



April-May 2008

State Employees' Incentive Bonus Program Turning Bright Ideas into Gold

Can you squeeze a dime until it turns into a dollar? Do you have an idea that will boost morale or improve safety? Then the State of North Carolina wants to hear from you.

Thirty years ago—a few years after the first big gas crisis hit this country—NC launched the State Employees' Incentive Bonus Program (SEIBP) dedicated to improving government operations by giving cash and other kinds of bonuses to employees who had good ideas that could be put to work to save the State money and improve its efficiency.

Over the years, the program became more or less dormant. But today, faced with the rising cost of energy and other recent events, the State has reinvigorated it. On March 18th, Tommy Griffin, a long-time Carolina staff employee, was appointed by Speaker Joe Hackney as his representative on the committee administering the program.

Under the SEIBP, any regular or temporary employee of the State (or a group of such employees) can submit an idea to a coordinator at their state agency. The coordinator will pass it along to an agency committee for evaluation and possible implementation. If the idea is tried for 12 months and produces cost savings, the person or group who proposed it will get a bonus amounting to 20% of the savings.

Successful ideas in the past have included the design of a dam (bonus of \$80,000), mail changes for patient appointment notifications (bonus of \$7,585), and rebuilding autos instead of making new purchases (bonus of \$100,000).

For further information about the program, go to <http://www.osp.state.nc.us/SEIBP/faqs.htm#1>, or contact UNC-Chapel Hill's coordinator, Lorri Allison at lorri@email.unc.edu or by phone at 962-8830 or 962-5626.

Give the Gift Upcoming Blood Drive

UNC's Red Cross Club will have another blood drive in the UNC Student Union Great Hall on Wednesday, May 21st.

You can sign up to donate at <http://givesblood.org/go.php?bdc=761081>. With your supervisor's permission, this can be counted as work time.

Thank you for caring!

***The Death & Resurrection of the
Bible Church Park & Ride***

Be it ever so humble, there is no place.

Whether you're an employee trying to park your car and take a bus in to work on campus or an administrator trying to find suitable places for park & ride lots, commuting to and from Carolina is an ongoing challenge that shows few signs of improving.

The recent announcement about the sudden closing of the brand new Bible Church park & ride lot on the east end of Chapel Hill—and its temporary stay of execution—illustrates the problem.

On April 3rd, Ann Williams signed up for a Commuter Alternatives Program permit to park in the new Bible Church park & ride lot at the corner of Sage Road & Erwin Road that had been opened to meet the commuting needs of employees from the Durham area. Although the lot had been open since early 2007, Williams hadn't heard about it until just a few days before. When she realized that it was 3 miles closer to her home than where she had been parking, she decided to sign up. An added bonus was that the bus ride from the lot to her workplace took only 15 minutes, instead of the 30-45 minutes that she used to have to spend.

But on April 4th Williams' pleasure turned to frustration when she received a notice that the University's parking contract with the Bible Church was going to be terminated three months early and the BCX bus line servicing the lot discontinued on May 9th. The memo suggested that people using the BCX route use the D bus route instead, until new parking permits are issued again in August.

According to Williams, this was a laughably absurd idea. "There is no parking lot for the D line," she observed, "and it would take even longer than [my old] route if one had a place to leave their car." So she wrote a letter of complaint to Chancellor Moeser about being left high and dry.

Carolyn Elfland, Associate Vice Chancellor for Campus Services, was asked to respond on the Chancellor's behalf.

“We too are disappointed that we have not been able to continue the use of the Bible Church park-and-ride,” she wrote to Williams on April 9th. “We search[ed] literally for years for a location for a park-and-ride lot in the 15-501 corridor and could find neither land for sale nor an existing parking lot owner willing to allow us to use their parking lot during the day. So we were thrilled when we work[ed] out an arrangement with the Bible Church.

“When we finally were able to open the lot, however, things did not turn out as we had hoped. The cost for the lot rental and transit was over \$340,000 a year and we had an average of only about 50 cars in the lot at any time.

