

March 6, 2007

Eugene Driker, Chair  
Board of Governors  
Wayne State University  
Detroit, MI 48202

Dear Gene:

Last month (February 10, 2007), the union received the opinion and decision in Grievance No. 255, the case of Dr. Lucia Zamarano. The decision was a decisive victory for the Union's position. The decision, which is enclosed, along with the report that I sent to the AAUP-AFT Executive Board, makes it clear that the actions of university administrators violated the due process rights of the grievant. Those administrators were, specifically, Vice President and General Counsel Louis Lessem, and Vice President for Research, John Oliver, and, to a lesser extent, Director of the Office of the Auditor, Ms. Carolyn Hefner and the Director of the Pro-Card Program, Ms. Christina Radcliffe. Provost Nancy Barrett and Vice President John Davis are also mentioned in testimony as being present in relevant meetings, but there is no clear evidence in the testimony that they played important decision-making roles in this matter.

I am taking the unusual step of writing to the Board of Governors in the matter of a grievance for two reasons; First, because the General Counsel's office has refused to implement the award in timely fashion and has filed a frivolous appeal with the Arbitrator, Susan Alexander, asking her to set aside portions of her award. In our view, this is but another attempt by the General Counsel to delay the inevitable. She has seen this as what it is, a request for re-hearing of several parts of her decision. She notes that there has been no effort on the part of the University to meet with the Union to discuss the implementation of the award and has told the two sides to do this. We stand ready to follow her direction. We are also preparing to answer the University if Mr. Lessem decides to pursue his objections further. We believe that Mr. Lessem is appealing to the Arbitrator to try to build a case for not implementing the Arbitrator's decision and forcing the Union to sue the University, as he did in a previous case.

Second, mistaken, even irresponsible, individual decisions were made by key administrators without a regard for the rights of the grievant under the collective bargaining agreement. The primary responsibility of General Counsel Lessem and Vice President Oliver for these decisions is clear. The testimony in this case shows it was primarily they who drove the flawed process. As the General Counsel of the University it is his duty to insure that the legal procedures that University follows in such matters are above reproach. It should have been he who assured that due process was accorded the grievant. He failed and personally violated the grievant's rights and influenced others to do likewise.. Vice President Oliver, the other major actor in the matter, provided a strange and unconvincing rationale for the dismissal of Dr. Zamarano that certainly helped to impel the flawed decision making process. Both of these matters are dealt with in detail the attached documents.

It is, ultimately, the responsibility of the Board of Governors to assure that WSU administrators conform the statutes that it has adopted and agreed to follow in the collective bargaining agreements signed with the University's unions.

Third, and importantly, I am writing you and your colleagues because the Arbitrator's decision illuminates certain faults in the administrative practices and procedures of this Administration that, if continued without correction, may threaten the due process rights of other members of our bargaining unit in the future. It is clear from the record that the senior University administrators involved in this case misused the Office of Internal Audit.

The Arbitrator states: "The decision to suspend, and later terminate, Dr. Zamarano was made by University Vice president (Research), John Oliver, Vice President/General Counsel Louis Lessem, the manager of Internal Audit, among possible others." (p. 2) The role of Ms. Hefner, Director of Internal Audit, should be of particular concern for the Board of Governors, and, most particularly, the Audit Committee. While Ms. Hefner testified that she was answerable only to the Board's Audit Committee, it was clear from the testimony that she participated in building the case against Dr. Zamarano under the direction of senior University administrators. The Arbitrator states:

"The Union points out the notable omission of the Internal Audit Director to interview the grievant. Ms. Hefner's explanation for that makes clear that it was a joint decision, discussed with the Vice Presidents. At the same time, the documentation, including the clearly erroneous explanations of the grievant, were persuasive evidence that the doctor was not being honest, at a minimum after the fact. The record shows that Ms. Hefner did make a recommendation as to the termination of Dr. Zamarano and thus her own failure to interview the grievant becomes more significant. Her recommendation role, and position as Head of Internal Audit along with the great weight of the Audit Report cannot compensate for the deliberate refusal at all levels to give the grievant her informal forum." (p. 34-5, Arbitrator's decision)

The job of the Office of Internal Audit should not be a prosecutorial one. Its responsibility to the Board of Governors' Audit Committee should be one of finding out the facts and letting the chips fall where they may. Instead, the record shows that Ms. Hafner was regularly in close contact with Mr. Lessem and was taking direction from him in building the case against Dr. Zamarano. When asked why the grievant had not been interviewed in the audit process, she testified, "...we discussed that with senior management. At that time *we asked direction on how they would like us to proceed. The decision was made that we would continue with the documentation* [and no interview]." (p. 150, Transcript, Emphasis added.)

In addition to Ms. Hefner taking direction from "senior management" on interviewing Dr. Zamarano, her office was actively engaged in the efforts to get her indicted. Ms. Hefner testified that the member of her staff that she had assigned to the case, Ms. Bhavna Mehta, "accompanied the [WSU] Public Safety officer on a couple of occasions to ...[the Prosecutor's] office." (Vol. 1, p. 173, Testimony)

The image that emerges from the Arbitrator's decision and the testimony is one in which senior administrators, particularly General Counsel, and then Interim Executive Vice President, Lessem and Vice President for Research Oliver, had decided on the result that they wanted and were willing to sacrifice both the due process rights of an accused and the independence of the Office of Internal Audit in their obsession to convict (literally) a grievant about whose guilt they had made up their minds.

The independence of the Office of Internal Audit is of grave concern for all the members of the Board, but particularly for those who are the members of the BOG Audit Committee, to whom the Office is required to report. The Director of Internal Office should not be someone ordered about by senior administrators. This case raises important questions about the oversight of the Office by the Audit Committee in such matters.

It is our hope that the General Counsel will be cautioned on the need to show a real respect for the rights of University employees in disciplinary proceedings in the future and told not to interfere with, or delay, the implementation of the Arbitrator's decision. In addition, we also hope that the Board will review the role of the Office of Internal Audit with the aim of assuring its independence in the future.

Sincerely yours,

Charles J. Parrish  
President

cc: Members of WSU Board of Governors  
President Irvin D. Reid  
WSU AAUP-AFT Executive Board