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The Right Flier Newsletter

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# The Right Flier

Newsletter of the WSU-AAUP

Volume 1, Number 1, Winter, 2001

## WSU-AAUP Wins Two P&T Arbitration Cases

By Mel Goldfinger

### Contract and Grievance Officer

WSU-AAUP has won two promotion and tenure arbitration decisions. Last spring, our union's Executive Committee determined that one case of denied promotion and tenure and another case of denied promotion included significant contract violations. The committee exercised its right to bring these cases to binding arbitration as provided by the contract.

During two days of hearings held before a professional arbitrator here during late summer, the union presented its case in defense of the two bargaining unit faculty. The administration defended its cases against both faculty. The arbitrator remanded the cases, both from the College of Science & Mathematics, for reconsideration with explicit instructions. A new schedule for the complete rehearing of both cases was included. The arbitrator has retained jurisdiction while these cases are reconsidered and until final decisions are made.

The arbitrator found for the Faculty candidates in both instances. In one case, the arbitrator ruled that the college P&T Committee and dean arbitrarily applied a major criterion for promotion which had never before been a standard for such promotion in that department. In the other case, the arbitrator found that the dean and college P&T Committee completely ignored the judgment of "other qualified individuals."

In both cases, the arbitrator singled out Dean Gilpin, and precluded him from participating in any way in the reconsideration of these cases. Also, the college and university P&T Committees were cited for not providing a full and complete rationale for rejecting department, chair, and outside evaluator judgments, and for not adhering to their own past standards for such decisions.

In addition to removing Gilpin from the process, the arbitrator provided explicit instructions whereby all participants will adhere to his interpretation of our contract. These instructions include that the college P&T committee must state its criteria, whether it used the departmental criteria (and if not to state why), must use its historical

criteria, cannot use new or modified criteria which occur "... too late in (the professor's) career to be valid," and that its assessment should consider the entire file and rely upon conclusions of "other qualified individuals" including the department P&T Committee, the department chair, and the external reviewers. The university P&T Committee was similarly directed.

Fortunately, thanks to our contract, once the new Bylaws are adopted, neither administrators nor college or university P&T committees can override or otherwise ignore departmental P&T criteria. Then, the violations which caused these two arbitration cases cannot reoccur!

This was AAUP-WSU's first foray into formal arbitration in defense of faculty rights.

AAUP-WSU helped in other P&T cases from last year. Two of the P&T cases which went to the Appeals Committee (as per our contract) last spring were remanded back. Both Faculty members received an extra probationary year. In one case from COBA, the dean was removed from this year's re-examination and replaced with another dean. Both cases are in process now.

## AAUP Winter Quarter Meeting

The winter quarter meeting of the American Association of University Professors, WSU chapter, will be held on Wednesday, Feb. 28, 2001, at 2pm, in room 302 Oelman Hall.

Because collective bargaining matters will be discussed, only Regular Chapter Members (members of the chapter who are in the Collective Bargaining Unit) are eligible to attend. An agenda will be distributed soon.

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# Faculty Governance Committee Reviews Bylaws

By Rudy Fichtenbaum

Chief Negotiator and Co-Chair of FGC  
and Jim Vance

Secretary and Member of FGC

The Faculty Governance Committee (FGC) has been meeting to review bylaws for departments and colleges as called for in our Collective Bargaining Agreement (CBA). The first few meetings were spent developing criteria to review bylaws and reaching an agreement with the administration on a number of controversial issues.

For example, some departments had proposed a system that would allow weights to be chosen for teaching, scholarship and service that would automatically maximize merit scores in a department. The administration initially opposed this idea but eventually was convinced that with some qualifications it should be an option open to bargaining unit faculty.

One important issue that has come up recently at FGC meetings is peer review of teaching. Peer evaluation of teaching means evaluation by Bargaining Unit faculty members. Peer evaluation does not necessarily entail classroom visitation.

There has been some confusion about whether peer evaluation of teaching is required for all Bargaining Unit Faculty, as a component of Annual

Evaluation. This confusion stems from (arguably) contradictory language found in contract articles 10, 11, and 13.

The FGC has discussed this issue and agreed that for untenured members of the Bargaining Unit peer evaluation of teaching must be performed annually and, therefore, a procedure for peer evaluation must be included in departmental bylaws. For tenured members of the Bargaining Unit, peer evaluation of teaching is not required. However, departments may elect to perform peer evaluation of teaching for all tenured members of the Bargaining Unit, or for all tenured members of the Bargaining Unit below the rank of Professor.

