

Unfair Labor Practice Charge - attachment

Statement of Charge:

The American Association of University Professors, University of Akron Chapter (“Akron-AAUP”) engaged in an ongoing and relentless course of unlawful conduct that has left the University no choice other than to file this charge to ensure the interests of the students and community the University serves are protected.

The COVID-19 pandemic created the greatest institutional challenge the University of Akron (“University”) has ever faced: how to react to an unforeseen circumstance that created a projected \$65 million deficit in its early stages and forced the University to persevere the inevitable additional impacts of the pandemic in Fiscal Year 2021 and future years. This challenge is unprecedented.

On March 9, 2020, the Ohio Department of Health confirmed through testing that Ohio had three patients positive with COVID-19 and determined this created “a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio. The very next day Governor Mike DeWine issued Executive Order 2020-01D declaring a State of Emergency in Ohio to protect the well-being of Ohio citizenry from the dangerous effects of COVID-19. That day, March 10, 2020, University President Gary Miller issued a directive suspending all classes until the conclusion of Spring break on March 30 and migrating all courses to online delivery beginning March 30. He also cancelled all large-scale and non-essential on-campus events until at least April 20, 2020.

The University and Akron-AAUP are parties to a collective bargaining agreement effective July 1, 2018 through December 31, 2020 (“Labor Contract”). Pursuant to Article 15 titled *Retrenchment* of the Labor Contract, the University must follow specific procedures (i.e. retrenchment) in order to effectuate faculty layoffs. Due to the notice periods required, these retrenchment procedures prevented the University from laying off faculty effective on or before August 24, 2020 (the beginning of the Fall 2020 academic semester). Under Section 12 of Article 15, the University could bypass Article 15 retrenchment procedures if “catastrophic circumstances, such as *force majeure*, could develop which are beyond the control of the University and would render impossible or unfeasible the implementation of procedures set forth in this Article” (“Catastrophic Circumstances Provision”).

Beginning on or about April 21, 2020, the University and Akron-AAUP began meeting to discuss the impact of the COVID-19 pandemic on the University and to negotiate over the same. The University made clear that it was still in the process of gathering information to understand the nature and scope of the challenge so it could identify proposed course(s) of action to Akron-AAUP. The University and Akron-AAUP negotiating teams met three more times in April and early May and explored potential options in a very generalized fashion.

On April 23, 2020, University President Miller delivered remarks *Affirming Our Promises in the Post-COVID World* and addressed the impact of the pandemic on the University. He explained the need to align the University with the financial, economic, and social realities of a post-COVID world. He requested that each member of the University be involved in processes of shared governance and collaborating in an efficient and timely manner. The following day, Akron-AAUP responded to University President Miller’s remarks and memorialized its offer to work in collaboration with the University with the spirit of shared governance to help solve the issues cause by the COVID-19 pandemic.

When the reality of the catastrophic circumstances created by COVID-19 became inescapable, on May 21, 2020, the University formally invoked its right under Article 15, Section 12 as it knew its proposed course of action as related to Akron-AAUP had to include securing savings through layoff of faculty prior to the start of the 2020-2021 academic year on August 24, 2020.

From May 21, 2020 forward, negotiation sessions between the University and the Akron-AAUP crisis negotiation team focused on exploring interim cost savings measures and on minimizing the number of Akron-AAUP members to be laid off prior to the start of the 2020-2021 academic year.

It should be noted that the University implemented cost-saving measures that affected every non-Akron-AAUP work group and the operational structure of the University. Action items by the University's Board of Trustees on May 29, 2020 included:

