

## **Retirement Newsletter Number 12**

**December 9, 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 eleven 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.

On December 5, 2003, the Oklahoma State University Regents refused to negotiate with the faculty and staff over appropriate recompense for damages suffered by the forced change to the 7-11 program in 1993. The motion declining to negotiate was placed before the Board by Regent Burns. His motion was as follows:

"We have just emerged from Executive Session where we have discussed the pending lawsuit by Lionel M. Raff et al. vs. the Oklahoma Teacher's Retirement System, State of Oklahoma, ex. rel. and OSU. We do not have the authority to pay claims that are not valid, and our legal counsel has advised us that this is not a valid legal claim. Consequently, in the absence of a court order to the contrary, we do not have the authority to pay this claim. Accordingly, I move that the Board instruct the Assistant Attorney General assigned to the defense of the case of Lionel M. Raff et al. vs. State of Oklahoma, ex. rel., the Oklahoma Teacher's Retirement System, and Oklahoma State University to proceed to urge the dismissal of the case against OSU or otherwise defend the case on its merit."

The motion passed unanimously.

The motion placed on the floor by Regent Burns is disingenuous in the extreme. Of course, the Regents do not have the authority to "pay the claim" since the lawsuit names not only Oklahoma State University as defendant, but also the Oklahoma Teacher's Retirement System, and the State of Oklahoma. Our request was not that the Regents "pay the claim", but that they enter into good-faith negotiations with us in an attempt to reach an acceptable middle ground for awarding recompense. If such a compromise could have been reached, the Regents would not have "paid the claim". Rather, the compromise would have been presented to the Court as being agreeable to both sides. After certification of the class, the Court would have made the adjudication as to whether or not the compromise was acceptable. If acceptable, the Court would have certified it as the decision of the Court and ordered its payment. Regent Burns is a skilled attorney. He is very well aware of this. Yet, he advances a motion having nothing to do with our request that the Regents begin good-faith negotiations with the Plaintiffs.

In the spring of 2002, the office of the Attorney General, representing the defendants, filed a motion for summary dismissal of our class action lawsuit. Our legal counsel, Ms. Gladys Cherry and Mr. Larry Derryberry, prepared a response asking the Court to deny the motion. The Court held oral arguments on the case June 28, 2002. The Court delayed making a decision on both motions to give the parties the opportunity to try to settle the case. By refusing to meet with the Plaintiffs in good-faith negotiations, the Regents have declined to honor the request of the Court to attempt to reach a negotiated settlement. The responsibility for this refusal rests solely with the Regents. The Plaintiffs have been making repeated efforts to honor the request of the Court for the last 18 months.

Not only have the Regents refused to honor the request of the Court, they have also refused to honor the recommendation on recompense made by Judge Joseph W. Morris who is a former Dean of the College of Law at Tulsa University, a former member of the Oklahoma State Regents for Higher Education, and a member of the National Panel of Distinguished Neutrals of the Legal Program of the CPR Institute for Dispute Resolution. The Oklahoma State University Regents selected, hired, charged, and paid Judge Morris as an external unbiased consultant to determine damages to O.S.U. employees. After several months of study, Judge Morris submitted a report to the Regents in which he estimated the damages to the 1,350 employees who were at O.S.U. in 1993 and who were still actively employed to be \$818,100 per year. In reaching his recommendation, Judge Morris declined to include credit for a "compensatory adjustment" given in 1993. Regent Fred Harlan sent a letter to Judge Morris on March 14, 2003, requesting that he submit a revised report that included a credit for this adjustment. Judge Morris refused to accommodate the request.

The Plaintiffs have repeatedly contended that this "adjustment" was a sham in that the Campbell Administration simply cancelled the annual raise in 1993, substituted an adjustment that was one-fifth to one-tenth as large, and renamed it "compensatory adjustment" in an effort to conceal the true effects of the forced changes to the 7-11 program. In 1993, the University was not suffering severe budget cuts of the type seen in 2002 and 2003. Annual raises had been averaging 5.12%. Yet, the Campbell Administration cancelled the raise program and substituted the "compensatory adjustment" in its place. The Vice-President for Financial Affairs in 2002, Mr. Harry Birdwell, agreed with our position on the "compensatory adjustment" and did not include it in several suggested programs designed to address the "going-forward" portion of the lawsuit. President Schmidly did not include credit for this adjustment in his proposal to fix the O.S.U. retirement program going forward in July, 2003, and the Regents implicitly agreed with his decision by approving that program.

It should be noted, that the Daily Oklahoman, the Tulsa World, and the Stillwater News Press quoted Regent Burns as having said subsequent to the Regents' meeting words to the effect that O.S.U. gave its employees additional compensation in 1993 when retirement adjustments were made that made up for losses by faculty and staff. It is clear that Judge Morris did not agree with Regent Burns, Vice-President Birdwell did not agree, President Schmidly did not agree, the Plaintiffs do not agree, and, in my opinion, a majority of the O.S.U. Regents are well aware that the change to the 7-11 program could not have been income neutral to class members as claimed by Regents Burns. What administration would have destroyed a retirement program

that had been in effect for 22 years, eliminated an annual raise program, and angered every employee at Oklahoma State University simply to effect an income-neutral change. The very suggestion that such a thing was done is absurd. This point was made to the Regents in my presentation prior to the executive session and vote. In my view, the Regents, including Regent Burns, realized the forced change to the 7-11 program in 1993 could not have been income neutral to members of the class.

President Schmidly has informed the Faculty Council officers that, prior to the Regents' meeting on December 5th, he was told to remain silent and take no part in the discussion. The President honored the Board's order and remained silent throughout the proceedings when the lawsuit was being discussed. The President of the University is the Faculty's representative to the Regents. We were entitled to have his voice speaking to the issues before the Board whether they would have been supportive or otherwise. By refusing to permit the President to speak to the issues, the Board effectively denied the Faculty any possible support they might have had from the Administration.

After two years of psuedo-negotiation, the Regents suddenly have shut down any possibility of negotiation with faculty and staff. In the place of good-faith negotiation, they have substituted a ploy in which they claim they cannot "pay the claim" and, therefore, cannot enter into negotiations over recompense. They have refused to honor the report and recommendations of the consultant they selected, hired, charged, and paid. They have denied the faculty and staff the right to have the President of the University address the issues. Regent Burns continues to release statements to the press to the effect that the change was income-neutral to members of the class when it is abundantly clear that such is not the case. These arrogant actions show extreme disrespect for the Faculty of Oklahoma State University.

From this point forward, we will be involved with legal issues and court proceedings. Our major challenge is obtain our day in court before a jury of peers. The defendants will plead that they are protected by the statute of limitations. Our legal counsel will counter with the argument that the fraudulent retirement benefits formula published by the Oklahoma Teacher's Retirement System and circulated without warning of its bogus nature by the Oklahoma State University Personnel Office constitutes deception that sets aside the statute of limitations. It remains to be seen which side will prevail in this debate. We hold the moral high ground and if we are successful in obtaining our day in court, I am confident that we shall win. The issue is joined. The Regents have divorced themselves from the concerns of the Faculty and the Staff. We shall see who the "last man standing" will be.

I shall continue to keep you informed of events as they transpire.