

AAUP

NEWS

Volume XVII No. 4 July 19, 2006

Arbitrator rules for AAUP in case on unit status & pay

An arbitrator has ruled in favor of the Cincinnati State AAUP and has awarded over \$25,000 in back pay to a faculty bargaining unit member whose job category had been in dispute.

This ruling brings an end to a case that the AAUP has been working to resolve for nearly three years.

AAUP Grievance Officer John Battistone said, "It's especially gratifying that the arbitrator's ruling recognized that the administration used every possible method to drag out the case."

John added, "The AAUP has an excellent track record in cases that have gone to neutral third-party arbitrators, so we were confident that we would prevail. But it's frustrating that the administration persists in using these kinds of tactics to resolve our disputes."

The disputed job is an Academic Advisor position in the Humanities Division held by Julie McLaughlin.

When this position was advertised in Spring 2003, it was believed to be an AAUP Unit 1 job; however, when Ms. McLaughlin accepted the job

offer in Summer 2003, she was told it was an AAUP Unit 2 position with a lower starting salary and no term off.

The AAUP filed a grievance immediately, but the administration refused to even hear the case or process the grievance. The administration said the only venue they would agree to use for resolution was the State Employment Relations Board (SERB).

John said, "We knew that going to the SERB would be a slow process, but that was the only route possible."

see *Arbitration award/ 2*

AAUP prepares to grieve unresolved workload disputes

After nearly a year of attempts to compromise with the College administration regarding some of their workload concerns, the Cincinnati State AAUP is preparing grievances related to implementation of the workload provisions of the current contract.

AAUP Chapter President Pam Ecker said that a number of full-time faculty members in AAUP Unit 1 were not fully compensated for all of their work in the 2005-06 academic year.

"The contract negotiated last summer included changes in the workload provisions," Pam said. "These changes should have led to reductions in load for a number of faculty members. If loads were not reduced, faculty members should have received all of the compensation owed to them for their work."

Pam continued, "Last summer, the Faculty sought some changes in the workload provisions of the contract, to address the challenges that have arisen over the past several

years in accomplishing faculty duties and responsibilities. As the College enrollment has grown significantly, demands on faculty have increased also," Pam said.

"The fact-finder's contract recommendations included most of the faculty-proposed changes to workload," Pam said.

"The Board rejected the fact-finder's report," Pam continued, "but after we returned to

see *Workload grievances/ 4*

Arbitration award/ continued from 1

The AAUP asserted that the position always should have been in AAUP Bargaining Unit 1, since it is comparable to other Academic Advisor positions in Unit 1, and was not created pursuant to the terms of a specific grant, which is the requirement for positions categorized in AAUP Unit 2.

The SERB agreed with the AAUP in November 2005 that Ms. McLaughlin's position rightfully belonged in AAUP Bargaining Unit 1.

Despite the SERB ruling, the administration refused to provide back pay for the two years spent in the wrong job category.

"The College administration has a history of claiming that certain faculty positions are 'soft money' hires, so those faculty are excluded from the rights and privileges afforded under the faculty Unit 1 contract," John said.

"They tried a similar tactic in 1993, and the AAUP prevailed

in that arbitration to establish that a particular faculty position belonged in Unit 1 rather than Unit 2," John said.

"It was gratifying that the SERB ruled in our favor on the essential issue of whether this faculty job belonged in Unit 1," John continued. "But then we learned that instead of just calculating the back pay owed to Julie, the administration was going to require us to go through yet another time-consuming legal process."

In December 2005, AAUP filed a grievance seeking back pay for Ms. McLaughlin. After additional administration delay (see "Timeline" on p. 3), an arbitrator finally heard the case on May 4, 2006.

The arbitrator's ruling was delivered to the American Arbitration Association on June 28, and was received by the AAUP on July 3.

In the ruling prepared by arbitrator Mitchell B. Goldberg, he said:

"In this case, the Union was met with an insurmountable roadblock that prevented the first grievance from being analyzed and considered. . . ."

"The Union has attempted to pursue rights for the Grievant on two separate occasions. The College required the Union to jump through the legal hoop of obtaining a favorable SERB decision before it would consider any grievance. . . This was done."

"The College has violated the Grievant's contractual rights. . . by not paying her [correctly] from the time she was hired."