“In addition, as part of the Special Use Permit from the Town of Chapel Hill [that was] required for us to be able to use the lot, we were required to construct a bus pull off. When we attempted this construction, we found that there were buried utilities that had to be relocated, which raised the cost of the pull off to over \$300,000. And, we did not have permanent permission to establish the park and ride lot in the Special Use Permit. Because of neighborhood opposition, we had received only temporary permission.

“The combination of all the costs, the prospect of being able to use the location for only a few more years, and an overall projected increase in our transit charges from Chapel Hill Transit that was double what we had budgeted [led us to choose] to relinquish the Bible Church lot.”

In the email dialog that ensued, Williams said that she appreciated the difficulty the Administration has had in creating viable commuting options along the 15-501 corridor, but that she is not convinced by the rationales being offered for the BCX lot’s closure. After doing some research of her own, she asked:

- Why did the University agree to pay the Bible Church more than \$1400 per leased parking space, when the University only charges about \$600 per space on campus? “I understand that this includes transit costs,” she wrote to Elfland in reply, “but it still seems excessive.”
- If transit costs at the BCX lot really are the main issue, why not reduce the number of runs during the middle of the day when ridership is lower?
- The University leased 241 parking slots, but only 50 have been claimed so far by active permit holders. Why hasn’t the University improved its advertising about the existence of the lot in order to increase usage?
- Given lower usage, why can’t the University renegotiate its lease to reflect actual ridership?
- Citing "neighborhood opposition" as a reason for closing the lot is odd. There is no neighborhood on Old Sterling Road other than apartments that are primarily leased by students who use this bus line.

- The fact that the lot was created with a time-limited Special Use Permit from the Town of Chapel Hill is a problem. The benefits of reducing traffic congestion, gas consumption, and air pollution from commuters traveling to and from campus should make the long-term existence of the BCX lot easy to justify for the City and the costs of running it well worth absorbing for the University—especially if the lease were renegotiated.

Williams suggested that perhaps the whole matter ought to be referred to the Town Council again, especially since the lot hasn't been given a fair chance to develop a user base and there are still several good years left on the permit. After putting in all of the time and money to develop this lot, she said, it doesn't make sense to shut it down so quickly.

Elfland responded that the cost of the lease for the parking spaces was not the main problem. Rather, it was the cost of the bus service itself, which was not economical given the low ridership.

“The costs for diesel fuel, the new transit facility, the need for more buses, and other very legitimate needs have resulted in Chapel Hill Transit costs rising twice as fast as we had planned for,” she wrote, “and the Bible Church park-and-ride was the obvious place to cut to enable us to maintain service levels elsewhere.

“We have learned through experience since the beginning of our development plan that there is a transit service tipping point,” she continued. “The service on the BCX route could not have been made less frequent without driving away the few people who chose to use the lot. People coming from Durham have long driven to the Friday Center where the buses run every 5 minutes in the peak, and a major reason that the Bible Church location failed was that most were not willing to trade off a more convenient park-and-ride location for less frequent bus service.

“This resulted in our paying about \$6800 per car which was just not a responsible use of scarce resources, especially given that the source of these funds primarily is payments by individual employees and students. The obstacles with the construction of the required bus pull off were the icing on the cake, so to speak, but the decision was already clear.

“We have an approved 5 year plan for permit price increases that raised prices to some employees over 100% in that time span, [and] we did not feel it appropriate to ask for more to enable us to continue this service that was desired by so few people.

“We do not have unlimited resources,” Elfland emphasized in closing. “We must weigh all the service demands and make the best possible decisions regarding what we can fund and what we cannot, and the Bible Church park-and-ride was just not sustainable.”

According to a conversation Williams later had with Stephen Spade, Director of Transit for Chapel Hill, the Special Use Permit for the BCX lot was granted for a period of five years, with periodic two-year renewals possible (at the discretion of the Town Manager)

provided that the University has demonstrated throughout the lease period that it has been actively seeking alternative park & ride arrangements. In view of the temporary nature of this park & ride location combined with the unexpected costs involved in building the required bus pull off, the decision was made to shut down the lot.

But that decision did not prevent Administrators from listening to those employees who were upset about losing their parking privileges so suddenly and prematurely—almost four months before their permits were supposed to expire.