- The University redesigned its academic administrative structure moving from 11 colleges to 5 colleges effective July 1, 2020 and implemented a 25% reduction initiative for departmental budgets, which yielded an average 20% reduction in a strategic and differential manner in all academic and non-academic departmental budgets, including Athletics. It should be noted that the cuts to athletics were deep and included but were not limited to the elimination of 3 sports programs: men's golf, women's tennis, and men's cross country.
- The University enacted new employment rules, 3359-26-05.1 *Reductions in Workforce* and 3359-11-02.1 *Furloughs for Non-Bargaining Unit Employees*, in order to achieve needed cost savings from the contract professional, non-bargaining staff, and non-bargaining faculty workgroups in Fiscal Year 2021. The furlough rule was enacted primarily as a tool to respond to the uncertain and continuing effects of the pandemic. The University later implemented reductions in workforce, and it is assessing whether furloughs will be needed in the future.
- The University proposed and adopted a revised employment rule, 3359-22-01 *Contract Professional Rule* to achieve needed cost savings from the contract professional workgroup in Fiscal Year 2021. The University later implemented personnel action items pursuant to this rule.
- The University adopted a tiered salary reduction for non-bargaining staff and contract professionals for Fiscal Year 2021. Affected employees hired before April 1, 2020 earning more than \$50,000 per year had their wages reduced from 3% to 10% based on salary tier.
- The University accepted voluntary salary reductions from University's senior administration to reduce their salaries: President Miller (10% reduction); senior administrators including Cabinet members and those with the title Vice President or Dean hired before April 1, 2020 (10% reduction).
- The University increased health insurance premium contributions for non-bargaining unit employees not having faculty rank earning \$50,000 or more by 11 percentage points, effective January 1, 2021.
- The University terminated the Retiree Dependent Health Insurance Program for eligible dependents of non-bargaining unit former employees, effective December 31, 2020.

While the University continued negotiating with Akron-AAUP, it was also negotiating two separate agreements with Communications Workers of America, Local 4302 (“CWA”). The labor contracts between the University and two CWA units were effective May 1, 2016, through April 30, 2020, extended through June 30, 2020. Ultimately, the University and CWA entered into two Memoranda of Understanding recognizing the \$65 million projected Fiscal Year 2021 deficit and extending both contracts through June 30, 2021 with the following concessions:

- Across-the-board wage reductions for Fiscal Year 2021 for the trades and maintenance unit and across-the-board wage reductions of 1% for Fiscal Year 2021 for the staff unit.
- Permitted the University to implement up to two furlough days per month (maximum 24 furlough days for Fiscal Year 2021).
- Effective January 1, 2021, the University will permanently discontinue the retiree spouse and dependent healthcare coverage benefit.

The University also negotiated an extension of the labor contract with the Fraternal Order of Police/Ohio Council, Inc. effective July 1, 2016 through June 30, 2020. The extension through June 30, 2021 contained the following concessions:

- Wage reductions of 3% to 4%, depending on wage level (utilizing same tiers as non-bargaining unit employees).
- Increases to health care contributions of up to 11%, based on wage level (utilizing same tiers as non-bargaining unit employees).
- Discontinuation of the retiree spouse and dependent healthcare coverage benefit effective January 1, 2021.

At all relevant times, the Akron-AAUP crisis negotiation team represented to the University negotiation team that the parties were working towards a tentative agreement. The University relied upon these representations. On or about July 13, 2020, the University and Akron-AAUP negotiation teams reached and memorialized a tentative agreement (“7/13/20 TA”). The Akron-AAUP attorneys prepared the tentative agreement document, labelling it “Tentative Agreement.” The 7/13/20 TA was contingent on ratification by Akron-AAUP’s membership and adoption by the University’s Board of Trustees.

At the last bargaining session on July 13, 2020, the University specifically asked the Akron-AAUP negotiators to agree to recommend the 7/13/20 TA to their membership. The Akron-AAUP representatives stated that their bylaws prevented them from recommending tentative agreements. The University then asked the Akron-AAUP team to recommend ratification of the 7/13/20 TA to its Executive Committee. Akron-AAUP stated it would not do so, but that the pros and cons of the 7/13/20 TA would be given to the membership. The University then specifically asked if Akron-AAUP would commit to not soliciting “no” votes. Akron-AAUP represented that it would not solicit “no” votes. They explained their intention was to spell out the pros and cons with transparency and to tell the membership what would happen if the 7/13/20 TA was voted down so its membership could understand the consequences and cast an informed vote. The University relied on these representations by Akron-AAUP in finalizing the 7/13/20 TA.

