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Editor: Martin Kich

The Right Flier

Volume 11, Number 1

Workload under Collective Bargaining at WSU: A Brief History

by

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To understand the tentative agreement that we are asking you to ratify, it may be helpful to understand the history of our bargaining over workload at Wright State. As you will see below, it has been a challenge to negotiate workload policies that ensure reasonable limits to teaching loads. Only broad faculty support for the efforts of our union have enabled progress on this issue.

In 1999, during our first contract negotiations, AAUP-WSU proposed a workload article aimed at preserving the status quo. The administration refused to bargain over workload, so AAUP-WSU filed an unfair labor practice (ULP) with the State Employment Relations Board (SERB) for failing to bargain in good faith over a mandatory topic concerning wages, hours and terms and conditions of employment. The administration, in return, filed its own ULP, alleging that the AAUP-WSU had asked to bargain over a prohibited topic for negotiations.

SERB dismissed AAUP-WSU's ULP and found probable cause that AAUP-WSU had committed an unfair labor practice by asking to bargain over a prohibited topic. SERB then scheduled a hearing on the administration's charge before an administrative law judge (ALJ).

At the heart of the case was a clause in Ohio Revised Code (ORC) 3345.45, which states:

On or before January 1, 1994, the Ohio board of regents jointly with all state universities, as defined in section 3345.011 of the Revised Code, shall develop standards for instructional workloads for full-time and part-time faculty in keeping with the universities' missions and with special emphasis on the undergraduate learning experience. The standards shall contain clear guidelines for institutions to determine a range of acceptable undergraduate teaching by faculty.

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On or before June 30, 1994, the board of trustees of each state university shall take formal action to adopt a faculty workload policy consistent with the standards developed under this section. Notwithstanding section 4117.08 of the Revised Code, the policies adopted under this section are not appropriate subjects for collective bargaining. Notwithstanding division (A) of section 4117.10 of the Revised Code, any policy adopted under this section by a board of trustees prevails over any conflicting provisions of any collective bargaining agreement between an employees organization and that board of trustees.

When ORC 3345.45 was passed, the administration at Central State University unilaterally increased the teaching load of the faculty. The AAUP at Central State filed a lawsuit, alleging that the language in ORC 3345.45 violated the equal protection clauses of the Ohio Constitution and the U.S. Constitution. The argument was that all other state employees had the right to bargain over workload and that faculty members were being singled out, hence being denied equal protection. The case made its way to the Ohio Supreme Court who ruled in favor of the Central State Chapter of the AAUP. The Ohio Attorney General appealed to the U.S. Supreme Court. By writ of certiorari (without hearing the case), the U.S. Supreme Court declared that ORC 3345.45 was not a violation of the equal protection clause of the U.S. constitution. The basis for this decision was the rational basis test, which said treating faculty members differently was constitutional because it was "reasonably related" to a government interest, i.e., the education of Ohio's citizens. The case then went back to the Ohio Supreme Court, which then reversed its previous decision..

So, the university's ULP was heard by SERB's ALJ. Our attorney argued that the law speaks only to undergraduate teaching and that the plans developed and approved by trustees were to develop a workload policy that was consistent with standards that would determine a range of undergraduate teaching. Nowhere does the law say that workload is a prohibited topic for negotiations; it says only that the policy dealing only with undergraduate teaching would prevail over any collective bargaining agreement (CBA).