On April 15, UNC’s Department of Public Safety announced that they had decided to keep the BCX park & ride open and continue bus service through August 14th. Current BCX riders will need to apply for new CAP slots in other lots for next year along with everyone else.

Williams is pleased with the reprieve but hopes that the University and the town will ultimately decide to advertise better and try to keep the BCX line going. “It serves not just those who park in the Bible Church lot,” she observed, “but a number of commuters who are only dropped off there or walk there to catch the bus.”

The April 15th announcement also said that the University would “continue discussions with transit partners in an effort to meet ridership demand.”

As we have seen, that can be a tall order. Be it ever so humble, there is no place.... But with the cost of gas rising faster than the temperature in Carolina, it’s an order that’s not going away.

If you or someone you know would be willing to make a commitment to parking in the BCX lot and using the bus if it were continued for another year, call Parking Services at 962-3951 or write to the Forum at forum_office@unc.edu. We’ll pass along your expression of interest to the administrators who are trying so hard to help everyone meet their commuting needs.

***Can You Hear Me Now?
UNC Tomorrow Report Issued***

On May 1st, UNC-Chapel Hill submitted its response to President Erskine Bowles’ mandate for all UNC campuses to define how they can respond to the needs of our state and the world in the years to come. The 67-page final report is available on the Employee Forum website at <http://forum.unc.edu/documents/CarolinaUNCTResponse.pdf>.

The report reflects a laudable attempt on the part of Carolina’s Administration to outline a plan of action for our campus, and contains many very excellent ideas and suggestions. Among them is the idea that Carolina must listen to its constituency.

“We will go to communities in need. We will listen to what they tell us. We will work with them to find the right solutions. And we will make sure that people outside this University and outside the UNC System know that we are here to help” (p. 4).

It is vitally important that we, as staff employees at Carolina, also listen. We must listen to what the Administration says about the direction they want to take Carolina, and what that might mean for staff employees.

We would like to strongly encourage all employees to take a few moments out of your busy days to look quickly at this document. Scan the table of contents to see what it contains, and maybe pick a topic of interest to read through quickly—and let us know what you think (forum_office@unc.edu or CB# 3488).

Readers are especially urged to note page 52 and following, where barriers to institutional efficiency and recommended changes are discussed. This statement immediately caught our eye:

“External barriers hamper our ability to operate as efficiently as might be possible. These barriers include the State Personnel Act and many financial, operational, property and purchasing regulations. We could operate more efficiently if some were lifted or modified....”

Caveat operarius.

Six Reasons Why

ARTICLE 16 Is a BAD IDEA

[Ed.Note: Article 16 is the proposal by President Erskine Bowles’ HR Task Force to “lift or modify” the State Personnel Act, which specifies the terms under which most staff employees in the UNC System work. It will require the approval of the NC Legislature. The Employee Forum has expressed its unanimous opposition to Article 16 for the reasons below.]

1. **Article 16 puts the cart before the horse. It asks for broad powers to create a personnel system that is only vaguely defined. The Administration is asking for the blind trust of both staff employees and legislators—promising that they’ll do good things if they are given these broad powers, but not telling us in advance exactly what those good things are.**
 - Administration should be presenting us with a fully conceptualized and planned personnel system, in some detail, so that we can see what we’re agreeing to, instead of asking us to buy a pig in a poke!
 - **Note:** Ann Lemmon, Associate Vice President for Human Resources for the UNC System, refused to specify what changes the new HR system might request beyond those mentioned in the final Report, because it would be premature (*Triangle Business Journal*, January 20, 2008).

