Retirement Newsletter Number 15
March 8, 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 fourteen 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.

   We have now received a reply from Ms. Lisa Davis, General Counsel to Governor Henry, to the effect that the Governor does not believe that Regent Burns' actions in the retirement issue are sufficient to disqualify him as an OSU Regent. Consequently, Governor Henry will not ask Regent Burns to resign. Although we did not achieve our objective of removing Regent Burns, we believe the letter requesting his removal had a beneficial effect on the retirement issue. It produced a very positive press and increased support for OSU faculty and staff in our effort to recover recompense and obtain a fair and equitable retirement benefits formula from OTRS.

   There are some developments in the progress of House Bill, HB2226, sponsored by Representative Ingmire. This bill eliminates mandatory participation on OTRS by OU and OSU employees and presumably corrects the inequities in the retirement benefits formulae used by OTRS. It has now been reported out of committee. However, Section 11 of the bill, which addresses the benefits formulae, was stricken from the bill. This is not necessarily bad. The wording of that section was very ambiguous to the extent that it could have been interpreted so that the unfair formula in use for OU and OSU employees would not be corrected. There now exists the opportunity to reword that section to remove the ambiguity and then try to incorporate it into the bill. Efforts are now in progress to make this happen.

   The OSU Board of Regents met in Stillwater on Friday, March 5th. During the public comments portion of the meeting, Dr. Ron Beer, Vice-president emeritus, OSU, spoke eloquently about the need for the Regents to ensure that OSU faculty and staff obtain an equitable and fair retirement benefits formula from OTRS. He urged the Regents to use their position and influence to effect these changes. After Dr. Beer completed his comments, Dr. Carol Model, Chair of the OSU General Faculty addressed the regents. The complete text of her remarks follows:

   ---------------------------------------------------------------------------------------------
Remarks to OSU A&M Board of Regents
March 5, 2004
Carol Moder, Chair Faculty Council

Over the last few months, a number of comments from Regents have appeared in the press concerning the thorny issues of the OSU retirement system. One statement that has been continually repeated in all the public statements by Regents and the public information office is that the lawsuit was brought by three OSU faculty members. The repeated emphasis on this statement appears to imply that the concerns about retirement are shared by very few isolated faculty members. Nothing could be further from the truth. The three faculty members who filed the lawsuit did so on behalf of the more than 2000 affected faculty and staff members. As Faculty Council Chair, I have received hundreds of comments from faculty and staff who are appreciative and supportive of the actions taken on their behalf with respect to the retirement issue. In order to emphasize the importance of this issue to all the employees of Oklahoma State University, a number of faculty and staff members are here today representing their colleagues across the Stillwater campus and throughout the OSU system. I would like to ask these faculty and staff members to rise.

A second statement is that the Regents are unable to engage in any discussion with the faculty because of the pending lawsuit. Representatives of the faculty met with Oklahoma Attorney General Drew Edmondson on January 26 and he assured us that it was never illegal for parties to negotiate and discuss an issue in which a lawsuit is pending.

Regents have also said that the issue is best resolved by the courts and that “in our country the law decides what is right and wrong.” This is a convenient way of evading the moral and ethical issues of the situation. The faculty and staff of OSU, the people you see before you today and their colleagues across the OSU system, have dedicated their lives to making the educational experience of our students the best it can possibly be. In order for faculty and staff to be able to devote their full attention to this very important charge, the administration should be equally dedicated to providing them the best service and the best benefits possible. It is the responsibility of the Regents to assure that the policies and actions they approve help or at least do not harm these individuals. Faculty and staff should be able to trust that the information provided to them is accurate. They should be able to trust that administrative decisions are made with their best interests in mind. The reason we have such a gaping breach of trust at this university is because this has not been so.

In changing the retirement program to the 7-11 plan without grandfathering and in lobbying for the 1995 OTRS legislation, the administration of OSU and the Regents who approved their actions, have brought serious financial harm to the faculty and staff. Furthermore, they compounded these actions, by failing to provide to employees adequate information about the extent of this financial damage. And this misinformation has continued. As late as January of this year, information the Human Resources office provided for employees still contained incorrect information about how OSU retirement benefits would be calculated.
Although over the last ten years the administration was well aware of the accumulated damages to faculty and staff caused by these retirement changes, they made no real effort to address them. It was not until the plaintiffs filed the lawsuit that anyone in the OSU administration or on the Board of Regents began to take these issues seriously. It is thanks to the lawsuit that OSU employees finally have a more adequate retirement program going forward and that more serious efforts to address the problems related to OTRS have begun.