The ALJ ruled that AAUP-WSU had committed an unfair labor practice because, she construed ORC 3345.45 as declaring that all aspects of workload were prohibited topics of negotiation. AAUP-WSU appealed to the full three-member State Employee Relations Board, and the Board overruled the ALJ on a

technicality: at the time AAUP-WSU had asked to bargain over workload, the Ohio Supreme Court had not yet reconsidered the case based on the decision of the U.S. Supreme Court. Therefore, the Board concluded that AAUP-WSU could not have known that workload was a prohibited topic at the time it asked to negotiate about workload. However, the Board concluded that if AAUP-WSU had asked to bargain over workload after the Ohio Supreme Court's reversal of its original decision then it would have committed an ULP. AAUP-WSU then appealed this decision to the Greene County Circuit Court, and the court ruled that we did not have standing because we had not been found guilty of an ULP. At the same time Judge Reid wrote: "As WSU points out, nowhere does SERB's Order state that all matters directly or indirectly related to the issue of faculty work load [sic] are prohibited subjects of collective bargaining under R.C. 4117.11." Thus, remarkably, the administration argued before a judge that SERB's opinion did not state that bargaining over workload was prohibited. Judge Reid concluded his ruling by writing, "Finally, SERB's Order does not deny AAUP the right to bargain over faculty workload." (emphasis ours)

At this point AAUP-WSU had spent more than \$35,000 and the administration was not trying to increase our workload, so we decided to drop the case.

In 2005, during negotiations for our third CBA, AAUP-WSU again raised the issue of negotiating over workload. In a memo dated January 21, 2005, the administration wrote, "the University values the input of AAUP-WSU on this issue and invites conversation on the subject [workload] to begin as soon as possible. Such conversations will be outside the collective bargaining process. In addition the University is currently willing to negotiate with the AAUP-WSU about possible provisions for grieving workload assignments."

In response to this memo AAUP-WSU proposed forming a joint committee outside contract negotiations to establish a workload policy for all tenured and tenure-track faculty, with stipulation that the policy would not be changed without the agreement of both parties and that violations of the policy could be grieved by bargaining unit faculty using the procedures in the CBA. Our offer, rooted in the concept of shared governance, was rejected by the administration. Eventually, we reached a new tentative agreement and withdrew our proposal on workload.

In November 2007, the administration circulated a proposal to change workload policies. In this proposal, the administration stated that the baseline teaching load for faculty should be 12 quarter hours per term and that faculty who were active researchers would have a reduced teaching load similar to the teaching loads currently assigned to faculty. This was the first time that the administration attempted to tie teaching loads to scholarly productivity. It was the position of the administration that they had the right to unilaterally change workloads as a “management right.”

On November 16, 2007 Anna Bellisari, then President of AAUP-WSU sent a letter to the administration stating:

The position of AAUP-WSU on this matter is simple: the proposal and the effects of the proposal are mandatory topics of negotiation, as is made clear by ORC 4117.03, “Rights of public employees”. Since we anticipate beginning negotiations in January about a successor to the current collective bargaining agreement, we suggest that negotiations about the proposal and its effects take place at that time.

President Bellisari conclude her letter as follows:

It is our belief that we could succeed in negotiating a workload policy beneficial to both sides, making sure that the policy is fair and that alleged violations of the policy would be grievable.

In closing, we hope that the University will take the high road and negotiate the proposal as well as its effects. At the same time we want you, the President, the Provost and the Board of Trustees to understand in no uncertain terms that the Bargaining Unit Faculty represented by AAUP-WSU are prepared to use all of the resources at our disposal to fight a unilateral imposition of a non-negotiated workload policy.

Subsequently, the administration decided to drop or at least postpone the idea of changing our workload policy.

This brings us to the present. When the Chancellor and Board of Regents “recommended” that all universities adopt the semester calendar, the administration approached AAUP-WSU to ask us to agree to a change in our Calendar Article in our current CBA. Since we knew that agreeing to a change in calendar from quarter to semester would entail a

change in teaching loads, we responded by saying we would not agree to change the calendar unless the administration agreed to negotiate over workload. The administration could have waited until negotiations for a successor agreement, which would likely begin in January of 2011, to negotiate over a new calendar. The AAUP-WSU could have refused to agree to a change in calendar and forced negotiations to go to fact-finding. A fact-finder would have almost certainly ruled in favor of the administration and the administration would have been free to impose a new calendar and unilateral changes in workload. At that point our only choice would have been to strike or accept the workloads imposed by the administration. In other words, the administration could have almost certainly prevailed in imposing a new workload policy with a research requirement.