- **But it's not premature to specify what all the changes will be up front! It's just plain, old-fashioned square dealing with folks.**
2. **Of the specific changes that are suggested in the 2008 HR Task Force Report, most of them could be done – and some are already being done – even without Article 16. For example:**
 - Reduction in paperwork
 - “Often the barrier to efficient recruiting was not the requirement of the State Personnel Act, but campus practice, including lack of automation” (HR Task Force Report, p. 12).
 - Eliminating dual reporting requirements
 - Updating outdated job classification system and bringing salary ranges more closely in line with market values through career banding
 - Starting to plan for succession management
 3. **Other changes that are suggested in the Report have nothing to do with the State Personnel Act – so making those changes does not require Article 16. For example:**
 - Review of EPA categories
 - Consistent performance management systems for EPA employees
 - Improving University's share of contribution to EPA employee retirement system
 4. **The University has a strong preference for creating an at-will workforce (EPA-NF) rather than employing career civil servants (SPA). They are not overly friendly to the idea of providing the employment protections that are given to us by the State Personnel Act. Article 16 would give them increased power to create a larger at-will (unprotected) workforce throughout the University system.**
 - At Chapel Hill in past 11 years they have created almost 1.5 at-will staff positions for every 1 SPA/career staff position that has been created.
 - Look at their *words* in the Task Force sub-committee reports:
 - Recruitment Subcommittee (Committee Chair: Alan Boyette, Sr. Assoc. Provost, UNC-Greensboro)
 - o **“The most significant barriers to the recruitment of university staff members are imposed by provisions of the State Personnel Act, which covers all SPA employees....“Exempting more employees from the Act would therefore represent a significant step toward improving staff recruitment.....**
 - “This level of exemption could be achieved by increasing the number of exemption categories or by interpreting the instructional, research, and senior academic and administrative exemption criteria more broadly than is currently the case.
 - “An alternative approach is to adopt a completely different basis for the exemption. For example...If one's position were exempt from the overtime provisions of the Fair Labor Standards Act, then one's position would also be exempt from the State Personnel Act.”
 - Position Mgmt. Subcommittee (Committee Chair: Elizabeth Bagwell, Director of HR, UNC-Asheville)
 - o It is **“not the intent of the Position Management Subcommittee to add protected employment rights (i.e., change the at-will employment relationship) for EPA employees.”**

- The question here is not whether the strategy they propose would be possible, legally.
- The question here is what kind of attitude this reveals about the people who would be putting together — and then running — a new, semi-autonomous HR system for the University.

5. No need for history to repeat itself. No “hair of the dog that bit you.”

- According to the several studies done by UNC Administration, a major problem with the UNC HR system is that it is a dual system that has to manage SPA and EPA Non-faculty staff, creating multiple inefficiencies.
 - This system was effectively created in 1997 when the Administration asked for – and got – a more limited version of the same kinds of powers that it is asking for more of today: increased HR independence and an expansion of EPA-NF jobs.
- It is not rational to do one thing, find that it gets you in a really bad bind, and then try to fix the situation by doing more of the thing that led to your problems in the first place!

6. State-level oversight is promised if Article 16 is passed. But according to the State’s recent review of government performance, agencies like the University that already have some independent HR authority have failed to follow existing auditing and reporting requirements (Government Performance Audit Committee Report II, pp. 4-5). **There is no rational reason to expect that things would suddenly be different if Article 16 is approved.**

NOTE: Rejecting Article 16 does not leave us stuck with a bad HR system.

- Unlike the University Task Force Report, the Legislature’s recent government performance report (GPAC II) provides specific, concrete proposals for updating and improving the system – proposals that everyone can know and evaluate in advance.
- Another advantage: The improvements this Report suggests would affect all State employees – not just University employees.

A Note from the Editor

Call Your Representatives Now!

A few weeks ago I was chasing down some information that required me to call a couple of our state legislators. In the process, the subject of President Erskine Bowles’ proposed “Article 16” amendment to the State Personnel Act came up. I explained that the Employee Forum had unanimously passed a resolution against it—and I explained why.

They were very interested to hear our reasons. A couple of them promised that they would vote against the amendment’s passage.

But, they said, it would help a whole lot if they could hear from you—the University employees, citizens of NC, and voters who would be directly affected by the amendment if it should be passed.

So schedule some personal time in your busy day to share your thoughts on Article 16 with your elected representatives. You might plan to call or email one of them each day until you've spoken with everyone.

Start with Rep. Joe Hackney, who is Speaker of the House (919-733-3451; Joeh@ncleg.net). Then go to <http://www.ncleg.net/homePage.pl> and scroll down to find the "Who Represents Me?" link on the lower right. Using that search engine, you'll be able to find the contact info for your representatives in the House and the Senate.

For the 95% of staff employees who live in the nine counties closest to UNC, information about your representatives is provided in the table below, for your convenience.