At a special Board meeting on July 15, 2020, the University's Board of Trustees ratified the 7/13/20 TA. *University Resolution No. 7-7-20*. At this Board meeting, the University also abolished positions as follows:

- 82 positions (including classified, unclassified, trades and maintenance bargaining unit positions, staff bargaining unit positions, law enforcement positions, contract professional positions, a non-bargaining unit faculty position, and other positions), and
- 96 positions in Akron-AAUP bargaining unit.

On or about July 26, 2020, the Akron-AAUP Executive Committee issued a statement outlining its reasons for not recommending ratification "of the Administration's *last, best, and final offer* to the chapter." (Emphasis added)

From approximately July 29, 2020 through August 5, 2020, Akron-AAUP's membership voted on the 7/13/20 TA. That vote reportedly resulted in rejection of the 7/13/20 TA – "[o]ut of 364 Chapter members, 184 voted against ratification and 159 voted for ratification." It should be noted that only dues paying members were permitted to vote – there were 513 bargaining unit faculty on payroll as of July 29, 2020.

Based on the totality of circumstances, it is clear Akron-AAUP engaged in bad faith bargaining practices in violation of Rev. C. 4117.11(B)(3). Akron-AAUP's conduct also violated Rev. C. 4117.11(B)(1) and (2). Specifically, Akron-AAUP's unlawful practices and conduct include, but are not limited to:

- Material Misrepresentations to the University Negotiation Team from April 21, 2020 to July 13, 2020
 - Akron-AAUP misrepresented to the University negotiation team its intent to reach a tentative agreement from April 21, 2020 until July 13, 2020
 - Akron-AAUP misrepresented to the University that the parties mutually entered into a tentative agreement on July 13, 2020
 - Akron-AAUP misrepresented to the University that Akron-AAUP's negotiation team could not make a recommendation to its Executive Committee to approve the 7/13/20 TA
 - Akron-AAUP misrepresented to the University that Akron-AAUP leadership would remain neutral and provide its members the pros/cons that accurately represented the consequences of passage and rejection of the 7/13/20 TA
 - Akron-AAUP misrepresented to the University that the Union would not solicit "no" votes from membership who would vote on the 7/13/20 TA

- Akron-AAUP's Material Misrepresentations to its Membership
 - Since on or about July 19, 2020, Akron-AAUP deliberately misrepresented to its membership the 7/13/20 TA as the University's "proposed agreement." In making this change, Akron-AAUP materially changed the character (and Title) of the 7/13/20 TA as a mutually negotiated agreement into a management proposed agreement. In so doing, Akron-AAUP engaged in unlawful activity in violation of Rev. C. 4117.11(B)(3). Further, Akron-AAUP's action and conduct was coercive in nature, intending or having the effect of manipulating its membership in exercising their right to vote by influencing them to reject the 7/13/20 TA. This constitutes a violation of Rev. C. 4117.11(B)(1).
 - On or about July 26, 2020, Akron-AAUP's Executive Committee materially misrepresented the 7/13/20 TA as the "Administration's last, best, and final offer to the chapter." This material statement is patently false. Upon information and belief, the University learned after the 7/13/20 TA was reached that the Executive Committee was comprised of individuals, several of whom were on the Akron-AAUP crisis negotiation team who negotiated and entered into the 7/13/20 TA. This constitutes a violation of Rev. C. 4117.11(B)(1) and further evidences Akron-AAUP's bad faith bargaining in violation of Rev. C. 4117.11(B)(3). To the extent this material misrepresentation caused the University to make statements that Akron-AAUP contends violate Rev. C. 4117.11, Akron-AAUP's actions also violate Rev. C. 4117.11(B)(2).
 - It should be noted the University's Board relied upon the 7/13/20 TA as a tentative agreement by both parties when it passed its resolution on July 15, 2020 adopting the 7/13/20 TA. Akron-AAUP deliberately waited until after the University's adoption of the 7/13/20 TA before initiating its campaign of changing the character of that document by calling it a "proposed agreement" and as noted in the next bullet, referred to the TA as the "University's last, best and final offer." Such action violates Rev. C. 4117.11(B)(1), (2) & (3).
 - The Akron-AAUP Executive Committee unanimous recommendation also contained material misrepresentations as to described items. To that end, the University states, in part: (1) the administration, through its Provost, shared information with the Akron-AAUP team on the methodology used to identify faculty to be laid off; (2) the administration, through its negotiation team, shared with Akron-AAUP that the University's proposed layoffs went through a legal non-discrimination review; (3) the administration, through its negotiation team, confirmed discriminatory or retaliatory criteria were not used as part of the layoff identification methodology; (4) the administration provided the individualized position abolishment rationale forms to Akron-AAUP on July 27, 2020; (5) the administration confirmed, through its negotiation team prior to July 13, 2020, that the layoffs would not result in *de facto* program closure; (6) the Catastrophic Circumstances Provision did not need to be implemented on coaching contracts as those individuals voluntarily agreed to salary reductions (e.g. Football Head Coach, Men's Basketball Head Coach 20% voluntary salary reductions and no bonuses, and Women's Basketball Head Coach a 10% voluntary salary reduction and