The sticking point for the administration was that they needed the faculty to do the work of converting the curriculum, and they needed a new semester-based calendar approved in 2009 so that planning for conversion could begin soon enough to meet the deadline for converting to semesters in the fall of 2012. So the AAUP-WSU again proposed what we had proposed in 2005: negotiating a workload agreement outside of the collective bargaining agreement, which would have a grievance procedure and could not be changed without the agreement of AAUP-WSU.

Having little choice, the administration agreed to our proposal, and the parties signed the March 2, 2009 “Memo of Understanding Concerning Workload and Conversion to Semesters.” This Memorandum of Understanding (MOU) outlined certain parameters for the workload agreement that the parties were to develop. The MOU stated that teaching loads specified in the anticipated workload agreement would not increase the cost of instruction, would not affect the income of bargaining unit faculty, would not increase the overall teaching per bargaining unit faculty member in any college, and would maintain the quality of instruction. The MOU also stated:

The parties anticipate that the agreed-upon workload policy will, for the large majority of Bargaining Unit Faculty, result in no substantial change in teaching load. However, the parties further anticipate that the agreed-upon workload policy will include descriptions of expected faculty productivity in teaching, scholarship, and service in each college or department.

In addition, the MOU also provided for binding arbitration were the parties unable to agree on a workload policy. We made it clear that the acceptance of any workload agreement on the part of AAUP-WSU would be subject to a ratification vote of our members.

During negotiations, the administration took the position that teaching-load neutrality meant credit-hour neutrality. What would this mean? CoLA provides an illustrative example. There, bargaining unit faculty typically teach 3-2-2, and since these are four-quarter-hour courses, the bargaining unit faculty teach 28 quarter hours per year. Converting quarter hours to semester hours would mean that bargaining unit faculty would teach 18.67 (two-thirds of 28) semester hours. With three-semester-hour courses, this would result in a teaching load of at least 3-3 (18 semester hours). AAUP-WSU rejected this interpretation of teaching load neutrality, arguing that the number of courses taught by faculty in any given semester was a better and more broadly recognized measure of teaching loads. By this measure, faculty in CoLA teach three courses one-third of the time and two courses two-thirds of the time so that a 3-3 teaching load would represent a clear increase in teaching loads.

Eventually, we agreed to a standard teaching load 3-2 in CoLA, CEHS, and RSCoB; 2-2 (or the equivalent) in CoSM; 2-2 in CECS; 3-3 at Lake; and 20 units in CoNH. For a history of the negotiations in detail see the July 10, 2010 issue of the Right Flier (<http://www.wright.edu/admin/aaup/rightflier/vol10no4july2010.pdf>) or see (<http://www.wright.edu/admin/aaup/workload.html>). Further, the tentative agreement specifies that faculty who receive this standard teaching load are expected to maintain an active program of scholarship. Importantly, the standard for maintaining an active program of scholarship was defined roughly as accomplishing in a five-year period 50% of the scholarship required for tenure. Other details of the agreement are discussed in the July 10, 2010 Right Flier, and all regular chapter members have received a copy of the actual tentative agreement via e-[BM1]mail.

If we reject the tentative agreement, it is likely that we will end up going to binding arbitration. An arbitrator will certainly look at teaching loads and research expectations at other universities that are nominally comparable to Wright State. If you believe that what we have negotiated represents an increase

in teaching loads or that the scholarship requirement is out of the norm, then I invite you to look at workload policies at other institutions in Ohio. Rejecting this agreement is certainly the prerogative of the membership, but that will mean putting the determination of our workloads in the hands of an arbitrator. The consequences of that are unpredictable, but an outcome worse than our tentative agreement is a realistic possibility.