The FGC has reviewed the bylaws for a number of departments. A handful of departments are close to finishing their bylaws and getting final approval by the FGC. The FGC will continue to provide written feedback to departments and colleges on bylaws and expects that the majority of bylaws will be approved by the end of the winter quarter.

If you have questions or concerns about bylaws in your department or college please contact Rudy Fichtenbaum (x3085), Jim Vance (x2206) or Adrian Corbett (2058).

## The President's Message

This is WSU-AAUP's first Newsletter. We expect to send news to the members of the Wright State University-AAUP Chapter at least once a quarter. To any tenured and tenure-track faculty who have questions at any time, please feel free to contact me or the other members of the Executive Committee: Paulette Olson (Economics), vice president; Jim Vance (Mathematics & Statistics), secretary; Adrian Corbett (Physiology and Biophysics), treasurer; Rudy Fichtenbaum (Economics), chief negotiator; Mel Goldfinger (Physiology and Biophysics), contract and grievance officer; Carol Loranger (English), and Mark Sirkin (Political Science).

I want to thank all who have joined our union since the beginning of this academic year in mid-September. A substantial majority of the tenured and tenure-track faculty now belong to the union. The more members, the stronger our bargaining position as we enter negotiations for the next contract.

In this first issue of the Newsletter I want to say a few words about one of the most important

reasons tenured and tenure-track faculty voted to form a union at Wright State: the persistent injustices in the promotion and tenure process at this university. This is an issue that should unite us, whether Assistant Professor, Associate Professor or Professor.

In the past 12 months our union took two promotion and tenure cases to arbitration and received a favorable ruling in both. The arbitrator pointed out the continuing application of different standards for different individuals, the arbitrary nature of decisions made by committees at the college and university level, and the potential for deans to ignore the wishes of faculty at the department and/or college level.

In the past, faculty had no recourse to arbitrary decisions involving promotion and tenure. Now we have a union. On behalf of the union, I want to acknowledge the two individuals who decided to seek justice at Wright State. They do not have to wage this struggle alone. The WSU-AAUP Chapter stands by their side.

Allan Spetter, President

# The Status of Our Legal Battle Over Workload

By

**Rudy Fichtenbaum, Chief Negotiator**

During our first contract negotiations the AAUP put a proposal on the table entitled "Workload." The intent of this article was to preserve the status quo with respect to course loads and prevent the administration from increasing course loads. Most other contracts in Ohio have articles dealing with workload.

At first the administration team would not bargain over workload, then changed their position, stating that they would bargain over workload. Finally they reversed their decision again saying that they would not bargain over workload. Under Ohio law there are three categories for bargaining 1) mandatory topics, 2) permissible topics and 3) prohibited topics. In the end the administration refused to bargain over workload because they claimed it was a prohibited topic.

AAUP-WSU filed an unfair labor practice, (ULP) against the University for failing to bargain over a mandatory topic; the WSU administration countered by filing their own ULP against AAUP-WSU. The State Employee Relations Board (SERB) dismissed our ULP and found probable cause for the administration's charge that we were demanding to negotiate over a prohibited topic. We tried to settle the case with the administration, but the conditions they demanded were far worse than the consequence of being found guilty of the ULP.

The case went to an administrative law judge (ALJ) who ruled that we had committed a ULP. The full SERB board reversed the ruling of the ALJ on a technicality, stating that at the time AAUP-WSU had demanded to bargain over workload the Supreme Court of Ohio had not yet reversed its ruling in the Central State case and therefore the law prohibiting bargaining over workload was still unconstitutional.

However, the SERB decision upheld WSU's position that in light of the Supreme Court reversing itself in the Central State case, bargaining over workload was now a prohibited topic. According to our attorney, although technically we won the case, the decision by SERB was actually a loss and if upheld, would set a precedent that would have been used against the AAUP-WSU in the future.

AAUP-WSU appealed the SERB decision to the Greene County Court of Common Pleas. The University and SERB both filed motions

asking that the case be dismissed, arguing that the AAUP-WSU was not aggrieved since we had technically won the case before SERB.

The Greene County Court of Common Pleas agreed with SERB and the University and dismissed the case on the grounds that we were not an aggrieved party. However, in his decision Judge Reid wrote "...SERB's Order does not deny AAUP the right to bargain over faculty workload." Although this is not an outright victory for AAUP-WSU it does state that the SERB Order does not prohibit AAUP-WSU from bargaining over workload.

Currently, most other contracts in the state continue to have language on workload including Cleveland State, University of Toledo, Youngstown State, and Kent State. The only universities in Ohio where the administrations have refused to bargain over workload are Wright State and Central State.

