

Retirement Newsletter Number 9

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To: Oklahoma State University Faculty and Staff

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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 first by the Halligan administration and now by the Schmidly administration. The first eight 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 Ed Lawry (elawry@okstate.edu), and we will help you gain access to them.

Judge Morris has now submitted his long-awaited report and recommendations to the OSU Regents concerning the retirement program and our lawsuit to recover benefits we contend were improperly taken from us and then concealed by publication of a misleading retirement benefits formula. In this newsletter, I shall simply relate the recommendations, essentially without comment.

The first 40 pages of Judge Morris' report summarizes his understanding of the events that led up to the loss of our TIAA-CREF retirement program that had been in force for over 20 years and the implementation of what is now known as the 7-11 program. Pages 40 to 43 of the report discuss the lawsuit and its allegations. The recommendations are contained in the last 10 pages of the report.

The Judge is silent about and takes no position on our lawsuit. His reports states the following:

"I will not address in this report the merit or lack of merit of the lawsuit referred to in Section XIII. The allegations by plaintiffs in that case assert breach of contract, impairment of contract, violations of the due process and equal protection clauses of the United States Constitution, breach of fiduciary obligations and misrepresentations and deceit by the defendants for which plaintiffs seek declaratory and injunctive relief and damages."

"Whether any of those allegations are well-founded or ill-founded, will depend on a broad array of testimony from many individuals whose views and interests are anything but uniform and would require a court judgment to achieve a binding effect."

The recommendations advanced by Judge Morris are contained in three sections. I reproduce these below, without modification or comment, for your information.

Prong 1 - OTRS

There are three (3) aspects of the retirement problem. The first aspect of the problem is the OTRS. I find and conclude that there is widespread dissatisfaction and discontent among the faculty and the OSU administration with respect to OTRS. The dissatisfaction relates to several factors. One is that the OTRS is simply not widely known among institutions of higher education outside the State of Oklahoma and is not portable. Some other benefit plans (such as TIAA-CREF) are widely known and are portable. In addition, ten years of employment are required before pension benefits in OTRS become vested. The tenure track at OSU is from six to eight years. If a young faculty member does not achieve tenure and leaves OSU to go to another state, he or she cannot take OTRS retirement benefits elsewhere.

Some employees also believe that they could get substantially greater retirement benefit by investing the money contributed to OTRS in a defined contribution plan. Further, under the 7-11 plan, the ever increasing level of required contributions to OTRS have worked to divert money from TIAA-CREF those OSU provided funds to OTRS. Many employees would prefer those funds to be invested in TIAA-CREF or a similar defined contribution plan.

I conclude that the following recommendations with regard to OTRS, developed by the Retirement Subcommittee of the Flexible Benefits Compensation Committee, are an appropriate way to rectify in part the current faculty dissatisfaction and I adopt these recommendations:

1. The comprehensive universities (OSU and OU) should not be required to have new employees participate in OTRS, and current employees should be given a one-time option to exit or remain in OTRS. New employees should have the option to enroll in OTRS and/or a portable retirement system, such as TIAA-CREF.
2. For those OTRS members from the comprehensive universities whose compensation is always below the cap, the benefit calculation formula should be the same as the formula for members from the non-comprehensive universities since OTRS has already received payment for OTRS coverage on the comprehensive university member's total compensation.
3. For those employees whose regular annual compensation exceeds the cap in each of the fiscal years 1996-2007, it is recommended that the following formula be implemented for calculating retirement benefits:

A. For those members who joined the system prior to July 1, 1992, the average of the highest three consecutive caps on which the highest contributions to OTRS were paid during fiscal years 1996-2007 times 2% times the number of years of service during the capped period.

B. For those members who joined the system after June 30, 1992, the average of the highest five consecutive caps on which the highest contributions to OTRS were paid during fiscal years 1996-2007 times 2% times the number of years of service during the capped period.

C. For those employees whose regular annual compensation changes from the above to below the cap between 1996 and 2007, a change in the statutory formula is recommended. OTRS should specify the year that an employee becomes uncapped as the year when regular annual compensation equals or remains below the cap. OTRS will then calculate retirement benefits for comprehensive university employees having regular annual compensation equal to or beneath the cap exactly as done for the non-comprehensive universities for the period after going below the cap until retirement. For all years where an employee's compensation is above the cap, the procedure used for those employees above the cap should be used to calculate benefits.

