

Jessica S. Monroe

From: George S. Crisci <gsc@zrlaw.com>
Sent: Tuesday, August 11, 2020 12:30 AM
To: Eben O. McNair; 'Foster Jr, Sidney C'
Cc: 'Nobil, Steven'; 'Moore, Sarah'; Jessica S. Monroe
Subject: RE: Step Two Grievance Answer
Attachments: Response to E. McNair E-Mail re NTT Coverage in Art. 15 Retrenchment (2).pdf

Sandy,

Your e-mail of August 4 and attachment to same were forwarded to me for a response. Enclosed is the University's response to the question of whether NTT faculty are included in Article 15 retrenchment.

GSC



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From: Eben O. McNair [mailto:emcnair@smcnlaw.com]
Sent: Friday, August 07, 2020 9:24 PM
To: 'Foster Jr, Sidney C'; 'Bill Rich'; 'Tim Matney'
Cc: George S. Crisci; 'Nobil, Steven'; 'Moore, Sarah'; 'Akron-AAUP Negotiating Team (nt@akronaaup.org)'; Jessica S. Monroe
Subject: RE: Step Two Grievance Answer

Sid-
When may I expect a response?

Thanks,
Sandy

Sandy,

I am responding on behalf of the University and Sid to your e-mail and enclosed letter of August 4, 2020, regarding the University position that NTT faculty are excluded from coverage under Article 15 retrenchment. The University will maintain its position, as stated on page 7 of the Answer to the Grievance.

While the University understands that statements were made by members of prior bargaining teams for both parties that there was no intent to exclude NTT faculty from coverage under Article 15 (which we understand were made by Dr. Green and Mr. Reeves during a subcommittee meeting of the bargaining team sometime during the Spring of 2015 and were not reiterated to the full bargaining teams), there exists no contract language to support those comments and discussions. Article 15 is devoid of any language directing that NTT faculty be laid off first, or even laid off at all. Article 29 likewise mentions nothing about the subject; rather, the language in Article 29 suggests strongly that NTT faculty remain employed if they maintain satisfactory performance levels and the University determines in its discretion that there is a need for them. There is no language in either Article that requires the University to layoff NTT faculty first.

Indeed, the negotiated contract language confirms that Dr. Green and Mr. Reeves were wrong in imagining that the then Instructors and College Lecturers were included in Article 15. They never have been mentioned in Article 15 even though those positions have existed for years. The comments by Dr. Green and Mr. Reeves also bear no relation to when the parties negotiated Article 29. The issue of layoffs has nothing to do with the construction of Article 29.

The removal of the last paragraph from the May 21, 2020 draft of the letter did not waive the University's right to raise this interpretation of the pertinent contract language. The purpose of the letter was to provide the basis to justify taking action. It was issued in the context that the parties were attempting to cooperate in reaching a result. The AAUP objected to this argument as a basis for invoking Article 15, Section 12, and it would not adopt the letter as the basis for implanting any cost-reduction plan. The University wanted to avoid the controversy, so it agreed to remove the paragraph.

In the end, the amicable context in which the University issued the letter dissipated. The AAUP never adopted the letter, and the parties failed to reach a negotiated outcome. AAUP filed a grievance to the letter. The AAUP denied that any basis for issuing the letter existed under Article 15, Section 12. In fact, AAUP's grievance denies that catastrophic circumstances even exist to invoke Article 15, Section 12, and it also denies the manner in which the University exercised its authority under that contractual provision. AAUP also openly opposed the parties' negotiated Tentative Agreement, refusing even to call it that. The bargaining unit rejected the Tentative Agreement, and the University withdrew it, thereby nullifying all agreements and understandings.

This dispute need not be an issue we need to confront at this moment. The University intends to present the number of layoffs and who gets laid off with the NTT faculty included and excluded. Moreover, we understand that a significant portion of the bargaining unit (i.e., the NTT faculty) probably take exception to the AAUP's position on this point.

The University looks forward to defending this and other legal positions during the arbitration.