no bonuses) without need to invoke the *force majeure* provision; and (7) the University and Akron-AAUP discussed other cost savings alternatives during negotiations.

- On or about July 26, 2020, the Akron-AAUP Departmental Liaison Council voted “not to recommend ratification of the university’s proposed last, best, final offer Collective Bargaining Agreement” and added “the last, best, final offer the university put in front of the Akron-AAUP negotiating team before negotiations ended.” These material statements are patently false. This constitutes a violation of Rev. C. 4117.11(B)(1) and further evidences Akron-AAUP’s bad faith bargaining in violation of Rev. C. 4117.11(B)(3). To the extent this material misrepresentation caused the University to make statements that Akron-AAUP contends violate Rev. C. 4117.11, Akron-AAUP’s actions also violate Rev. C. 4117.11(B)(2).
- The Akron-AAUP published its *Voting Yes vs. Voting No: A Guide to What Your Vote Means*. The document contained numerous material misrepresentations. This constitutes a violation of Rev. C. 4117.11(B)(1) and further evidences Akron-AAUP’s bad faith bargaining in violation of Rev. C. 4117.11(B)(3). To the extent this material misrepresentation caused the University to make statements that Akron-AAUP contends violate Rev. C. 4117.11, Akron-AAUP’s actions also violate Rev. C. 4117.11(B)(2).
- On or about July 25, 2020, Akron-AAUP revised its *Voting Yes vs. Voting No: Guide to What Your Vote Means* to better align it with accurate statements that the University had just published. However, the document still contained material misrepresentations. This constitutes a violation of Rev. C. 4117.11(B)(1) and further evidences Akron-AAUP’s bad faith bargaining in violation of Rev. C. 4117.11(B)(3). To the extent this material misrepresentation caused the University to make statements that Akron-AAUP contends violate Rev. C. 4117.11, Akron-AAUP’s actions also violate Rev. C. 4117.11(B)(2).
- On or about August 3, 2020, Akron-AAUP publicized *Dr. Rudy Fichtenbaum’s Rebuttal, Point by Point*. This item purported to provide an independent financial review of the University. The document contains material misrepresentations. Further, Akron-AAUP had previously and repeatedly stated to its membership that it could not independently review the University’s finances and attributed that deficiency to the University. Akron-AAUP’s material misrepresentation to its membership prior to the membership’s voting window and then subsequent publishing of the independent financial review during the voting period was coercive and violated Rev. C. 4117.11(B)(1). The University asserted its legal right to respond to Dr. Fichtenbaum’s statements. Any assertion by Akron-AAUP that the University’s response violated Rev. C. 4117.11(A)(1) evidences Akron-AAUP’s Rev. C. 4117.11(B)(2) violation. It further demonstrates Akron-AAUP’s bad faith dealings in violation of Rev. C. 4117.11(B)(3).
- Filing of Unfair Labor Practice Charges and Publicizing Same during Voting Period
 - On or about July 26, 2020, Akron-AAUP filed an unfair labor practice charge alleging violation of Rev. C. 4117.11(A)(5), while representing to its membership on the same

day “[o]ur Counsel has advised us that while this is an unfortunate change because the situation is already complicated, the Administration has not acted in bad faith.” The filing of SERB Charge No. 2020-ULP-07-0115 on Rev. C. 4117.11(A)(5) grounds was baseless and filed with purpose by Akron-AAUP to further its objective of actively campaigning against ratification of the 7/13/20 TA. Such conduct violates Rev. C. 4117.11(B)(1) in coercing members in exercise of their Chapter 4117 rights. It is noted that Akron-AAUP also based this unfair labor practice charge on Rev. C. 4117.11(A)(1). Such filing on this basis further evidences the University’s position that Akron-AAUP committed Rev. C. 4117.11(B)(2) violations as the conduct Akron-AAUP complains of was the direct result of Akron-AAUP publishing false statements and misrepresentations and refusing to correct them.

