

GRIEVANCE NO. 2020-06

GRIEVANCE
REGARDING
UNIVERSITY'S INVOCATION OF ARTICLE 15, SECTION 3

August 27, 2020

To: Sidney C. Foster, Associate Vice President for Faculty Relations

From: Dr. Tim Matney, CAGO
Bill Rich, Chapter Consultant

Grievance:

On or about August 21, 2020, the University of Akron formally invoked Article 15 but, unlike its prior invocation under Section 12 of the collective bargaining agreement between the University of Akron-AAUP and the University of Akron ("CBA"), this time it did so under Section 3, declared its intent to begin the procedures that will lead to reducing the number of bargaining unit faculty ("BUF"), and limited the reduction to tenure-track and tenured faculty ("TT/T").

The Akron-AAUP disputes these actions on the following bases:

First, the President's August 21 letter to the Provost directing him to initiate the procedures of Article 15, Section 3, which is incorporated and relied on in the Provost's memorandum to Dr. Schulze, erroneously applies or interprets Article 15, Section 1. The Akron-AAUP disputes that the items listed under item 1 on page 2 of the President's letter constitute financial exigency as necessary to trigger retrenchment. The Akron-AAUP disputes the Administration's reference to enrollment declines on a University-wide basis as satisfying Section 1(A)2 – this section allows for retrenchment when enrollment has declined for five semesters in a "college, department or program." The Administration has not identified such units or provided evidence of a five-semester enrollment decline in a college, department, or program in which intends to implement retrenchment. The Akron-AAUP disputes the Administration's reference to the consolidation of colleges in Res. No. 5-1-20 as a basis for invoking retrenchment under Section 1(A)(3). Section 1(A)(3) permits retrenchment to be initiated when a college, department, or program is "discontinued." A consolidation is not a discontinuation. The Akron-AAUP disputes the Administration's categorization of a reduction in SSI or other state funding as an action "by the Ohio Board of Regents or Ohio General Assembly which requires the University to implement a retrenchment." A reduction in funding does not "require" a retrenchment and such reductions are not the actions contemplated by Section 1(A)(4). Furthermore, the reduction in funding does not require a retrenchment any more than it requires the elimination of football. The same is true of all other actions of the Ohio General Assembly or ODHE cited by the Administration.

Second, the Administration has failed to comply with Section 2.B. of Article 15. The June 24 and July 15 RIF lists the Chapter received included academic units whose faculty had been categorically excluded from the last retirement/separation incentive program. To comply with Section 2.B., faculty from those excluded departments should have been offered the retirement/separation incentive program as well.

Third, the Administration failed to comply with section 2.C. of Article 15. The Board of Trustees has made no judgment that retrenchment requires reduction in bargaining unit faculty beyond those conducted through attrition. This is so because the University would first have to comply with Section 2.B., which it has not, and because the Board has in fact made no such determination as a predicate to the August 21st action.

Fourth, for the reasons stated in the Akron-AAUP's opening brief and to be stated in its reply brief in the pending Article 15 arbitration, the Akron-AAUP denies that the Administration has provided evidence that the efforts taken to date (assuming the reinstatement of all faculty on the current RIF list) are insufficient, as required by Section 3.A. of Article 15.

Fifth, in violation of Article 15, the Administration is excluding non-tenure track faculty ("NTTF") from these procedures and is seeking to retrench only TT/T faculty.

Sixth, in invoking Article 15, Section 3, the Administration came up with yet another "rationale/interpretation" of Article 15 and its application to NTTF by arguing that only Section 12 in Article 15 not the rest of Article 15, applies to NTTF. The Administration erroneously claims that because it is not invoking Section 12 in these retrenchment procedures, the NTTF are not subject to retrenchment. Rather, according to the Administration, it can sever NTTF at any time and without following any procedures in Article 15 because of Article 29, Section 1. Based upon Article 29, Section 1, the Administration erroneously claims, it can exercise its management rights and, merely by determining that the University's needs have changed, sever NTTF. See Dr. Wiencek's memo to academic deans re: retrenchment dated August 25, 2020.

Seventh, Dr. Wiencek's letter referenced above violates Article 29 because Section 1 does not provide for the Administration to terminate NTTF as described in that letter. Rather, NTTF can only be terminated (other than for cause) during a fixed term contract pursuant to Article 15, with all of the procedural safeguards set forth in Sections 2-4 and with all of the substantive protections as set forth in Sections 6-11 of Article 15.

Eighth, Dr. Wiencek's letter referenced above violates Article 3 because the management rights clause gives the Administration no such right to terminate NTTF during a fixed term contract (other than for cause) except as provided in Article 15.

Ninth, Dr. Wiencek's letter referenced above violates Article 7 because this retrenchment invocation is done in retaliation for, discrimination against, and harassment of BUFs for engaging in concerted, protected union activity.

Tenth, contrary to Article 15, Section 6, BUF have been asked by the Administration for their recommendations about what factors should be considered in determining the order of

layoffs. Subsection C of that section prescribes the exclusive factors to be considered in determining the order of layoffs within the subcategories of BUF specified in subsection B of that section. BUF may sensibly be asked to make recommendations about how those factors apply to the faculty in their respective academic units or how much weight should be given to each, but the factors to be considered are all and only those prescribed in Article 15, Section 6(B) of the CBA.

Remedy:

The University will: (i) immediately cease and desist from taking any further action to implement the retrenchment procedures it initiated on or about August 21; (ii) comply with all Sections of Articles 3, 7, 15 and 29 with respect to any conduct which could lead to severing BUFs for reasons other than just cause; (iii) meet with the Akron-AAUP to discuss its proposed course of action; and (iv) if it nonetheless severs any BUFs, reinstate them with back pay (and interest), with all benefits restored retroactively and otherwise make them whole.

Signed

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