4. It is recommended that OTRS recalculate benefits for those employees of the comprehensive institutions who have retired between 1996 and the current time using the appropriate calculation procedures specified in the preceding recommendations, depending on where their salaries were relative to the caps.

5. For those employees hired in FY96, the benefit calculation formula should be the same as it is for common education since OTRS received the same payment for OTRS coverage from employees hired that year, regardless of who their employers might be. For example, an employee at OSU or OU hired in FY96 with a total compensation package of \$50,000 and whose five-year average compensation package climbed to \$150,000 by retirement at 2030 would receive \$2,000 a year less than an employee in common education who contributed the exact same amount each year.

6. For employees whose salaries are above the caps, as specified in statute, at any time between 1996 and 2006, the OTRS should institute a buyback program whereby comprehensive university employees can retroactively make contributions and subsequently have OTRS calculate benefits for those years as an uncapped retirement benefit using the same procedures as currently used for the uncapped, non-comprehensive university employees. It would be desirable for employees to have the choice to buy back an uncapped retirement benefit and/or to request that their salary be uncapped immediately without buying back an uncapped retirement benefit from 1996 to the present. It is further recommended that employees who have retired between 1996 and the present

time be afforded the same buy-back opportunity, with benefits recalculated to reflect the additional contribution.

Prong 2 - A "similar" plan

The second prong of the retirement problem is the 7-11 plan. Many employees desire to return to a retirement plan that is "similar" to the plan that was in place at OSU before 1993. In turn, the OSU administration indicates a willingness to consider returning to a "similar" plan. However, there has been a great deal of controversy as to what constitutes a plan which is "similar" to the retirement plan in place before 7-11 was adopted. This controversy stems in large part from the many factors involved, some of which have changed from that time until now, such as (1) the OTRS requirement that contributions be made based upon seven percent (7%) of total compensation rather than six percent (6%) of total compensation; (2) the gradual uncapping of OSU employees' salaries, which results in an increasing contribution to OTRS for many employees; and (3) the benefit change adjustment in salary that was given to many employees when the 7-11 plan was adopted so as to ensure that such employees would not receive less total compensation under the 7-11 plan than they were receiving before the plan was adopted.

I find and conclude that the following retirement plan is "similar" to the plan which existed before the 7-11 plan was adopted and I recommend it:

1. OSU would contribute ten percent (10%) of an employee's salary in excess of \$7,800 in TIAA-CREF on each employee's behalf.
2. OSU would contribute six percent (6%) of an employee's salary up to \$25,000 to the OTRS.
3. OSU employees who are members of OTRS would be required to make any additional OTRS contributions required (other than the mandatory employer contribution, which is currently 7.05%)
4. Because of the increased burden upon OSU employees with regard to paying their increasing OTRS member contribution, the five percent (5%) employee contribution into TIAA-CREF previously required would not be required.
5. In order to give OSU employees as much flexibility as possible, OSU employees should be allowed to elect that the amount they are required to contribute to OTRS on their own behalf be paid by OSU out of the funds it would otherwise contribute on the employee's behalf to TIAA-CREF.
6. Eligible employees should be given a one (1) time option to elect this plan.

Prong 3 - Recompense

In the spring and summer of 2002, OSU faculty and administration representatives met to discuss, among other things, whether the university would be willing to compensate the approximately 1340 faculty and administrative and profession employees who were at OSU when the 7-11 plan was implemented in 1993 and are still at OSU, for any economic loss suffered by them as a result of the change to the 7-11 plan. It was determined that the Plaintiffs and other faculty members present would develop a proposal detailing what they would like to see done, and would present it to the administration. A copy of the proposal is attached hereto as Appendix G.

The proposal was presented on or about July 23, 2002. The proposal contained four (4) provisions, with a fifth (5) optional provision. In essence, the proposal would return covered employees to a retirement plan where OSU would contribute 10% of an employee's salary in excess of \$7,800 to TIAA-CREF and would also pay the OTRS required contributions on the first \$25,000. Some of the provisions included an employee contribution to TIAA-CREF, and some did not. Some of the provisions increased the amount of the OTRS contribution that would be paid by OSU. One of the provisions allowed employees to have the portion of the OTRS contribution they must pay to be taken out of OSU's contribution to TIAA-CREF.

