

Retirement Newsletter Number 11

September 3, 2003

To: Oklahoma State University Faculty and Staff

From: Lionel M. Raff,

Regents Professor

Plaintiff Class Action Lawsuit

Vice-Chair, Faculty Council

The purpose of this and other newsletters to follow is to keep all of you informed about current developments in our class action lawsuit aimed at recovering our retirement benefits confiscated by the Campbell administration and retained first by the Halligan administration and now by the Schmidly administration. The first ten newsletters can be found on the Faculty Council webpage. If you have trouble finding them, send an email message to either Lionel Raff (lionelraff@hotmail.com) or Carol Moder (clm1011@okstate.edu), and we will help you gain access to them.

As most of you are probably aware, recent actions by President Schmidly and his administration have repaired the damage done to our retirement program by the forced switch to the 7-11 program in 1993. As of July 1, 2003, all faculty and staff who were employed by O.S.U. prior to the change to the 7-11 program are now given the option of returning to a retirement program recommended by Judge Morris in his report to the O.S.U. Regents. This program is very similar to the TIAA-CREF program in force at the University prior to 1993. At the same time, the President enhanced the retirement program for all O.S.U. faculty and staff by changing the 7-11 program to one in which the University contributes 11% of all salary for the employee. Most recently, the University has implemented a procedure that gives each employee who has the option of returning to the 1993 TIAA-CREF plan or taking the straight 11% the maximum possible retirement benefit. Under this procedure, it unnecessary for the employee to guess whether to return to the TIAA-CREF plan or opt for the new 11% plan. Personnel Services automatically places the employee in the plan that provides the maximum benefits. The details of this procedure have been described in a memo to all staff and faculty from Vice-President Bosserman. It is my view that these developments are an outstanding response by the Administration to the going-forward portion of our class action lawsuit.

The only remaining portion of the lawsuit that remains to be settled in court or negotiated is the recompense for damages suffered by staff and faculty from 1993 to the present. In his report to the Regents, Judge Morris stated that damages to class members because of the change to the 7-11 program amount to \$818,100 per year. He recommends that appropriate recompense be provided. In view of the fact that Judge Morris was selected by the Regents, charged by the Regents, and paid by the Regents for his expertise, we regard his recommendations as decisive corroboration of our allegations of damages.

To date, the O.S.U. Regents have refused to negotiate with the faculty and staff over the issue of compensation. They have, however, given permission for Vice-President Bosserman to discuss possible negotiated settlements with the plaintiffs on the lawsuit. At our first meeting in late June, Vice-President Bosserman requested that we initiate the discussions by placing a proposal on the table to which the Administration might respond. Our initial proposal for settlement was delivered to the Vice-President on or about August 1, 2003. A copy of this proposal is attached for your information. To date, we have not received a response from the Vice-President. We are hopeful that one will forthcoming in the near future.

I will continue to keep you informed of events as they occur.

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The following document represents the position of the Plaintiffs and OSU Faculty Council Officers with respect to damages suffered by OSU Faculty and Staff due to the forced switch to the 7-11 program in 1993.

Professor Charles Edgley, Plaintiff and Secretary, OSU Faculty Council

Professor Lionel M. Raff, Plaintiff and Vice-Chair, OSU Faculty Council

Professor Mark G. Rockley, Plaintiff

Professor Carol Moder, Chair, OSU Faculty Council

Professor Edward Lawry, Past Chair, OSU Faculty Council

(This position paper was presented to Vice-President Bosserman on or about August 1, 2003, in an attempt to open discussions concerning recompense for staff and faculty financially injured by the forced switch to the 7-11 program.)

Position Paper on Damages to OSU Faculty and Staff

Background

On July 1, 2003, the OSU Board of Regents implemented a new retirement program proposed by President David Schmidly. One of the options under this program is a "Prior Plan Option" that is available to those OSU employees who were employed prior to 1993 when the University unilaterally, without approval from the OSU Faculty Council, took away the TIAA-CREF program that had been in place for 21 years and substituted the 7-11 plan. The Prior Plan Option essentially returns those employees to a retirement plan very similar to the original TIAA-CREF plan. In a presentation to the OSU Faculty Council in late June, 2003, Mr. Joe Weaver, Assistant VP for Budget and Internal Resources, estimated the additional annual cost of the new retirement plan to be about \$850,000.

