salaries are derived from funds other than the general fund must use all vacation time prior to shifting to the general fund or prior to shifting to another subsidy source or the vacation accrual will be reduced to zero.*

*Vacation days must be scheduled in advance with the appropriate chair or dean/director/vice-president and shall be approved in accordance with the operational needs of the unit. Vacation days shall be requested in writing and accompanied by a completed copy of the University's official Time/Exception Report.*

*The Time/Exception Report shall be processed by the administrator, with the payroll covering the vacation period. If the Time/Exception Report is not filed by the administrator as herein provided, the bargaining-unit member may file a grievance requesting that the Time/Exception Report be filed and his/her vacation bank be debited the vacation days reported on the Time/Exception Report.*

**“All twelve-month employees who work fifty-percent time or more accrue vacation time...”**

## Vacation Buy-Out

The Letter of Agreement between the AAUP-AFT and the University dated 8/19/02 (page 164 of the contract) provides that:

*Bargaining-unit members who have been denied vacation time by the University and who have reached at least 90% of their maximum accrual of vacation time may be allowed to take up to two weeks of pay (without fringe benefits) in lieu of vacation time off once a year.*

*The bargaining-unit member must request payment in lieu of vacation time off, and the request must be approved by the dean/director or his/her designee. All paid time will be subtracted from a bargaining-unit member's vacation accrual bank. The unit in which the vacation time is accrued is responsible for funding this buy-out. A unit cannot deny vacation and also deny buy-out. A bargaining-unit member may opt to have a portion of this buy-out payment made directly to his/her retirement program as a pre-tax contribution as per existing University guidelines.*

## Vacation for “Fractional Time Employees” too!

All twelve-month employees who work fifty-percent time or more accrue vacation time as well.

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Article XIV states in part:

*Twelve-month fractional-time bargaining-unit members shall accrue vacation days in proportion to the fraction of time worked.*

**Vacation Discounts for Union Members**

The AFT *Member Plus* program offers Union members discounts on car rentals, hotels, theme parks and tours. For a complete listing and further details, go to: <http://www.aft.org/aftplus/> or call (800) 238-1133, ext 8643. The AFT Member Plus program is only available to full dues paying members of the AAUP-AFT.

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The Auditor did not sign it and adjourned the meeting until she could get legal advice on the matter. For the time being, the case is on hold.

Protecting the rights of bargaining unit members is one of the chief goals of the Union and we take this responsibility very seriously. If you have questions on any of the issues raised here, contact us by phone or email for a confidential briefing on your rights and responsibilities.

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