In carrying on this legal struggle the AAUP-WSU received financial assistance from the Cleveland State Chapter of AAUP and the University of Cincinnati Chapter of the AAUP.

## From the Editors

It's been 13 months since our first contract was ratified. Overall the experience has been positive, thanks to the enormous efforts by our Bargaining Council and excellent Negotiating Team to forge and fight for a strong first contract.

Bargaining Unit Faculty (BUFs) all over campus have thrown themselves into the tremendous job of making that contract work, often struggling against administrative disinformation and disincentive campaigns and the weight of thirty years of unwritten "policy" and inertia.

This quarterly newsletter is intended to inform BUFs as we move through our first and toward our next contract. As the only faculty newsletter completely free of administration input and oversight, it is dedicated to the principle that rights not defended are rights lost. But to defend them, we must first know what they are. This publication will be a first step in developing that knowledge.

Let us know how we are doing.

The Editors

Henry Ruminski and Carol Loranger



# Collective Bargaining Congress Offers Ideas

Rudy Fichtenbaum, WSU-AAUP chief negotiator, attended the 50<sup>th</sup> semi-annual meeting of the Collective Bargaining Congress (CBC) of the AAUP held in Washington, D.C. Dec. 1-2.

The CBC is the organization within AAUP, which represents all of the chapters from around the country who have collective bargaining agreements. The semi-annual meetings of the CBC allow faculty from all over the country to meet and exchange ideas and experiences regarding collective bargaining in higher education.

Fichtenbaum said the highlight of the meeting was the workshop conducted by Eastern Michigan University faculty on their successful strike experience. They reported that five major issues precipitated the strike.

The EMU administration

- wanted unlimited rights to replace tenure track faculty.

- was unwilling to address the inequitable and heavier teaching load for members of EMU's Nursing Department who are primarily female.

- wanted greater control over internet courses.

- refused to allow faculty to participate in the evaluation of administrators.

- left the EMU faculty salaries at the bottom of a

comparison group agreed to by both the AAUP-EMU and the EMU administration, even though EMU was in good financial shape and the President had stated that it was the goal of the administration to raise faculty salaries.

The workshop explained how the AAUP-EMU was able to mobilize the support of the faculty, staff, students and community leaders to pressure the University to settle the strike. The EMU-AAUP reported that the strike lasted a week and resulted in significant victories for the union in each area including a 22% increase in salary over three years.

The meeting also included two workshops on mutual gains bargaining. Mutual gains bargaining is often referred to as interest-based bargaining or "win-win" bargaining. The first session was led by a Commissioner from the Federal Mediation and Conciliation Service and explained the framework for this alternate form of negotiations.

The second session dealt with the actual experiences of chapters around the country who have attempted to use mutual gains bargaining.

Other workshops were held on merit pay and past practice. A roundtable discussed issues in recently concluded and ongoing negotiations to help identify trends and exchange experiences.

## What the Administration Told the Fact Finder About Us

During the certification campaign the newly named Administration urged faculty to reject collective bargaining and give them a chance. They told us that they would be different from past administrations. In reality, in its attitude toward faculty, this administration already bears a striking resemblance to its predecessors. Despite their stated commitment to improving the image of the University, they revealed that they were willing to tarnish the reputation of the faculty and of the entire University in order to avoid paying faculty what their own strategic plan demands. In their brief to the Fact-Finder the administration wrote:

**"Wright State is not one of Ohio's top echelon academic institutions. The University ranks in the middle among Ohio public universities in terms of prestige and academic reputation. *U.S. News and World Report's* 1999 survey of 200 national universities for national standing ranked Wright State in the lowest of 4 tiers. Under that survey, Wright State received one of the nation's lowest ratings for academic reputation. ... Yet, despite Wright State's relatively low academic standing and national**

**and state reputation, the University compensates its Bargaining Unit faculty at an extremely high rate."**

But the University's low ranking in the *U.S. News and World Report* survey is not due to the quality of our faculty. The irony here is that *U.S. News and World Report* bases its rankings on faculty salaries and a host of other factors such as class size, the use of part time faculty, acceptance rate, alumni giving, graduation rates, high school class standing of students, student/faculty ratios, retention rates, and academic reputation as ranked by administrators at other similar institutions — factors almost entirely beyond the faculty's control. That is, Wright State's low ranking is largely due to circumstances determined by the administration, the Board, *et al.* Rather than being seen as an indictment of the faculty, *U.S. News and World Report's* ranking should be recognized as a scathing critique of the Ohio Legislature, the Governor, the administration, and the Board of Trustees who collectively have failed to provide faculty with resources and values commensurate with a first-class university.