Also during the spring and summer a chart for consideration and discussions was prepared which embraced various alternatives. I find and conclude that it is appropriate for me to use the chart developed during negotiations between the OSU faculty and administration at their meetings as a basis upon which to determine what constitutes reasonable recompense to eligible employees. A copy of the chart is attached hereto as Appendix H. I further find and conclude that it is appropriate to base my recommendations for recompense, at least in part, upon any financial gain to the university as a result of employees becoming members of the 7-11 plan rather than remaining in the old plan, or a plan similar to it. There are certain points concerning the above-recommended plan which require further clarification when using it as a basis for determining appropriate recompense.

First, I find and conclude that there was no general salary increase given at OSU in 1993, and the benefit change adjustment was given to certain employees for the express purpose of ensuring that his or her total compensation was not decreased as a result of the adoption of the 7-11 plan. Therefore, in calculating an appropriate recompense to OSU employees upon adoption of the 7-11 plan, a persuasive argument can be made that OSU should be credited with the amount of monies paid to fund the benefit change adjustment. However, at some point during discussions between faculty representatives and OSU administrations in

the spring and summer of 2002, it appeared that OSU would not insist on a credit for the benefit change adjustment that was given. I conclude that, in reaching my determination of what the cost of returning to a "similar" plan would be, no credit will be given to OSU for the benefit change adjustment.

Second, when considering the cost of returning to a "similar plan", it is appropriate to assume that not all eligible employees will elect to return to the plan proposed herein. I find and conclude that between two-thirds (2/3) and all (100%) of eligible employees would choose to return to this proposed "similar" plan if given the option.

For these reasons, the cost to OSU of returning to a plan similar to what was in place before the change to the 7-11 plan would be between \$545,400 and \$818,100 per year. I find and conclude that this range is appropriate gauge of what recompense OSU might make to persons employed at OSU in 1993 and injured by the change to the 7-11 plan, on a yearly basis for each of the years between 1993 and the present and I recommend it be adopted.

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The report ends at this point except for the inclusion of various documents in several appendices. For your general information, if each of Judge Morris' recommendations were to be implemented, here's is a brief summary of what some of the changes would mean to the faculty and staff at OSU.

OTRS:

Faculty hired prior to July 1, 1992 who are above the cap and low-base:

Current OTRS Yearly Benefit for years 1996-2006 = \$11,850
Under the Morris recommendation, Yearly benefit 1996-2006 = \$15,590

Yearly benefit increases by \$ 3,740.
Total increase over a 20-year retirement lifetime = \$74,800.

Faculty hired prior to July 1, 1992 who are above the cap and high-base:

Current OTRS Yearly Benefit for years 1996-2006 = \$15,480
Under the Morris recommendation, Yearly benefit 1996-2006 = \$19,580

Yearly benefit increases by \$ 4,100
Total increase over a 20-year retirement lifetime = \$82,000

Faculty who were hired after July 1, 1992 would see their retirement benefits increase as follows:

Low Base yearly increase = \$3,000 20-year retirement increase = \$60,000

High Base yearly increase = \$3,000 20-year retirement increase = \$60,000

Annual OSU Contributions to Retirement Under the "Similar" Plan
Recommended by Judge Morris:

Each staff or faculty member electing the "similar" plan would receive the following change in the annual contributions by OSU to their retirement accounts:

$$\text{\$ Annual Change} = \text{\$ } 1,181 - 0.01 P ,$$

where P is the annual salary of the employee. Thus, a secretary making \$20,000 per year would realize an annual increase of \$981 per year. The "break-even" point is a salary of \$118,100 per year.

Recompense:

Judge Morris recommends a payment of between \$545,400 to \$818,100 per year to affected employees to compensate us for financial damages. The annual average increase in TIAA-CREF accounts according to the 2002 yearly report is 7.36%. If the above monies had been contributed monthly to the retirement accounts of OSU employees from 1993 up to 2003, the accumulated totals with monthly compounded growth and interest at an annual rate of 7.36% would be

for \$545,400 per year recompense, \$ 9,199,395
and for \$ 818,100 per year recompense, \$ 13,799,399.

Thus, the Judge has recommended OSU refund between \$9.2 million to \$13.8 million to their employees.

These recommendations fall short of what we believe our damages to be, but they are probably a reasonable compromise. We will be attempting to negotiate a settlement in an effort to avoid a legal confrontation.

I will keep you informed of events as they transpire.