

## **Retirement Newsletter Number 4**

**August 22, 2002**

**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**

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 by the Halligan administration. The first newsletter was mailed in late June, the second and third in July. If you wish to receive a copy of any of these newsletters, send an email message to either Lionel Raff (lionelraff@hotmail.com) or Ed Lawry (elawry@okstate.edu), and we will transmit them to you via return email.

As you were informed in the first three Newsletters, the Administration and OTRS (Oklahoma Teachers Retirement System) acting through their attorneys filed a motion in district court requesting that our lawsuit be summarily dismissed. Our legal counsel, Ms. Gladys Cherry and Mr. Larry Derryberry, prepared a response asking the Court to deny the motion for summary judgment filed by the Defendants. The Court held oral arguments on the case June 28th. The Court delayed making a decision on both motions to give the parties the opportunity to try to settle the case. We were instructed to report back to the Court after the July 22nd meeting with the administration. At the July 22 meeting, the discussions dealt exclusively with the "stop the bleeding" portion of the case. Appropriate redress for damages incurred from 1994 to the present was not discussed. At the time, I felt that the results of the meeting represented a positive step in the right direction. It was generally agreed that to make further progress toward a settlement, specific offers would need to be laid on the table for discussion and negotiation. Since the Faculty/Staff side had already prepared specific offers, it was agreed that we would present these offers to the Administration for their consideration after which they would either accept one of our offers or counter with one of their own for our consideration. Following the exchange of these formal settlement offers, it was agreed that a second meeting would be scheduled to continue the negotiations.

Newsletter Number Three also informed you that the OSU Board of Regents has begun the investigation of possible financial damages to the OSU Faculty and Staff due to the change to the 7-11 program in 1993. To obtain an unbiased, outside evaluation of these possible damages, they retained Judge Joseph 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, to investigate the issue. We provided the Judge with a 12-page document that presented our calculations of the overall financial damages accruing between 1993 to 2002. Our estimates of the damages range from a low of \$27,770,000 to a high of \$32,197,000. If we include the loss of about 75% of our raise program in 1993 these estimates rise to \$34 million for a low and \$39 million for a high.

In this newsletter, I shall inform you of the principal events that have transpired subsequent to the July 22nd meeting.

During the last week of July, we provided the OSU administration with two proposals to "stop the bleeding". Both of these propose a restoration of benefits under the TIAA-CREF system in operation from 1971 to 1993 that include 10% of salary in excess of \$7,800, no required matching 5% from the employee, and University payment of a fraction of the employee's low-base OTRS premiums. The two proposals differ only in the fraction to be paid by the University. Although the administration has now been aware of this problem for a full year, they have not yet responded to our proposals. Neither proposal has been accepted and no alternative proposal has been offered by the administration in spite of the directive by the Court to negotiate in good faith. Once again, we see the administration talking a good game but failing to back up the words with meaningful actions.

On a brighter note, we now have some indications that the Board of Regents is deeply concerned about this problem and wishes to have the matter handled expeditiously. Perhaps something positive will result from the Regents' interest.

Judge Morris is actively involved in attempting to assess the damages. This is a difficult problem because a significant portion of the damages depends upon the distribution of funds each OSU employee has elected in his/her TIAA-CREF accounts. He has scheduled additional meetings with Professor Lawry and the administration next week to obtain further information. At present, we have no indication when he expects to submit his recommendations to the University.

On the legal front, our legal counsel, Mr. Larry Derryberry and Ms. Gladys Cherry, are moving to have the class certified by the Court. If certified, the class will include all OSU faculty and staff who were employed at OSU prior to 1997, even if they have since retired or resigned. The 1997 date is chosen so as to include all faculty and staff who were employed prior to the University's change to the 7-11 plan without permitting grandfathering and those who were hired after 1993 but before 1997 when the State changed the contributions rules for OTRS also without permitting grandfathering. Part of the filing for certification includes an affidavit from me attesting to the essential facts required to obtain certification of the class from the Court. I have attached a copy of my affidavit submitted in support of the action for your information. We are confident that the Court will certify the class. If this happens, each member of the class will be contacted and given the opportunity to opt out of the class if they desire to do so. By declining to join the class, an individual preserves his/her right to bring suit individually for damages. Any person doing so will not share in any financial damages recovered by the class action suit.