- On or about July 31, 2020, Akron-AAUP filed another unfair labor practice charge alleging violation of Rev. C. 4117.11(B)(1). This filing occurred within the Akron-AAUP membership’s ratification voting period and was clearly filed to further coerce its members’ exercise of their Chapter 4117 rights. The filing takes issue with the University’s response to Akron-AAUP’s claim that the University was “renegeing on its promises.” On or about July 29, 2020, Akron-AAUP publicly published its message claiming the University renegeed on promises. The University asserted its legal right to respond. Akron-AAUP had 90 days from July 31, 2020 to file an unfair labor practice charge, but intentionally chose to file one during its membership’s voting period. Then, Akron-AAUP publicized its filing of the unfair labor practices on or about July 31, 2020, which resulted in news media coverage. Akron-AAUP effectively used available legal mechanisms to further commit Rev. C. 4117.11(B)(1) and (2) violations. There is nothing that prevented Akron-AAUP from waiting until its membership voting period was over to file and/or publicize the alleged charges. The timing of its conduct, taken in total with the entirety of the circumstances should not go without consequence.
- Akron-AAUP’s Filing of a Class Action Grievance during the Voting Period
 - On or about July 30, 2020, Akron-AAUP filed a grievance challenging the layoff of 96 faculty members. The following day, Akron-AAUP publicized it had filed this grievance. This grievance was filed during the membership’s voting period. The deadline by which Akron-AAUP had to file this grievance was after the voting window closed. Akron-AAUP effectively used available legal mechanisms to further commit Rev. C. 4117.11(B)(1) and (2) violations. There is nothing that prevented Akron-AAUP from waiting until its membership voting period was over to file and/or publicize this grievance. The timing of its conduct, taken in total with the entirety of the circumstances should not go without consequence.
- Akron-AAUP’s Filing of a Grievance to Challenge the Commencement of Conventional Contractual of Retrenchment Procedures
 - Preparing for the unlikely possibility that it might not prevail in the arbitration involving the layoffs under the contractual Catastrophic Circumstances provision, the University issued notices to the AAUP on or about August 25, 2020 to commence retrenchment

procedures under Article 15, Sections 1-11 of the labor contract. The contractual retrenchment procedures require the Deans/Directors of the areas where the retrenchment would occur to seek input and recommendations from faculty in the areas affected by the retrenchment regarding the manner in which retrenchment would occur and alternatives to retrenchment.