County	House of Reps			Senate		
	Name	Phone	Email	Name	Phone	Email
Alamance	Rep. Alice L. Bordsen	919-733-5820	Aliceb@ncleg.net	Sen. Tony Foriest	(919) 301-1446	Tonyf@ncleg.net
	Rep. Cary D. Allred	919-733-5905	Carya@ncleg.net			
Chatham	Rep. Joe Hackney	919-733-3451	Joeh@ncleg.net	Sen. Bob Atwater	(919) 715-3036	Boba@ncleg.net
	Rep. W. A. (Winkie) Wilkins	919-715-0850	Winkiew@ncleg.net	Sen. Floyd B. McKissick, Jr.	(919) 733-4599	Floydm@ncleg.net
Durham	Rep. Paul Luebke	919-733-7663	Paull@ncleg.net	Sen. Bob Atwater	(919) 715-3036	Boba@ncleg.net
	Rep. Henry M. Michaux, Jr.	919-715-2528	Mickeym@ncleg.net			
	Rep. Larry D. Hall	919-733-5872	Larryh@ncleg.net			
Granville	Rep. James W. Crawford, Jr.	919-733-5824	Jimcr@ncleg.net	Sen. Doug Berger	(919) 715-8363	Dougb@ncleg.net
	Rep. Pricey Harrison	919-733-5771	Priceyh@ncleg.net	Sen. Stan Bingham	(919) 733-5665	stanb@ncleg.net
Guilford	Rep. Alma Adams	919-733-5902	Almaa@ncleg.net	Sen. Phil Berger	(919) 733-5708	philbe@ncleg.net
	Rep. Maggie Jeffus	919-733-5191	Maggiej@ncleg.net	Sen. Kay R. Hagan	(919) 733-5856	Kayh@ncleg.net
	Rep. Earl Jones	919-733-5825	Earlj@ncleg.net	Sen. Katie G. Dorsett	(919) 715-3042	Katied@ncleg.net

	Rep. Laura I. Wiley	919-733-5877	Lauraw@ncleg.net			
	Rep. John M. Blust	919-733-5781	Johnbl@ncleg.net			
Orange	Rep. Joe Hackney	919-733-3451	Joeh@ncleg.net	Sen. Eleanor Kinnaird	(919) 733-5804	Elliek@ncleg.net
	Rep. Verla Insko	919-733-7208	Verlai@ncleg.net			
	Rep. Bill Faison	919-715-3019	Billf@ncleg.net			
Person	Rep. W. A. (Winkie) Wilkins	919-715-0850	Winkiew@ncleg.net	Sen. Eleanor Kinnaird	(919) 733-5804	Elliek@ncleg.net
Randolph	Rep. Pat B. Hurley	919-733-5865	Path@ncleg.net	Sen. Jerry W. Tillman	(919) 733-5870	Jerryt@ncleg.net
	Rep. Harold J. Brubaker	919-715-4946	Brub@ncleg.net			
Wake	Rep. Dan Blue	919-733-5752	Danb@ncleg.net	Sen. Vernon Malone	(919) 733-5880	Vernonm@ncleg.net
	Rep. Grier Martin	919-733-5758	Grierm@ncleg.net	Sen. Neal Hunt	(919) 733-5850	Nealh@ncleg.net
	Rep. Jennifer Weiss	919-715-3010	Jenniferw@ncleg.net	Sen. Janet Cowell	(919) 715-6400	Janetc@ncleg.net
	Rep. Nelson Dollar	919-715-0795	Nelsond@ncleg.net	Sen. Richard Stevens	(919) 733-5653	Richards@ncleg.net
	Rep. Paul Stam	919-733-2962	Pauls@ncleg.net			
	Rep. Deborah K. Ross	919-733-5773	Deborahr@ncleg.net			
	Rep. Linda Coleman	919-733-5974	Lindac@ncleg.net			
	Rep. Marilyn Avila	919-733-5530	Marilyna@ncleg.net			
	Rep. Ty Harrell	919-733-5602	Tyh@ncleg.net			

***Outsourcing Layoffs
UNC's Beach Café Closing***

[Ed. Note: The following notice has appeared around campus in response to a recent decision by the University's outsource food service provider, Aramark, to close the Beach Café and lay off the employees

there for three months. The Forum is attempting to verify the layoffs and the refusal of Aramark to pay out these employees' accrued sick and personal leave. At press time, there had not yet been a response from Aramark. Their HR office is forbidden to talk to anyone outside the company about this matter. We were told our query would be referred to their Public Relations branch, which has yet to contact us.]

