

Jessica S. Monroe

From: Eben O. McNair
Sent: Tuesday, August 4, 2020 6:36 PM
To: 'Foster Jr, Sidney C'; Bill Rich; Tim Matney
Cc: 'George S. Crisci (gsc@zrlaw.com)'; 'Nobil, Steven'; 'Moore, Sarah'; Akron-AAUP Negotiating Team (nt@akronaaup.org); Jessica S. Monroe
Subject: RE: Step Two Grievance Answer
Attachments: 8.4.20 email to S. Foster.docx

Sid-
Please review and respond to the attachment.

Sandy

From: Foster Jr, Sidney C <sfoster@uakron.edu>
Sent: Friday, July 31, 2020 4:52 PM
To: Bill Rich <rich@akronaaup.org>; Tim Matney <tim.matney@akronaaup.org>
Cc: Eben O. McNair <emcnair@smcnlaw.com>; 'George S. Crisci (gsc@zrlaw.com)' <gsc@zrlaw.com>
Subject: Step Two Grievance Answer

Bill/Tim,

Attached is the administration's Step Two Answer to the pending grievance. Regards,

Sid Foster

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Sid-

There is much that troubles me regarding the Administration's Step Two Answer, but there is one issue in particular I raise here and want clarified.

During the current negotiations, there were discussions between the Parties as to whether NTTF are included in the scope of Article 15. This matter was resolved by both sides agreeing that NTTF were so included. I am concerned that the Administration appears to be attempting to resurrect this issue in your Step Two Answer.

A

On page 7 of the Answer, you state:

. . . [T]he Akron-AAUP's interpretation[is] that non-tenure-track faculty would be the first category of employees retrenched. The University disagrees with this interpretation, as the collective bargaining agreement clearly indicates that retrenchment is only applicable to only probationary faculty and tenured faculty—non-tenure track faculty are clearly in neither category.

The above statements are false, contrary to what the Parties agreed to less than three months ago, and if the Administration is resurrecting this argument, we believe that action constitutes bad faith conduct. **I need to know immediately if the Administration is going to maintain this position because it will affect how the Chapter approaches the Article 15 arbitration.**

You will recall that this disagreement came to a head during the latter part of May. The Administration initially took the position that only tenure track/tenured faculty were covered by Article 15 and non-tenure track faculty appointments were only covered by Article 29. Indeed, this was the position as articulated by the Administration's outside counsel in its letter dated May 21, 2020.¹ The Chapter strongly disagreed with certain parts of that letter, including the last paragraph of that letter, where that argument was made. As a result of my discussions with Steve Nobil, that paragraph was removed in its entirety in a revised letter issued on May 22, and Steve told me that this letter superseded the May 21 letter. If you are attempting to resurrect the May 21 letter in "its entirety", that is contrary to what your outside counsel committed to, and I am requesting that the reference to the reissuance of the letter be stricken from the Step Two Answer, as well as the above quotation.

I was not involved in the specific negotiations regarding Article 29 regarding the changes that led to the current CBA. The two principal negotiators of that Article were John Reeves for

¹ Your footnote refers to a letter dated May 19, 2020. The first iteration of the May 22nd letter was dated May 21, 2020. The only communication dated May 19th is a one-paragraph document memorializing that the University invoked Article 15, Section 12. This document is an entirely different document than the May 21st/ 22nd correspondence. Please correct the mischaracterization of the May 19th document as a letter in the Step 2 Answer.

the Chapter and John Green for the Administration. I spoke with John Reeves and he confirmed that there was no intent to remove NTTF from Article 15, Section 6, and it was his understanding that they had always been included in that Section. I confirmed this with Steve Nobil and I asked Steve to check with John Green. On May 27 I spoke with Steve, who advised me that he had spoken with John Green and that Green had confirmed what Reeves had told me- namely, that during the last negotiations there was no intent to remove NTTF from the retrenchment process and that NTTF are covered by Article 15.

Finally, I note that the claim that NTTF are not covered by Article 15 is contradicted by the Board of Trustees' Resolution 7-7-20 of July 15 eliminating numerous faculty positions, including NTTF. With respect to the CBA, that Resolution cites to only one provision—Article 15, Section 12—nowhere to Article 29. I also understand that NTT were notified that their positions were being eliminated pursuant to Article 15, not Article 29.

I find your inclusion of an argument the Administration had raised and expressly abandoned to be enormously troubling. I resent having to take my and my client's time to correct such an egregious mistake. I look forward to your retraction.