We are still left with a gaping breach of trust, into which you, our Regents, by your recent actions, have take a sledge hammer and driven an enormous wedge. You did this when you “took on the retirement issue,” and then refused to communicate in any open and direct fashion with the faculty and staff. You did this by closing off the normal channels of communication and refusing to allow the President of the university to speak with, and on behalf of, the faculty and staff. You did this by cloaking your decisions in legal technicalities to avoid addressing the issues directly. You did this by failing to take moral responsibility for decisions which you approved.

It is in the hope of bridging the breach of trust that I am speaking here today. On behalf of the faculty and staff, I ask you to take moral and ethical responsibility for the actions of the OSU administration which, under your supervision, broke faith with the faculty and staff, who have with willingness and dedication devoted their careers to this university. We ask you to take seriously the responsibility to redress these damages and to resolve these issues, so that the faculty and staff can regain trust in the administration and continue their efforts on behalf of the students of OSU and the people of Oklahoma.

On February 20, Dr. Ronald Moomaw, Associate Professor of Economics in the College of Business, wrote a guest editorial for the Daily O'Collegian that expressed "Another perspective on retirement programs". Those of us who have been working to correct the inequities in the retirement benefits formulae used by OTRS and to obtain redress for damages have very different views than those expressed by Professor Moomaw. For your information, we append our response to Dr. Moomaw's editorial below:
Response to Professor Ronald L. Moomaw

Professors Charles K. Edgley, Lionel M. Raff, Mark G. Rockley, Birne Binegar, Carol L. Moder, and Edward G. Lawry

Plaintiffs Class Action Lawsuit, Present and Past Officers of the OSU General Faculty

The Plaintiffs and officers of the OSU General Faculty have read Professor Moomaw's letter published in the Daily O'Collegian, Friday, February 20, with interest. Since we have not previously heard from him on these issues, either privately or publicly, during the 2.5 years we have been working to redress the damages done to OSU employees, we are pleased to see his awakened interest. We welcome him to the discussion and share his concern with "clarity", but clarity is not served by incorrect statements and omissions. In his letter, he extends his apology for any errors. We are pleased to accept his apology in the same spirit with which it is offered. We present a correct and more comprehensive analysis below.

Professor Moomaw is essentially correct in his analysis of the detrimental effect of the unfair retirement benefits formulae currently in use by OTRS. However, his calculations underestimate the magnitude of the damage. For someone consistently above the cap, the damage can be almost $6,000 per year, not the $5,400 Moomaw suggests in his letter. Over a 20-year retirement lifetime, this error is about $12,000. Moreover, his letter is silent on the issue of concealment and deception by OTRS and OSU. For nearly seven(7) years prior to the filing of the class action lawsuit in October, 2001, the administration of OTRS published, and OSU Personnel Services circulated, a fraudulent retirement benefits formulae. At no point did Personnel Services circulate a single document warning faculty and staff of the deceptive nature of the OTRS publications. As a result, we were lulled into a sense of retirement security that led to our exceeding the statute of limitations for legal action. This remains our biggest legal hurdle, and the defendants are using it in an effort to keep the issues from going before a jury. Clarity is not served by omitting discussion of these deceptions, for they are central to our case.

Moomaw demonstrates his lack of familiarity with the history of the case when he states that in 1992, the Campbell administration reduced its retirement contribution for most employees after consultation with faculty and staff. This is true only if one calls a recommendation forced by administrative fiat "consultation". The taskforce committee originally recommended that all present employees be grandfathered under the TIAA-CREF plan. This recommendation was rejected. Campbell ordered the committee to go back to work and return a recommendation that reduced the retirement ratio and which did not include an option for grandfathering. We submit that such dictatorial action does not qualify as "consultation". Moreover, the Campbell administration claimed that grandfathering was prohibited by IRS regulations. This was a lie. Professor Moomaw professes not to know if the claim was true or not. Apparently, he is unaware that at the same moment of time, OU grandfathered all of their employees in their TIAA-CREF plan.
Moomaw's statement that the 7-11 plan was approved by the OSU Faculty Council is likewise incorrect. The Faculty Council approval was conditioned on the Administration first extricating OSU employees from OTRS. The Campbell administration ignored this condition and proceeded to implement their plan. Therefore, they did so without the advice and consent of the Faculty Council. This history is detailed in the extensive documentation on the Faculty Council website.