Ms. McLaughlin said, "I'd like to thank everyone on the AAUP Executive Committee for continuing to work on this case for such a long time."

AAUP Chapter President Pam Ecker said, "It can be discouraging when we are forced to take so many steps to get past the administration's hurdles, but it's great to know that after all the time and effort, this situation turned out for the best."

AAUP scholarship awarded to student earning second Associate's degree at Cincinnati State

The AAUP Scholarship for 2006 has been awarded to Annette K. Wallace, a student in the Nursing program.

The AAUP Scholarship provides \$2000.00 for tuition, fees, and books for a current Cincinnati State student who has demonstrated academic excellence. Preference is given to a qualified applicant who is a labor union member or is related to a union member.

Ron Craig, Chair of the AAUP Scholarship Committee, said Ms. Wallace has a 3.7

GPA and received very strong recommendations from three Cincinnati State faculty and staff members. Her husband, Mark, is a member of the United Auto Workers, Local 683.

In 2001 Ms. Wallace graduated from Cincinnati State's Chemical Technology program, and she subsequently worked as a technician for International Paper and Procter & Gamble.

However, her career interests turned toward nursing as a result of experiences helping a friend whose son was injured

in an auto accident and went through rehabilitation at Drake Hospital.

Ms. Wallace, who expects to complete the Nursing program in January 2007, has completed clinical training at Drake and Bethesda Hospitals. She thanked the AAUP for "believing in me" and helping in "getting two terms closer to my goal!"

The other members of the 2006 AAUP Scholarship Committee were Crystal Dunlevy, Ann Fox, Bob Jakubovic, and Bob Nields.

Timeline of Case Concerning AAUP Unit Status & Pay (See story starting on p. 1)

April 2003 - Academic Advisor, Humanities, is advertised as a Unit 1 position.

July 2003 - The job is offered to Julie McLaughlin as a Unit 2 position.

August 2003 - AAUP files a grievance and asks to refer the dispute to an arbitrator, as had been done for a similar case several years prior. The administration refuses to arbitrate.

September 2003 - AAUP files a SERB Petition for Clarification.

September 2004 - SERB hearing takes place; AAUP and administration present their cases to a SERB Administrative Law Judge.

February 2005 - SERB Administrative Law Judge agrees with AAUP and recommends that the disputed position should be included in AAUP Unit 1. The administration files objections, and the AAUP files a response.

November 2005 - SERB issues an order that the disputed position is rightfully included in AAUP Unit 1. The SERB order is received by the College administration on November 28.

December 5, 2005 - AAUP Grievance Officer John Battistone requests a meeting with Human Resources Director Gene Breyer to discuss retroactive adjustments to Ms. McLaughlin's salary. Mr. Breyer responds by email that he does not think the SERB order requires any retroactive changes.

December 14, 2005 - AAUP files a formal grievance seeking compensation adjustments for Ms. McLaughlin.

December 22, 2005 - Mr. Breyer writes a response stating that the administration had properly implemented the SERB order beginning on Nov. 28. Mr. Breyer also says that since the SERB order did not make any statements about retroactive adjustments, the issue of back pay is not grievable or arbitrable.

January 5, 2006 - AAUP files a formal step 2 grievance with Executive Vice President Carolyn Anderson appealing Mr. Breyer's ruling.

January 17, 2006 - Dr. Anderson writes a two-sentence response stating that she supports Mr. Breyer's decision.

January 24, 2006 - AAUP requests arbitration, pointing out that the contract does not give the administration the authority to summarily dismiss a grievance filed by the AAUP. The contract says that the AAUP in its sole discretion decides whether to advance a case to arbitration. In addition, the AAUP informs the administration that the chapter attorney is preparing to file a lawsuit to compel arbitration.

February 2, 2006 - Dr. Anderson sends a memo to AAUP stating that the administration has reconsidered and is now willing to take the case to an arbitrator—provided that the first question submitted to the arbitrator is whether the issue of back pay is arbitrable.

May 4, 2006 - Arbitration hearing takes place.

July 3, 2006 - Arbitrator's decision arrives, awarding back pay plus interest to Ms McLaughlin.