- Akron-AAUP initially instructed bargaining unit members not to participate in this contractually-required process by directing them not to complete a survey issued by the Deans/Directors to the faculty to provide the contractually-required information and then advised them to participate, if at all, only “under protest” and alleging falsely that the survey violated the labor contract.
- On August 27, 2020, Akron-AAUP filed a grievance that challenged the University’s commencement of the Article 15 retrenchment process. The grievance lacked any factual or legal merit. Indeed, the grievance alleges that the University violated a provision of the retrenchment procedures that Akron-AAUP had admitted that – in its grievance challenging the Catastrophic Circumstances layoff – the University had satisfied.
- Akron-AAUP’s actions had the effect of causing or attempting to cause the University to commit an unfair labor practice, a contractual violation, or both
- Akron-AAUP’s Refusal to Correct its Material Misrepresentations
 - The University made repeated requests to Akron-AAUP to correct Akron-AAUP’s material misrepresentation that the 7/13/20 TA was the University’s “proposed agreement” or “Last, Best and Final Offer.” At first, Akron-AAUP, through its attorney conceded the change in name was improper and represented it would be corrected. Despite these representations, the promised correction did not occur. Ultimately, Akron-AAUP wholly refused to correct the material misrepresentation that the 7/13/20 TA was the University’s “proposed agreement” or “Last, Best and Final Offer.” In so doing, Akron-AAUP engaged in unlawful activity in violation of Rev. C. 4117.11(B)(3). Further, Akron-AAUP’s action and conduct was coercive in nature, intending or having the effect of manipulating its membership in exercising their right to vote by influencing them to reject the 7/13/20 TA. This constitutes a violation of Rev. C. 4117.11(B)(1). Through its continued refusal to correct the material misrepresentation, Akron-AAUP also caused the University to communicate its position on the 7/13/20 TA. The refusal by Akron-AAUP is a violation of Rev. C. 4117.11(B)(2) to the extent it caused or attempted to cause the University to violate Rev. C. 4117.11(A). It should be noted Akron-AAUP has two pending unfair labor practices alleging the University violated Rev. C. 4117.11(A). Any action complained of by Akron-AAUP in those charges is a consequence of Akron-AAUP’s misrepresentation to its membership the 7/13/20 TA was the University’s “proposed agreement.”
 - On or about July 29, 2020, Akron-AAUP published and disseminated a statement regarding the University allegedly renegeing on its promises. The University requested in writing for Akron-AAUP to remove or correct the serious factual inaccuracies/omissions

that mislead readers. Akron-AAUP refused to do so. As a result, the University responded in a July 30, 2020 statement. The refusal by Akron-AAUP to correct these inaccuracies/omissions is a violation of Rev. C. 4117.11(B)(2) to the extent it caused or attempted to cause the University to violate Rev. C. 4117.11(A).

- On or about July 29, 2020, Akron-AAUP engaged in conduct aimed at modifying the releases related to terms of the 7/13/20 TA and additional consideration the University had agreed to provide. Akron-AAUP's conduct included publishing and disseminating a statement regarding the University allegedly renegeing on promises. This conduct occurred during the membership's voting window, contained false statements and misrepresentations and caused additional confusion to the membership. Such conduct violated Rev. C. 4117.11(B)(1), (2), and (3).
- On or about August 12, 2020, Akron-AAUP published and disseminated a statement regarding next steps that continues to falsely mischaracterize the 7/13/20 TA as "the Administration's last, best offer." Such action constitutes a continuation of the Rev. C. 4117.11(B)(1), (2), and (3) violations.
- On or about August 25, 2020, Akron-AAUP filed yet another frivolous unfair labor practice charge against the University alleging Rev. C. 4117.11(A)(1) and (3) violations. Akron-AAUP alleged that the University revoked tuition remission benefits for Akron-AAUP members in "retaliation or discrimination for being represented by AAUP and/or for the bargaining unit exercising its right to vote on the ratification of proposed midterm modifications." This Charge succeeded a grievance that Akron-AAUP filed the day before (Grievance No. 2020-05), which alleged similarly that the University had violated the parties' Labor Contract by not extending tuition remission benefits to laid-off bargaining unit members.

Article 17, Section 5 of the Labor Contract governs Tuition & Fee Reduction, and the express, clear and unambiguous contract language excludes tuition remission benefits for employees who have been laid off. Any extension of those benefits to the faculty could only occur through mid-term modification. Akron-AAUP knows that Article 15, Section 5 of the Labor Contract does not extend tuition remission benefits to laid-off employees for two reasons.

First, Akron-AAUP specifically negotiated a Memorandum of Understanding ("MOU") with the University, that was included in the 7/13/20 TA, to extend those benefits to such employees. As discussed above, while other bargaining units requested and negotiated tuition remission coverage for their laid off employees, Akron-AAUP never did so until after negotiations on the 7/13/20 TA had concluded, thus necessitating a separate MOU before the ratification vote occurred. Under the MOU, the tuition remission coverage was extended to RIF'd Akron-AAUP members contingent on ratification of the 7/13/20 TA. The other bargaining units ratified their TA's, thus securing tuition remission coverage for their bargaining unit members. Akron-AAUP did not. When Akron-AAUP's membership rejected the 7/13/20 TA, all benefits extended therefrom automatically extinguished. Extending the Article 17 Section 5 benefits to

those positions abolished under Board Resolution 7-7-20 was contingent upon Akron-AAUP's ratification of the 7/13/20 TA. Second, neither the unfair labor practice charge nor the grievance alleged that the University had violated Article 17, Section 5 of the Labor Contract by not providing tuition remission benefits to laid-off bargaining unit faculty.