During the last month, we have discovered some additional features of the 7-11 retirement program that work to the disadvantage of the faculty/staff member. Some OSU faculty and staff may have been aware of these items but many are not. They were certainly not disclosed in the "informational" sessions conducted by the Benefits Office in 1993 when the 7-11 program was implemented and no mention of them is contained in the video tape of those

sessions nor in the affidavit filed by the administration in support of the brief to the Court requesting that our class action suit be dismissed. Three items merit your attention.

1. When the 7-11 program was implemented without faculty approval, the mandatory 5% contribution by faculty/staff was eliminated. The Benefits Office did advise all OSU employees that they should reinvest this money in a retirement account otherwise the funds available at their retirement would significantly decrease. They did not, however, inform OSU employees that if they reinvested this money in a TIAA account, it would have to go into an SRA (supplemental retirement account) rather than into a GRA (group retirement account) as was the case prior to implementation of the 7-11 program. They also did not inform anyone that the SRA account always pays 0.5% less interest than the GRA account. Thus, even if the faculty/staff did reinvest the money in a TIAA account, their financial position was still harmed.

2. If you check your payroll confirmation receipts at the beginning of the fiscal year, most faculty/staff will find a payroll deduction for OTRS (Oklahoma Teachers Retirement System). The magnitude of this deduction depends upon your salary and whether you are low or high-base in the OTRS system. For one member of the Executive Committee of the OSU Faculty Council it was \$53 for one month. Here is Anna Matoy's explanation for the deduction copied directly from her email to us:

"OTRS requires member and employer contributions on total contributory salary which includes salary and benefits (total compensation). OSU contributes 7% of the first \$11,520 of pay. The amount an employee is charged on a payroll by payroll basis is the difference between what OSU makes available for retirement based on pay and what the employee is required to pay OTR based on both pay and benefits. At the beginning of the fiscal year this does frequently result in employees assuming a small portion of OTR member contributions until they begin receiving the 11% of pay which is sufficient to pay the OTR required member contribution (7% of pay and benefits).

This has been happening since OTR member contributions went to 7% on 7-1-97. We remind employees quite regularly. I don't have my payroll advice here but I think the July payroll advice had a notice to that effect." --- Anne Matoy

As you can see, Ms. Matoy claims that the Benefits Office has informed us of this deduction. Perhaps so, but you may be certain that the "misinformation" sessions conducted when the 7-11 plan was being implemented did not so inform you that this would happen if and when the State changed the OTRS contribution rules. You should also keep in mind that under the previous TIAA-CREF plan that was in effect from 1971 to 1993, the University paid all the low-base OTRS premiums for faculty and staff. There was never a payroll deduction for this.

When we asked Ms. Matoy if she was aware in 1997 that this deduction would occur and if the University even considered picking up this "small payment", her response was

"I recall we were aware that this would happen. I do not recall any cost projections or formal requests to handle." Anne Matoy

It is very difficult to make a "formal request to handle" when we are unaware that this is going to occur.

3. There are a number of OSU faculty and perhaps some staff who were at the limit of salary tax sheltering permitted by the Internal Revenue Service (IRS) when the 7-11 program was implemented in 1993. These limits do not include money that is tax sheltered because of mandatory contributions. Only voluntary contributions count. Once the 5% mandatory contribution was eliminated without faculty approval or permitting grandfathering of present OSU employees, those faculty and staff found themselves unable to reinvest the released 5% in a tax sheltered account. Full state and federal taxes had to be paid on this money. Depending upon an individual's salary and tax bracket, this tax bite amounted to something in the range \$500 to \$2,000 per year. Thus, since 1993, these individuals have had to pay between \$4,500 to \$18,000 in taxes on this money. Instead of being in an interest-bearing, growth account building retirement funds, the money went to the State and US treasury. The total loss to date to such faculty and staff from this effect alone lies in the range \$7,000 to \$30,000 when interest, dividends, and growth are included.

If you check the video tape of the "informational" sessions conducted by the Benefits Office in support of the 7-11 program, you will not find any mention of this disastrous loss to some OSU employees. The affidavit submitted by Ms. Matoy in support of the request to dismiss our lawsuit contains no mention of any of the above losses to OSU faculty and staff.

I will keep you informed of events as they transpire.

I have attached a copy (word) of the affidavit that I submitted in support of certification of the class.