Arbitrator Mitchell B. Goldberg's decision notes that traditionally, interest is not awarded in cases such as this, but states that interest is appropriate in this case "because the Grievant should have been paid in accordance with the Collective Bargaining Agreement from the outset. . . and the SERB ruling confirmed her entitlement."

Workload grievances/ continued from 2

bargaining and reached our tentative agreement last summer, the administration announced in the *Daily News* that the new contract included a '20 percent reduction in workload' for faculty," Pam said.

"However, no one received a 20 percent reduction," Pam said. "In fact, the administration's actions this year caused most faculty to simply continue the same workload as the previous year."

"Some faculty members, primarily those in Humanities and Business Tech whose load is almost always composed of 3-unit courses, did get some reduction in load," Pam said.

"The current contract says faculty who teach primarily 3-unit courses should be assigned 18 courses per year, rather than the 20 courses taught in the past," Pam said. "For the most part, we have not had problems implementing that portion of the contract language."

"However, we do have many problems related to so-called 'banked' units," Pam said. "In many cases, the 'banked' units are overload payments that were never made." (See Sidebar.)

Pam said, "The administration has indicated that they only intend to pay for 'banked' units when the faculty member's annual load is above 64. But that's not what the contract says."

AAUP attempts to resolve problems through discussion

Pam said that during the past academic year, members of the AAUP Executive Committee and members of last summer's Faculty Bargaining Team have had several meetings with Academic Vice President Monica Posey and some Deans and

Assistant Deans to attempt to resolve problems related to carrying out the contractual workload provisions.

"We had several informal meetings that, in essence, allowed us to share some of the detailed discussion of workload concerns that never happened during the negotiations last summer," Pam said.

"At one point in Spring, the AAUP Executive Committee said we could agree to a proposal, made by the administration, for changing the workload language of the contract," Pam said.

"We believed this proposal would address the concerns raised by Dr. Posey and the Deans, but would still preserve fundamental improvements in the workload article that the fact-finder recommended," Pam said.

"The AAUP made a good-faith effort to try to resolve every issue that the administration discussed with us," Pam added.

"This was not the first time that informal discussion was used to attempt to improve new contract language that had been agreed upon after a fact-finder's recommendation," Pam said.

"Our very first contract, in 1990, also had workload language recommended by a fact-finder," Pam said. "After the agreement had been settled, both the AAUP and the administration realized we had some problems, so we worked together in the FACT committee to develop improved language that both sides supported."

"This time, however, we were told that Dr. Wright rejected the proposed compromise language that had been based on the administration's proposals," Pam said.

"Rather than achieving a solution, we were instead told us that the administration was going to continue to ignore many 'banked' units and only pay for workload they way they think they are allowed to," Pam said.

"Since arbitration is a very slow legal process, it's likely that this matter is not going to be resolved for every faculty member for quite some time," Pam said.

"Of course, the AAUP Executive Committee is willing to meet with the administration any time that they might wish to reconsider a compromise," Pam said.

What's the Workload Problem?

AAUP Chapter President Pam Ecker said that several workload grievances stem from these facts:

- **Counting the term load and overload.** The contract states clearly that for faculty whose load is measured primarily in instructional units (and who are not in the group that teaches primarily 3-unit

courses) the maximum units per term is 16.

Any assigned load that is above 16 is overload, and the faculty member is to be paid for the entire course (or courses) that sends the load over 16.

For instance, if a faculty members teaches one 5-unit course and three 4-unit courses,

see *Workload problems/ 5*

Workload problems/ continued from 4

the total term load is 17—but the 4-unit course that sends the faculty member over the term limit of 16 must be compensated as 4 units of overload.

- **Counting chair units.** The contract specifies that program and area chair units are to be counted first when calculating load. Chair units should never be treated as overload.

- **Reducing load through “light” terms.** The primary exception to being paid for all overload within the term is if a faculty member agrees to an annual load that includes “heavy” and “light” terms.

For instance, a faculty member could agree to teach four 4-unit courses plus one additional 4-unit course and receive no overload pay—provided that the faculty member and Dean have agreed that later in the same academic year, that faculty member would have a term with 12 assigned units of load.

The contract states that a faculty member may waive compensation as a “trade off” against a lighter workload in a subsequent term.