ATTENTION!!!!

On May 23rd the Beach Café will be closing.

On April 30th our parent company, Aramark/Carolina Dining Services, held an employee meeting. At this meeting, employees were told that due to construction, UNC wanted to close the Beach Café.

Please note that employees were previously told that the Beach Café would NOT close during construction. Aramark assured the employees of the Beach Café that their jobs would not be in jeopardy!

Employees were also notified that effective May 23rd, they would be TERMINATED!! All accrued sick and holiday leave will be lost.

Beach Café employees will need to reapply for employment with Aramark/Carolina Dining Services in August.

We the employees of the Beach Café would like to thank our loyal customers for your support and continued business.

Please address your concerns to the following individuals:

Fred Bissinger: 919-843-9528 / 919-943-8800

fbissinger@aux-services.unc.edu

Scott Meyers: 919-883-6238

Follow the Money?

Dental Techs Wanted at School of Dentistry

Whether people will take notice and then speak up about something depends, they say, on whose ox is getting gored. Perceptive people have been able to watch some School of Dentistry employees' oxen getting gored for a year and a half now. The latest event in this (apparently ongoing) saga is—well...“interesting.”

In November 2006, 15 dental technicians with the School of Dentistry were laid off with (originally) only 30 days' notice. The termination date was later extended by a month and a half—not out of any real consideration for the lab techs, but because the dean of the school realized that they needed the lab techs a while longer so that students could finish their semester projects.

In December 2007 about 130 people in the dental school were notified that they would be getting in-range salary increases. Many people wondered whether the source of the funds for those increases came from the salaries of the now-dismissed dental techs.

In March 2008 the Office of Administrative Hearings ruled against two of the dental techs who had filed suit against the University for age discrimination. The judge ruled against the dental techs on a technicality. But his decision is packed with statements about how the testimony of the dean and other dental school officials shows their behavior in this matter to have been disgraceful.

And the beat goes on.

On May 1, 2008, two lab tech positions were posted in the Dental School at a salary ranging from \$25,400 to \$60,000. The old salary grade equivalent for this position was 70—ranging from \$37,000 to almost \$60,000.

Given the course of events in the Dental School in the last 18 months, it will be interesting in the extreme to see just who gets these new jobs...and just how much pay they are offered.

The Legalities of Layoffs for State Employees

In an organization as large as Carolina, there are probably always going to be attempts from time to time to lay off a staff employee or groups of staff employees. Most recently a number of employees at WUNC-TV—employees well known for their outspokenness about labor and management issues—have received pink slips.

Given the outcome of the dental techs' appeal to the State Personnel Commission and the layoffs at WUNC, the Forum would like to clarify the legal situation re: layoffs related to reductions in force (RIFs).

In 1997, the legislature changed the language of Ch. 126-34.1, which defines the types of appeals employees can make to the Office of Administrative Hearings (OAH). Before 1997, employees could appeal RIF actions to the OAH. The OAH would use the "just cause" standards for RIFs to determine whether or not an employee had been unjustly terminated under a banner of force reduction that was really motivated by something else. (In essence, "just cause" in the case of RIFs exists only when there are legitimate business reasons for the layoffs, such as shortage of work or funds, etc.) After 1997, although this law was somewhat changed, in practice nothing really changed. Between 1997 and 2003, that section of law was interpreted as it always had been: Employees would bring appeals of RIFs to the OAH, and the OAH would hear them using the just cause standards.

In 2003, a layoff case known as *Feinstein v. UNC-Chapel Hill* came before the OAH and was decided in favor of UNC-Chapel Hill. But the decision reached far beyond the case itself. The court held that based on its legislative history, the statutory change in 1997 was intended to exclude most RIFs from being appealed to the OAH. On that basis, rather than on the basis of its internal merits, the *Feinstein* appeal was denied.