Akron-AAUP's unfair labor practice has no factual basis and was purposely and intentionally filed for improper purpose. By pursuing an unfair labor practice and a grievance to attain what is not in the Labor Contract and was not attained through negotiations to amend existing language in the Labor Contract, Akron-AAUP has bargained in bad faith. In addition, to demand that the University extend tuition remission benefits to laid-off faculty in violation of clear contract language would be to force the University to commit an unfair labor practice by unilaterally modifying a mandatory bargaining subject without bargaining in good faith.

Akron-AAUP engaged in an intensive series of actions to misinform and confuse its membership for the purpose of coercing members in the exercise of rights guaranteed under Chapter 4117 of the Revised Code in violation of Rev. C. 4117.11(B)(1). The misinformation and falsehoods by Akron-AAUP were made to the bargaining unit and deliberately broadcast to the outside community and media.

At all relevant times, the University asserted its legal rights to publish its opinions as to the 7/13/20 TA. Some of the University's materials directly responded to the misleading and false information disseminated by Akron-AAUP. Consequently, Akron-AAUP's conduct also ran afoul of Rev. C. 4117.11(B)(2) to the extent it attempted to or caused the University to interfere with Chapter 4117 rights. Last, the totality of circumstances evidences Akron-AAUP engaged in bad faith negotiations from the onset in violation of Rev. C. 4117.11(B)(3). Clearly, Akron-AAUP did not negotiate. In retrospect, Akron-AAUP merely went through the motions to delay the impact of COVID-19 on its bargaining unit and has placed the University in an even more challenging predicament.

The University still has an approximately \$56 million budgetary gap in Fiscal Year 2021. Cost savings achieved from all the other work groups on campus has helped minimize the deficit. While implementation of the layoffs this month will offset most of the remainder (and the rest to be offset by a draw on the University's reserves), the reality is the University has lost savings that would have been achieved from adoption of the 7/13/20 TA that the membership rejected in the wake of Akron-AAUP's intentional campaign to secure "no" votes. Further, an arbitration on Article 15, Section 12 is set to occur with a decision by September 18, 2020. This arbitration, if ruled in Akron-AAUP's favor could undo the layoffs effective later this month. This would place the University in the position of needing to close a substantial double-digit deficit within 9 months, a practically impossible task. Had the 7/13/20 TA been ratified, the University would not be in this position.

It is also of note that Akron-AAUP's actions have created a potentially greater outlay of expenditures in Fiscal Year 2021 to defend legal actions. Between July 13, 2020 and present, the University received 1 class action grievance (2020-03) challenging each individual faculty layoff; 1 grievance on the tuition remission benefit (2020-05); and 3 unfair labor practice charges by Akron-AAUP (Case Nos. 20-ULP-07-0115; 20-ULP-08-0124; and newly filed 8/25/20). All of this makes the situation more dire, particularly in a state and country that continue to attempt to reopen amidst a pandemic.

The impact of Akron-AAUP's conduct and bad faith dealings in violation of Rev. C. 4117.11(B)(1), (2) & (3) is even more devastating. As of June 30, 2019, the University had a CFI score of 1.1. If this score falls below 1.1, our regional accrediting body (Higher Learning Commission - HLC) will issue a letter to the University. A score in the 1.0 range triggers view of an organization as being in need of significant re-engineering. As matters stand today, there is a potential for a significant reduction in CFI before the end of the year, based on what has unfolded since the 7/13/20 TA.