- **Units that are “banked” and not compensated.** Despite the contract language, a number of faculty members (most of whom have Summer as their term off) have ended the academic year with a large number of workload units that were not compensated during the term the work was performed, were not “traded off” against a lighter load, and were not paid.

The administration refers to the practice of setting aside units and not paying overload as “banking” units.

“The word ‘banking’ does not appear in the current contract

language, and never was used in any past contracts,” Pam said.

“What we have this year is a significant number of faculty whose so-called ‘banked’ units are really overload payments that were never made,” Pam said.

Pam added, “The administration has indicated that they only intend to pay for ‘banked’ units when the faculty’s member’s annual load is above 64. But that’s not what the new contract says.”

“The AAUP is aware that some faculty members might have agreed to ‘bank’ units and not be paid for their overload above 16 within the term,” Pam said.

“We believe this happened in many cases because the faculty members were afraid that if they did not give up payment for units above 16 in the term, they would be assigned courses they did not want to teach, or would be denied the opportunity to earn overload in some future terms,” Pam said.

“No matter what the reason, it’s not OK for individual faculty members to ‘volunteer’ to give up some of their earned compensation, or to make an

Faculty BAT report/ continued from 6

team’s only contribution was the recommendation of three Action Plan items to be considered if additional funds became available.

We believe that if the College was truly committed to continuous quality improvement, as defined by our participation in activities such as the Higher Learning Commission’s AQIP (Academic Quality Improvement Process) and CQIN (Continuous Quality Improvement Network), the Budget Advisory Team would have been highly involved in establishing and

agreement with their Dean to ignore the language of the contract,” Pam said.

Pam continued, “We encourage all faculty members whose work is measured in units, and who do not generally teach only 3-unit courses, to look carefully at their projected load for 2006-07,” Pam said. “These projected loads were to be made available by June 1, so faculty members who do not have their projected load should ask the Dean or other administrative scheduler to provide it.”

“If that load includes any ‘banked’ units over 16 that are not a trade-off for a lighter term elsewhere in the year, it’s quite possible that the contract is being violated,” Pam said.

Any faculty member with questions or concerns should get in touch with Pam, with Grievance Officer John Battistone, or with any other member of the AAUP Executive Committee.



reviewing the budgeting process and would have made meaningful recommendations for the Executive Team to consider.

If the Budget Advisory Team is to continue and produce anything useful for the FY 2008 budget cycle, the Faculty Senate must press for a more structured budget process that includes meaningful recommendations from this team.

If that cannot be accomplished, the Team might as well be disbanded.

Report to the Faculty Senate, from the Faculty Representatives to the Budget Advisory Team, 2005-2006

*Debbie Bogenschutz
Robert Eveslage
Michele Geers
Jan Hoeweler
Bob McLain*

Team formation and charge

In Early Fall 2005, we were asked by the Faculty Senate to serve on the Budget Advisory Team. As defined by the Collective Bargaining Agreement, the team included the 5 faculty members appointed by the Faculty Senate and 10 members appointed by the administration.

Each of us believed we could make a contribution because of our backgrounds (which include accounting, project management and budgeting, service in College administration, and experience analyzing College finances because of service on past budget teams or in past contract negotiations). All of us were concerned about the College's financial situation with respect to Senate Bill 6. Each of us accepted the appointment.

At the first meeting, Dr. Wright addressed the team and charged us to:

- review the budget process.
- review the 2006-2007 budget details.
- make recommendations.

The team considered the time required to review both the process and the budget details, and concluded we could not do both during the 2006-2007 budget cycle. The team was then directed to review the budget details. The review of the budget process was to be postponed until after the Fiscal Year 2007 budget was approved.

Team activities

From November through February the team worked out procedural items such as how the team would operate, how often we should meet, and the length of the terms for members. The team also discussed the best way to develop

a budget review timeline and how to review the various pieces of the budget as they became available.

In March, the team received the general fund revenue projections (including both 2% and 3% enrollment targets) and the institutional fixed cost projections for the College. In late March, the same information was sent to all of the cost center managers to obtain budget projections for each center.

The final projections were to come to the team via the appropriate College Vice President, to indicate their review and approval. We discussed how the team would review this information, and agreed to hold weekly meetings to allow our team adequate time for review and recommendations.