At this point, it is important to note that when the 7-11 program was implemented, no opportunity was provided for faculty and staff to be grandfathered under the previous TIAA-CREF program. Moreover, the change to the 7-11 program was implemented without approval of the OSU Faculty or Staff Councils or the general OSU Faculty. There was a conditional approval given by the OSU Faculty Council at the time to the effect that the change to the 7-11 program would be approved provided the Administration removed the Faculty from OTRS. As this was never done, the Administration acted without approval of either the Faculty or the Staff.

To assess the damages to OSU faculty and staff incurred by the switch from the TIAA-CREF program to the 7-11 program, the OSU Board of Regents retained Judge Morris to evaluate the situation. In his report, Judge Morris stated that damages to class members because of the change to the 7-11 program amount to \$818,100 per year. He recommended that appropriate recompense be provided. In view of the fact that Judge Morris was selected by the Regents, charged by the Regents, and paid by the Regents for his expertise, we regard his recommendations as decisive corroboration of our allegations of damages. We also note that his estimate of \$818,100 per year is in good accord with the annual cost of new retirement program that redresses the damages going forward in time.

"Compensatory Adjustment" Program

Since the instigation of the lawsuit, the University has maintained the position that there are no damages to OSU faculty and staff because of the "compensatory adjustment" that was given to all faculty and staff in 1993, which, it is now contended, offset the diminished retirement contribution. There has even been the suggestion that the OSU faculty and staff agreed to trade retirement benefits for this "compensatory adjustment". This is a total fiction. No such agreement was ever made or passed by either the OSU Faculty or Staff Council. Common sense logic is sufficient to determine that the forced change to the 7-11 program cannot possibly have been income neutral. If it were, the Campbell administration would have provided the opportunity for grandfathering. They did not do so. If it had been income neutral, the OSU Administration would never have gone to the trouble of changing the entire retirement program of the University. It was changed to save money, and the money saved came directly out of the

pockets of the faculty and the staff. Using Judge Morris' report and the cost of the new retirement program that has restored the pre-1993 program, we now know that the amount of money saved was about \$818,000 per year.

The "compensatory adjustment" program, as the following table shows, was nothing more than a renamed raise program that had the effect of concealing what the Administration had done to the faculty/staff benefits in an effort to raise monies. The following table lists the average annual raises from 1988 to 2002:

Year	Average % Raise
1988	5.0%
1989	6.0%
1990	4.5%
1991	5.5%
1992	4.6%
1993	Compensatory adjustment ($\approx 0.5\%$);no raises
1994	\$500 bonus - no raises
1995	5.0%
1996	3.5%
1997	5.0%
1998	5.0%
1999	4.0%
2000	3.0%
2001	3.0%
2002	3.0%

Notice that raises were forthcoming every year since 1988 except in 1993 and 1994 when the 7-11 program was implemented. The average annual raise from 1988 to 1992 was 5.12%. From 1995 to 2002, it was 4.06%. The Campbell administration simply reduced the retirement benefits by substitution of the 7-11 program for the TIAA-CREF program and simultaneously cancelled the annual raise program. In its place, they inserted a much smaller adjustment program, which they renamed as a "compensatory adjustment" program. This created the fiction that faculty and staff had lost nothing; that the changes were "income neutral". This action was pure deception. Faculty and staff not only lost a substantial portion of their retirement benefits; they also lost most of their 1993 raises!

The Vice President for Business and Finance, Mr. Harry Birdwell, in negotiations with the plaintiffs on the lawsuit in 2002 conceded the above points about the "compensatory adjustment" program and agreed not to press this issue further in our negotiations. Judge Morris refers to this agreement in his report. At Mr. Birdwell's direction, the OSU Personnel Office under Ms. Anne Matoy prepared a list of five possible options that might settle the "going forward" portion of the class action lawsuit. The details of these options are included as a one-page summary sheet at the end of Judge Morris' report. None of these options included a credit for the "compensatory adjustment" in 1993 as the Vice President for Business had conceded that this would be inappropriate. The "Pre-Option" portion of the plan recently proposed by the

President and approved by the Regents on June 20, 2003, is essentially identical to Option 3 under the OTR \$1500-None column. It does not include any credit for the compensatory adjustment.

We regard the issue of credit for the "compensatory adjustment" as settled. Vice-President Birdwell agreed that such an adjustment was not appropriate. Judge Morris did not include it in his report. President Schmidly declined to include such credit in the "Pre-Option" portion of the new retirement program, and the OSU Board of Regents agreed with this position by approving the plan.

