

Retirement Newsletter Number 1

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To: Oklahoma State University Faculty and Staff

From: Lionel M. Raff,

Regents Professor

Plaintiff Class Action Lawsuit

Member, Faculty Council Retirement and Fringe Benefits Committee

As most of you are aware, in August, 2001, Professors Charles Edgley (Sociology), Mark Rockley(chemistry) and Lionel Raff(chemistry) sought legal representation for the purpose of filing a class action lawsuit against Oklahoma State University, the Oklahoma Teachers Retirement System (OTRS), and the State of Oklahoma for breach of contract involving the OSU retirement program. The law firm of Derryberry, Quigley, Solomon, and Naifeh agreed to accept our case on a contingency basis. A class action lawsuit was filed by this firm on our behalf in October, 2001. During the fall of 2001, we conducted three informational sessions, one with the OSU Faculty Council, a second with the OSU faculty in Stillwater, Okmulgee, Tulsa and Oklahoma City, and a third with the OSU staff in Stillwater. The purpose of this and other newsletters to follow is to keep all of you informed about current developments.

Subsequent to the informational sessions in the fall of 2001, the Executive Committee of the OSU Faculty Council (Professors Edgley, Lawry, Moder, and Warde), Professors Rockley and Raff, and our lead counsel, Mr. Larry Derryberry and two other members of his firm, Mr. Gary Levine and Ms. Gladys Cherry, met with various groups in an effort to arrange for the redress of damages to the OSU faculty/staff retirement program without the necessity of court action. On the political scene, meetings were held with Senator Mike Morgan and his staff, and two of our state representatives with several members of the OSU Board of Regents also being present. An informational exchange meeting was held with the OSU Administration (Halligan, Birdwell, Matoy) and Mr. Tommy C. Beavers (Director, OTRS). One meeting was held with the OSU Board of Regents. More than a dozen meetings have been held with the OSU Administration. At President Halligan's suggestion, we agreed to break the retirement problem into two parts. One part involves compensation for damages suffered by OSU staff and faculty from 1993 to the present. The second part involves the development of a program that would allow faculty and staff who were covered under the previous TIAA-CREF program prior to 1993 to elect, at their option, to be grandfathered into a program as similar to the one that existed prior to the implementation of the 7-11 program as can be devised. This part has been called the "stop the bleeding" portion of the redress. Since this part is the less expensive of the two parts, all discussions to date have centered on "stop the bleeding".

Initially, the OSU Administration seemed to be taking a cooperative approach to the problem. In fact, many of you heard President Halligan state at the general faculty meeting held to discuss this issue that the problem must be fixed. We have a tape recording of his remarks. Then Vice President Harry Birdwell was assigned the task of developing a program comparable to the TIAA-CREF retirement program that existed prior to 1993 into which faculty and staff could elect to be grandfathered, if they wished. Several meetings were held to discuss the nature of this optional program. Ms .Anne Matoy (Director, Personnel Services) was assigned the task

of computing the cost of grandfathering the 1350 remaining active faculty and staff who were here in 1993 into a program under which OSU contributes 10% of all annual salary in excess of \$7,800 and pays the OTRS contributions on the first \$25,000 of the OTRS base. Her staff computed a figure of \$1.155 million per year. At our next meeting, it appeared that the Administration was offering this option to us to "stop the bleeding".

After meeting with our legal counsel in Oklahoma City, we decided that this offer was not adequate to return the money that the Administration was continuing to confiscate each year from the faculty/staff retirement program. In 1993, approximately 2000 faculty/staff had their TIAA-CREF retirement program taken away without the opportunity to be grandfathered. The OSU Faculty Council approved this action only on the condition that the Administration get us out of OTRS. As this was not done, the action was taken without the approval of the Faculty Council or of the general OSU Faculty. Since it takes about \$1.155 million to return the 1350 faculty/staff who remain out of this initial number to the TIAA-CREF program, it follows that the total amount of money extracted from the faculty/staff in 1993 was about \$1.155 million times (2000/1350) or about \$1.71 million per year in 2002 dollars. This money is still in the OSU budget where it has been every year since 1993. The confiscated total for the nine years between 1993 to 2002 is, therefore, about \$15.4 million. With growth, interest and dividends added over nine years, the total damage is about \$30 million. With the above considerations in mind, we countered with an offer of a grandfathering plan whose cost would be about \$1.8 million per year. We were told the Administration would consider our proposal.

Before our next meeting took place in mid May, 2002, the Administration and OTRS acting through their attorneys filed a motion in district court requesting that our lawsuit be summarily dismissed. The Administration and OTRS contend

1. that OSU faculty and staff have no right to sue because our retirement benefits are not vested,
2. that the statute of limitations has expired and therefore, we cannot bring suit,
3. that OSU faculty and staff are not entitled to error-free information. Therefore, OTRS and the Administration bear no legal liability for the dissemination of misinformation (such as a bogus and fraudulent retirement benefits formula).
4. that we are barred from seeking redress in the courts because we have not exhausted our administrative remedies.

At the meeting in May, 2002, the Administration rejected our proposal for grandfathering redress. They also pleaded poverty even though they still have our \$1.71 million per year in their budget where it has been for nine years. In addition, they seemed to withdraw their previous offers for grandfathering. In their place, they offered us a program that would add between \$0.2 to \$0.3 million per year to the OSU retirement contribution. We regard this offer as insulting and outrageous. You do not stop \$1.71 million per year of bleeding with \$0.2 or \$0.3 million. Another meeting is scheduled for July 22, 2002, but we are not optimistic at this time.

It is now very clear that the Administration is not on the side of the OSU faculty and staff. Their previous pronouncements of desire to redress the problem were apparently for nothing more than PR purposes. It is my view that they now believe that they can get the lawsuit dismissed and therefore, have nothing more to worry about. As to their plead of poverty, I would remind all of you that they have enough money to spend \$80 million on a football field. They have enough money to spend \$440,000 a year on a discriminatory No Rookies on Rookies program and \$70,000 a year running shuttle buses around this campus. They have enough money to build apartment houses, to buy Cowboy Mall, to build a nearly empty ATRC building, a nearly useless CITD building, a girl's softball field, and enough money to fund a \$55 million renovation of the basketball arena.

At present, our attorneys are preparing a response to the defendants request for summary dismissal of our lawsuit. Affidavits and evidence of deception and duplicity are being collected and the law researched for appropriate legal precedents. It appears that the Court will conduct a hearing on the defendants' request for summary judgment this summer. In the next newsletter, I will describe our defense to the defendants' request for summary judgement. Hopefully, we shall prevail. If not, the Administration will have succeeded in confiscating our retirement funds and transferring them to their budget. Should this occur, you will have lost a significant portion of your retirement funds but at least, you will have gained a knowledge of where the Administration really stands.