

Retirement Newsletter Number 14

February 20, 2004

To: Oklahoma State University Faculty and Staff

From: Lionel M. Raff,

Regents Professor

Plaintiff Class Action Lawsuit

Vice-Chair of the General OSU Faculty

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 thirteen 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.

Newsletter Number 13 informed you that the attorney for the OSU Regents filed a formal discovery request with the Court which we were required to answer. The Plaintiffs had thirty (30) days to respond. The discovery document is a request that the Plaintiffs, Lionel M. Raff, Mark G. Rockley, and Charles K. Edgley, answer or respond to a set of interrogatories, requests for admission and requests for production. Newsletter Number 13 also requested that each of you send letters and email messages to the Regents informing them of your views of the class action lawsuit and your own personal damages. Many of you responded to this request. If you have not yet done so, please consider helping in this manner. The email addresses of all OSU Regents are

Dr. Claud Evans	cde@cevanse.com
Jay Helm	jay@argtulsa.com
Douglas Burns	DBurns@Burns-Stowers.com
Joe Hall	joehall@cableone.net
Fred Harlan	fharlan@aol.com
V. Burns Hargis	bhargis@mail.bokf.com
Terry L. Peach	tpeach@oda.state.ok.us
Ed Keller	Ed_Keller@bankone.com
Lou Watkins	Lou@weswatkins.com

Executive Secretary to the Regents:

W. Douglas Wilson wdw@okstate.edu

During the previous six weeks, the following events have occurred: (1) The Faculty Council unanimously passed a resolution authorizing a letter to Governor Brad Henry requesting that he remove Regent Burns from the Board. This letter has been sent. (2) The Faculty Council Officers and Plaintiffs on the class action lawsuit along with our legal counsel, Mr. Larry Derryberry, have met with Attorney General Drew Edmonson to discuss the position taken by the OSU Regents. (3) The Faculty Council Officers and Plaintiffs have met with the Governor's general counsel, Ms. Lisa Davis, concerning our request to remove Regent Burns.

(4) We have filed our response to the Defendant's discovery request with the Court. (5) We have filed with the Court and presented our own discovery requests to the Defendants. (6) A bill sponsored by Representative Ingmire has been filed with the Oklahoma Legislature. This bill, if passed, will provide the opportunity for OU and OSU faculty and staff to withdraw from the Oklahoma Teacher's Retirement System. Hopefully, it will also redress the unfair benefits formulae now in use by OTRS. Each of these items is discussed below.

The text of the letter to Governor Henry requesting the removal of Regent Douglas Burns has already been circulated by the Chairman of the General Faculty, Dr. Carol Moder. If you have not seen it, a copy may be obtained by contacting her. The underlying reasons for our request is Regent Burns' failure to deal with the Faculty openly. He met with us a single time and stated that the reason for the meeting was so that he could "educate" himself about the issues. This seemed strange to us at the time since Judge Joseph Morris had already been retained to provide a detailed report on the issues. In fact, this report cost the Regents approximately \$131,000. Nevertheless, we acted in good faith and provided Regent Burns with every fact and piece of information in our possession. In addition, we outlined the points underlying our case. Neither Regent Burns nor any other regent ever met with us again. We now believe that the purpose of Regent Burns' visit was to assess the strength of our case and determine ways in which it might be defended. That is, he was acting not as a regent, but rather as a defense attorney. We have since learned from one of the regents that at their December 5th meeting, one or more of the attorneys present in their closed executive session informed them that if they met with us to negotiate an acceptable settlement, they could each be personally sued for the amount of the settlement. Since the executive session was closed, we have no way to be certain who the attorneys were who provided this advice. The attorneys present were Scott Boughton, Douglas Burns, and V. Burns Hargis.

In our meeting with Attorney General Edmonson, we directly addressed the issue of whether it was illegal for the OSU Regents to meet with us in an attempt to reach an acceptable settlement on recompense over the ten-year period we were forced to endure the 7-11 program. The duration of the meeting was approximately 75 minutes. General Edmonson stated that while it is illegal for anyone to make a gift of taxpayer's money, it is never illegal to attempt to negotiate a dispute. Hopefully, he will direct Mr. Scott Boughton, who is his assistant, to so inform the OSU Regents.

Our meeting with Governor's general counsel, Ms. Lisa Davis, lasted over two hours. After outlining our reasons for requesting the removal of Regent Burns, Ms. Davis did not give us much hope that this could be accomplished. She told us that it would be very difficult for the Governor to remove Mr. Burns. The remainder of the time was spent discussing ways in which the Governor might provide some assistance in resolving the issues raised by our letter. We are still hopeful that this will occur.

Our response to the discovery requests filed by Mr. Scott Boughton on behalf of the Defendants has now been filed with the Court. With one exception, we denied and refuted every request for admission made by the Defendants. An electronic copy of our response is now on the Faculty Council webpage. You may access this document by logging onto the OSU main page at www.okstate.edu and scrolling down the drop-down listing to "Faculty Council".

Our own discovery motion to the Defendants has now been filed with the Court. It comprises 25 pages that contain 43 Requests for Admission, 20 Interrogatories, and 55 Requests for Production. The Defendants have about 30 days to respond. Our legal counsel will probably grant a time extension if it is requested. Some of the more important Requests for Admission include the following:

REQUEST FOR ADMISSION NO. 3: Admit that from 1984 through the present, the OTRS published a retirement benefits formula, including OSU employees, under the rule of 80, which was as follows:

Benefits = $((0.02) \times (\text{years of creditable service}) \times (\text{average of 3 highest annual contributory salaries}))$.

REQUEST FOR ADMISSION NO. 4: Admit that from 1984 through the present, the OSU Personnel Office, now known as Human Resources, circulated, disseminated, or published the benefits formula cited in Request for Admission No. 3 to OSU employees.

REQUEST FOR ADMISSION NO. 5: Admit that after 1994 neither OTRS nor any administrative agency of OSU ever published a document available to all OSU employees under the rule of 80 which detailed a retirement benefits formula other than the formula contained in Request for Admission No. 3.

REQUEST FOR ADMISSION NO. 23: Admit that the stated reason given by OSU in 1993 for not permitting current employees to be grandfathered into the existing TIAA-CREF plan was that grandfathering was prohibited by either state or federal law.

REQUEST FOR ADMISSION NO. 24: Admit that the University of Oklahoma, facing similar retirement changes, permitted its employees to be grandfathered into the existing TIAA-CREF plan in 1993.

REQUEST FOR ADMISSION NO. 25: Admit grandfathering of OSU employees into the existing TIAA-CREF plan in 1993 was not prohibited by state or federal law.

The complete discovery request may be seen on the Faculty Council webpage. I think you will be pleased with the document. I suggest you read it. We have done our very best to nail the individuals responsible the deceptions perpetrated in 1993.

Finally, the bill sponsored by Representative Ingmire offers the possibility of extricating ourselves from OTRS and redressing the retirement benefits formulae going forward. The officers of the Faculty Council and the Plaintiffs have some concerns about the current language of the bill in that it may not adequately redress the formulae. However, there is a good possibility that the vague language is simply an oversight that can be corrected. We are working on this at the present time. The present form of the bill is available on the Faculty Council webpage.

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