Accumulated Damages from 1993 to June 30, 2003

100% of the class members were harmed by the switch to the 7-11 program. Judge Morris has estimated the total yearly damages to the 1350 class members (data from Ann Matoy's office) who were still active in 2003 to be \$818,100. In addition, many faculty and staff retired or resigned at some point between 1993 to 2003. These individuals were also damaged. The report by Foster-Higgins commissioned by the University in 1992, lists the total number of faculty and A/P staff as being 2,787 at this time (see Evaluation of Task Force Report, Foster-Higgins, dated February 7, 1992). Therefore, 1437 faculty and A/P staff members resigned, retired, or died at some point between 1993 and 2003. We will compute the damages to each of these groups separately.

If we take Judge Morris' \$818,100 figure for the 1350 class members who are still active to be correct (and we believe it is), it is a simple matter to compute the accumulated damages over the 10.5 years period since the 7-11 program was implemented. TIAA-CREF has provided the average percent increase in all TIAA-CREF investments over this period. This percentage is 7.36%. Since retirement funds are paid into TIAA-CREF accounts on a monthly basis, it is appropriate to compute the total monetary damages to the 1350 class members who are still active as being the accumulated total of \$68,175 invested per month at 7.36% interest compounded monthly. The resulting balance on July 1, 2003, is \$12,901,989. With the recent proposal by President Schmidly to "stop the bleeding", this debt will cease to increase on July 1, 2003. Therefore, this is the final magnitude of the debt to currently active faculty and A/P staff if amortization or payment of this debt begins on July 1, 2003. If amortization or payment is delayed until January 1, 2004, the magnitude of the debt will increase because of the continuing interest.

In the absence of data, we may assume that the 1,437 retired class members served an for an average period of time equal to half of the 10.5 years, or 5.25 years. Thus, the total debt owed to this group of 1,437 class members is approximately

$$(\$12,901,989/2) \times (1437/1350) = \$6,866,677.$$

The total debt as of July 1, 2003 is, therefore, \$19,768,666.

Oklahoma State University can retire the above debt without the necessity to provide the entire \$19,768,666 at one time. The debt can be amortized over the expected working lifetime of

members of the class. This period is approximately 15 years. The annual payment required to amortize a \$19,768,666 principal balance over a period of 15 years at a reasonable interest rate is less than \$2 million per year. For example, if we assume an interest rate of 5.5%, the annual payment would be about \$1,970,000. An actuarial study will undoubtedly provide a more accurate number.

The longer the University delays in making these payments, the worse the "black hole" will become.

Additional Financial Damages to "Max-Group"

When the OSU administration in 1993 unilaterally changed the OSU retirement program without providing an opportunity for vested participants to be grandfathered, they inflicted severe financial damage on one particular group of OSU employees. This group, which is called the "Max-Group" here, comprises those employees who were depositing the maximum amount permitted by IRS regulations into tax-deferred retirement accounts. One of the plaintiffs on the current class action lawsuit (Lionel M. Raff) was a member of the Max-group. When the OSU administration changed the retirement program without permitting grandfathering, the result was an elimination of the mandatory 5% employee contribution into TIAA-CREF accounts. Once this contribution was no longer mandatory, it became impossible for members of the Max-group to contribute this 5% into tax-deferred retirement accounts. This 5% immediately became taxable income for purposes of both State and Federal income tax. Consequently, a significant portion of the money was lost to taxes instead of going into retirement accounts where it would draw interest, dividends, and growth to accumulate retirement benefits for the employee. These financial damages are in addition to the those previously discussed for which Judge Morris has recommended recompense in the amount of \$818,100 per year.

Recompense

On our part, we are willing to forego any compensation to the Max-Group as part of the overall package of recompense to be provided by the University. However, the University should provide to faculty and staff who have suffered severe financial damages over the past 10.5 years a financial package equal to the \$19,768,666 that can be computed using the settlement recommended by Judge Morris in his report. These monies should be distributed to the damaged parties in proportion to the total damages suffered by each member of the class. The appropriate formula remains to be devised and approved by the court.

We have suggested an amortization schedule that will permit the University to retire this debt in 15 years with the annual expense being less than \$2 million per year. We would be willing to consider alternative schedules for the retirement of the debt.