In April the team received the FY 2007 allocation of budget increases by VP area, as directed by the President's Executive Team. These projections were based on FY 2006 numbers, reallocation of funds held in the FY 2006 general fund, and an across-the-board increase for each VP area. Obviously, past budget data was important to the FY 2007 budget process.

The FY 2006 figures were never reviewed by our team because we were repeatedly told by the team's co-chairs that previous budget information was not applicable to FY 2007.

At several early meetings of the team, there was heated discussion of whether we should review past budgets and budget trends as a way to help develop future budgets. Budget information from the past 5 years was supplied to all 15 team members by one of the faculty team members, but this information was never used.

Our team was asked to be prepared to meet weekly or even twice weekly during May to review sections of the FY 2007 budget as they were submitted.

However, all of these budget review meetings were cancelled,

and our team never met to review any FY 2007 budget submissions. As a result our team never made any recommendations on the actual FY 2007 budget.

The only remaining work accomplished by our team was a review of Divisional, Department, and Unit (DDU) Action Plans, submitted by Greg Mason, the College's Director of Strategic Planning. We received a list of 16 Action Plan items that were not included in the FY 2007 budget being prepared by the President's Executive Team.

We were asked to prioritize these 16 items for possible implementation in FY 2007 if additional funds became available.

Because we had no information about the actual FY 2007 budget, we asked the team co-chairs to provide us a dollar amount that might be available for these 16 items. The amount was approximately \$227,000, which could cover only a small fraction of the requested items.

Through discussion, it was determined that several of the Action Plan items were already fully or partially covered in the actual FY 2007 budget, so these items were eliminated from the list. The team prioritized the top three items and sent forward a recommendation.

We later learned that the \$227,000 allocation represented about one-half of one percent of the total FY 2007 budget.

Conclusions

Based on the charge given to the team in November 2005, we produced few, if any, tangible accomplishments.

We definitely were not a budget advisory team. The budget for FY 2007 was put together by the Finance Department and was reviewed and approved solely by the President's Executive Team. Our

see Faculty BAT report/5

Budget Team/ continued from 8

expressed by the Senate and the report given at the Board meeting by Chief Fiscal Officer Sandra Simpson.

Michele said she discussed with Dr. Wright and Mr. McKenna some of the suggestions faculty have made regarding how to improve the annual budget-building process and help achieve College strategic goals for increasing revenues and appropriately monitoring expenditures.

Michele said Dr. Wright and Ms. Simpson are expected to meet with the Faculty Senate later this summer, with all faculty representatives on the BAT invited to attend.

Michele said she also recommended that the initial meeting of the BAT should take place in August, when faculty have time to consider planning for the entire year, rather than holding a start-up Team meeting

during the initial weeks of Early Fall Term.

Michele, who is also an Accounting instructor, said, "The faculty members who serve on the Budget Advisory Team are eager to dig into the details of the College budget, so we can offer meaningful ideas for ensuring that the College remains in good fiscal condition. We look forward to an improved Team process in the future."

Board of Trustees approves \$58.6 million budget for Fiscal Year 2007

The College Board of Trustees approved a one-page, 15-line budget for Fiscal Year 2007 at the June 27 meeting, but stated this approval was contingent on receiving a "detailed line-item budget" at the next Board meeting, on July 25.

The total Fiscal Year 2007 budget approved by the Trustees is about \$58.6 million. The fiscal year began on July 1, and ends on June 30, 2007.

At the June meeting, prior to the Faculty Senate report, Chief Fiscal Officer Sandra Simpson reported that the Budget Advisory Team was in its first year of operation, and had assisted "primarily at the end of the budget-building process" by establishing priorities for allocating about \$228,000 in "set-aside" funds.

Ms. Simpson said the prioritized items came from a list of possible Action Projects submitted to the President's Executive Team by budget-area managers.

Ms. Simpson reported that the Budget Advisory Team had decided that the highest priority Action Project should be providing a salary increase for adjunct faculty.

At the June meeting, the Trustees approved an increase to adjunct compensation of \$20 per credit hour.

In response to a question from the Trustees, Academic Vice President Monica Posey said that the financial impact of this increase would total about \$208,000 in FY 2007.

Dr. Posey said that about half of the adjunct faculty have been teaching at the College for nine or more terms, and are paid at the highest rate (which was increased from \$350 to \$370 per credit hour).