Akron-AAUP's course of unlawful conduct evidences a continuing and ongoing campaign to obstruct the University's legitimate exercise of contractual authority to implement essential reductions in faculty by:

- Actively campaigning to defeat the ratification of a Tentative Agreement that its own bargaining team had negotiated which would have authorized the faculty layoffs under the contractual Catastrophic Circumstances provision;
- Repeatedly providing factual misstatements to bargaining unit members during the ratification period and then filing and publicizing unfair labor practice charges against the University when the University attempted to inform bargaining unit members of the Akron-AAUP leadership's factual misstatements;
- Pursuing a grievance to arbitration that challenges the reductions in force under the contractual Catastrophic Circumstances provision that lacks any factual or legal basis;
- Filing a meritless class action grievance that claims non-existent due process rights to a pre-layoff hearing to discuss the reasons for the layoffs of bargaining unit members and claiming that faculty who were laid off for legitimate reasons were actually laid off for discriminatory and retaliatory reasons;
- Filing a frivolous grievance and related unfair labor practice charge that challenges the discontinuation of tuition remission benefits for laid off bargaining unit members when such the clear and unambiguous contract language requires that such benefits be discontinued when employment ends and ignoring the continued tuition remission benefits were included in the Tentative Agreement that Akron-AAUP leadership actively and successfully campaign to defeat; and
- After insisting that the University should pursue retrenchment under the conventional contract procedures, instructing bargaining unit members NOT to participate in the contractually-required retrenchment procedures, then instructing bargaining unit members to participate only "under protest," and then alleging falsely that the survey violated the labor contract, and filing a meritless grievance to obstruct the very procedures that Akron-AAUP insists that the University must follow.

Absent meaningful remedy, Akron-AAUP's unlawful conduct would go unabated and effectively embolden Akron-AAUP to commit future unfair labor practices. This would be against public policy and could set dangerous precedent within the public labor sector of this State. Accordingly, the University was left with no choice but to file this Unfair Labor Practice Charge to hold Akron-AAUP accountable for its unlawful conduct and halt future unlawful actions.

Remedy Requested: The University devoted significant time and effort to bargain in good faith with the Akron-AAUP in reaching the 7/13/20 TA. It also relied upon these negotiations in discussing a proposed course of action to meet its legal obligations under Article 15, Section 12 after invoking the Catastrophic Circumstance Provision.

Akron-AAUP's unlawful conduct was deliberate and intentional in its objective of securing rejection of the 7/13/20 TA by its membership. Given the close ratification vote of 54% (against) to 46% (for), it is clear Akron-AAUP's conduct more than likely had a direct effect on the 7/13/20 TA not being ratified. With the 7/13/20 TA's rejection on August 5, 2020, the University will lose certain cost savings and stands to lose significantly more. Given the continuing financial impacts from COVID-19, these losses will be further exacerbated. Akron-AAUP's conduct was significant, calculated, and cannot go unabated.

The remedy in this case should be fashioned to address the extent of the damage and the opportunity lost in protecting Akron-AAUP's membership and the rest of the University community and its students who are impacted by Akron-AAUP's unlawful conduct.

The University requests that SERB:

- (a) find probable cause that Akron-AAUP committed unfair labor practices;
- (b) direct this matter for hearing;
- (c) determine Akron-AAUP's conduct was unlawful in violation of 4117.11(B)(1), (2) & (3);
- (d) issue an order that details the extent of Akron-AAUP's unlawful conduct and orders the immediate revote by Akron-AAUP's membership on the 7/13/20 TA;
- (e) issue an order that Akron-AAUP cease and desist in the future from engaging in any conduct or activity in violation of Rev. C. 4117.11(B);
- (f) order Akron-AAUP to publicly post for a period of 90 days after a final determination by SERB a notice of SERB's determination and order and a statement that it will not engage in any unlawful activity in the future, such notice to be posted in conspicuous locations at Akron-AAUP's office(s), other locations within Akron-AAUP's possession, custody or control where bargaining unit employee would be expected to meet, congregate or otherwise be present, and featured prominently (in at least 14 point font) on the home page on its Internet website;
- (g) order Akron-AAUP to email its entire membership and any of its listserv groups a copy of the public posting in (f) within two (2) business days of SERB's order;
- (h) find that Akron-AAUP's unfair labor practice charges against the University are frivolous and assess appropriate sanctions against AAUP for filing frivolous unfair labor practice charges against the University; and
- (i) order any other remedies SERB deems appropriate to redress the matter.