Moomaw's letter seeks to portray the change to the 7-11 program as "income neutral". Even without numerical data, any rational person knows that this cannot be true. The Campbell administration dismantled a 21-year old retirement program loved by all OSU employees, forced a change to the 7-11 program, violated its promises to hundreds of employees, and refused to permit grandfathering. No sane individual would do such a thing to execute an income-neutral change. Simple logic is enough to show that the change was made to save money, and the money "saved" came directly out of the pockets of OSU faculty and staff.

Moomaw claims that "Most employees, however, could have maintained their previous contribution by using a Supplemental Retirement Annuity (SRA)." This is also incorrect. Supplemental retirement annuities in TIAA pay 0.5% to 1.5% less interest than the Group Annuity the Campbell administration took away. Moomaw ventures that only "a few employees" could not reinvest the salary adjustment because they were investing substantially to an SRA. Has he done any research to determine how many OSU employees constitute "a few"? If so, he is silent on the issue. The problem becomes much worse when one considers the difficulty encountered by OSU employees in trying to tax shelter the 5% mandatory contribution that was eliminated by the switch to the 7-11 program. Mandatory contributions do not count against the IRS statutory limit on tax-sheltered accounts, but non-mandatory contributions do. The OSU actions eliminated this tax shelter for every employee under the plan without the consent of the employees. Professor Moomaw completely ignores this point. Since the financial damages to each of these employees lie in the range of $25,000 to $30,000, we take exception to his perfunctory dismissal of this issue.

Moomaw further seeks to excuse the Campbell administration for confiscating the raises of all OSU employees in 1993 and 1994 by citing irrelevant claims from the campaign of former president Clinton. Extrapolating from Clinton's campaign statements, Moomaw concludes that "It is not surprising that the financing of higher education suffered." Did it? An examination of the overall Oklahoma State University budget in 1992-93 compared to that for 1991-92 shows that the budget increased by $7.7 million. These data are available in the OSU Library. Basically, Campbell wanted to transfer money that should have gone to OSU employees into his budget, and he did so because he had the power. He eliminated employee raises for two years and substituted a "compensatory raise" program so that he could claim that what he was doing was "income neutral". It was pure deception.

Moomaw states that "Employees, who generally prefer the TIAA-CREF system, presumably were pleased with the delayed uncapping." Really? How could he possibly know this? Neither the faculty nor the staff was asked to submit a recommendation on delaying uncapping. The administration lobbied for this action to reduce the administrative fees they would have to pay. No input from faculty and staff was ever sought or obtained. With certainty, employees close to
retirement would have strongly objected. The same statute that delayed uncapping also established the unfair retirement benefits formula currently in use by OTRS for employees at the comprehensive universities. We believe that very few OSU employees are pleased with this result.

In the final paragraph of his letter, Moomaw admonishes us to discuss the issues with collegiality rather than "poison the well" with harsh rhetoric. We were conducting extensive and collegial negotiations with the Halligan administration for over a year before the OSU Regents abruptly ordered them to withdraw and engage in no further discussions. They summarily announced that all further negotiations would be handled by the Board. Since that time, we have tried unrelentingly to discuss the issues with the Board so that we might reach an acceptable settlement without the necessity for court action. They have steadfastly refused to even sit down at the table with us. We have recently learned that they are fearful of personal lawsuits if they do so. Our recent meeting with Attorney General Edmonson was an effort to assure the Regents that they do not face personal lawsuits and to bring them to the negotiating table. Is Moomaw totally unaware of these efforts? If the well is poisoned, it is the Regents who are responsible.

Finally, and most importantly, we are appalled that Moomaw's comments might have the effect of setting one group of faculty and staff against another by his suggestion that if we obtain redress via the lawsuit, other employees will be hurt. The facts are that all employees have already been helped enormously by the lawsuit. Every employee now enjoys either grandfathering back to a program similar to the former TIAA-CREF program or an 11% program rather than the 7-11% program. Moreover, President Schmidly has promised to work diligently to change this to an 11.5% and then to a 12% program. The President deserves thanks from all OSU employees for this action, but it would have never occurred without the impetus of the lawsuit. In addition, thanks to the lawsuit and the superb work of the Barfield-Deyong Long-Range Retirement Taskforce, as well as the efforts of Ms. Anne Matoy and Mr. Robert White, we now have a bill, HB 2226, that has already been reported out of committee that hopefully will, if passed, extricate us from OTRS going forward and provide redress for the inequitable OTRS retirement benefits formulae.

If Professor Moomaw had known these details prior to publishing his thoughts, he might well have concluded that he should just say, "Thank you".

=================================================================

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