Ms. Simpson also reported to the Trustees that the College's Executive Team was able to "find funds" to support all of the other Action Items the Budget Advisory Team had prioritized. The total cost of these items was not stated.

Trustee Lisa FitzGibbon asked Ms. Simpson how much of the College budget is "truly discretionary," meaning not committed to items such as employee salaries, utility bills, and other such continuing expenses. Ms. Simpson said about 12 to 14 percent of the budget is discretionary.

Trustee Michael Oestreicher asked if the budget is built conservatively, and asked what scenario might lead to a "worst case" of the College not achieving a composite score above 1.75, as required by Senate Bill 6 (and as occurred in Fiscal Years 2003 and 2005).

Ms. Simpson reported that the budget assumptions for FY 2007 included conservative projections for enrollment growth (2.5 percent) as well as plans for building the College's financial reserves, which has a large impact on the Senate Bill 6 composite score.

President Wright said that a "worst case scenario" could occur if enrollment for the year is less than projected, or if there is an unforeseen cut in state subsidies.

Ms. Simpson told the Trustees she expects the College to finish Fiscal Year 2006 with a composite score of 2.4, and she expects the score for Fiscal Year 2007 to be 2.4 or higher.

Trustee John Steele said that all College employees are stakeholders in the budget, and encouraged everyone to "bring forward ideas" for saving money and increasing revenues.

Faculty on Budget Advisory Team seek improved process for building College budget

The Faculty Senate and the five faculty members who serve on the College's Budget Advisory Team informed President Wright and the Board of Trustees at the June 27 Board meeting that significant improvements are needed in the budget-building process.

In response, President Wright told Senate President Michele Geers that the Senate should have discussed its concerns with him in a venue other than the Board meeting. However, as a result of the Senate's expression of concern, process changes are expected to begin no later than September.

The faculty members who were appointed by the Faculty Senate last fall to serve on the Budget Advisory Team (BAT) are Debbie Bogenschutz, Bob Eveslage, Michele Geers, Jan Hoeweler, and Bob McLain.

The faculty representatives on the BAT sent written reports to the Senate describing their disappointment with the lack

of meaningful participation in building the College budget for Fiscal Year 2007.

The Senate decided during Spring Term meetings that the concerns expressed by faculty BAT members should be sent to Dr. Wright and to the College Board of Trustees.

Senate President Geers sent a written copy of the report to Dr. Wright prior to the June Trustees' meeting. (The report sent to Dr. Wright is on p. 6.)

At the June 27 Board meeting, Michele gave a brief synopsis of the concerns, and said that the Senate and the faculty BAT members looked forward to collaborating with the administration to achieve improvements.

Immediately after Michele's report, President Wright said, "Collaboration is a two-way street." He then indicated dissatisfaction with Michele bringing the Senate's concerns to the public Board meeting,

and said the Senate should have made its concerns known to him sooner and scheduled a meeting with him.

Michele responded that it can be difficult to schedule meetings at the end of a term, and said the Senate and the faculty members serving on the Budget Advisory Team think it is important to conduct meaningful, open discussion of budget issues throughout the year.

Michele said that at the request of Board Chair Robert McKenna, she attended a meeting on July 7 with Dr. Wright and Mr. McKenna to discuss the Senate's concerns about the role and function of the Budget Advisory Team.

According to Michele, Mr. McKenna said he didn't think the President's strong reaction to Michele's Senate report was warranted, and also said he didn't notice significant differences between the concerns

see Budget Team/ 7

**CINCINNATI STATE CHAPTER
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
3520 CENTRAL PARKWAY
CINCINNATI, OHIO 45223-2690**

EXECUTIVE COMMITTEE

PRESIDENT

PAM ECKER
PHONE: 513.569.1722

VICE PRESIDENT

JOYCE RIMLINGER

GRIEVANCE OFFICER

JOHN BATTISTONE

SECRETARY

GEOFF WOOLF

MEMBERSHIP CHAIR

DAVID SIMMERMON

TREASURER

PAUL DAVIS

MEMBER-AT-LARGE

JASON CAUDILL

PAST PRESIDENT

BOB EVESLAGE

CHAPTER WEBSITE

WWW.CINSTATEAAUP.ORG