The judge's decision did not change the just cause standard that organizations are expected to use when making a legitimate RIF. After *Feinstein*, management still bears the burden of proof during the internal grievance process for showing that the RIF policy was followed. But since *Feinstein*, most RIF grievance decisions can no longer be appealed to OAH, and those that can be appealed can only go forward under very limited conditions.

Today there are two main ways in which a RIF can be successfully appealed. If it is done in retaliation for an employee opposing discrimination, it can be appealed. Also, someone with Veteran's Preference in rehiring who alleges denial of Veteran's Preference can appeal. (One of the dental techs who was laid off could have appealed on denial of Veteran's Preference and might possibly have won. But he chose not to.) There are also a few other ways, but they tend to be harder to prove—such as age discrimination.

Sharon House and Jackie Maynard, former dental techs at the School of Dentistry, based their appeal on age discrimination because an appeal on the basis of “just cause” is no longer permitted due to *Feinstein*. This is what happened to them:

During the UNC-based appeal process, the burden of proof was on management to show that the layoff of the dental techs had followed the University's RIF policy and constituted a "just cause" for termination. This meant that to justify the dental techs' dismissal, management had to show that dismissing the employees and outsourcing their services was done because it would save money.

The grievance panel hearing Maynard's case found for her. They said that management had not demonstrated that careful evaluations of cost savings had occurred and that they formed the basis for the decision to outsource. The panel hearing House's case, however, found just the opposite. In all grievance cases, the final decision rests with the Chancellor—not the grievance panels. He did not accept the recommendation of Maynard's panel. He stated that the RIF policy had been followed—that the lay-off was for just cause because it was motivated by the effort to achieve “cost efficiencies.”

House & Maynard decided to appeal to OAH. But the appeal had to focus on the age discrimination that occurred in the RIF because age discrimination is grounds for appeal to the OAH while "just cause" no longer is. This means that in the appeal, the Dean of the School of Dentistry didn't have to show that he had followed the University's RIF policy. Nor did he have to show cost-savings.

In fact, under oath the Dean readily admitted he didn't follow the RIF policy. And in the end, the judge's Findings of Fact regarding the alleged cost-savings were largely in House

and Maynard's favor. (Our kudos to the Maynard grievance panel, which was able to see this!) All the Dean had to do to win the appeal was maintain that the layoffs were not motivated by age considerations.

For Maynard and House to win the appeal, they had to show that the underlying rationale for the “business decision” was age discrimination. Thus, statistical evidence was supplied by the statistician for House and Maynard to show that the action did not affect employees of all ages equally, as one might expect in a purely business-based decision, but had a disparate impact on older employees.

In his ruling, Judge Webster held that according to prior case law (i.e., *Feinstein*), it's not up to the courts to determine whether the Dean's decisions were really good business decisions. In fact, as his Findings of Fact indicate, it appears that they were not. But the Dean's business acumen was not at issue. The question was whether the Dean had made his poor business decisions from an underlying motive of age discrimination, and the Judge ruled that House and Maynard hadn't provided evidence for this. (There are some more details, but that's the main gist.)

For those who have an interest in being able to take just cause RIF cases to the OAH, Ch. 126-34.1 will need to be changed so that it expressly states that career employees can appeal RIFs to OAH on the basis of a just cause standard.

Otherwise, if you are laid off and if you grieve the lay-off decision as a violation of just cause and if you lose, you cannot appeal to the OAH on the same grounds that you originally used to file your grievance. You must approach the problem from another angle and hope to win.

***Movement for the Liberation of Old Papers:
Liberate and disseminate***

[Editor's Note: While the Employee Forum cannot advocate doing something that might be an infraction of the law, outside of that caveat the information preservation campaign described below sounds like a noble cause that some of our readers might be interested in joining.]

10 April 2008

Free information freely available is the rallying cry of Erik Ringmar, who wants others to join in putting restricted documents on the web.

The Internet Archive (<http://www.archive.org/index.php>) is an amazing place. Most famous for maintaining the net's largest repository of old web pages—some 2 petabytes of data—it also collects many other kinds of material: old movies, radio and television shows, books. The Americans have put entire libraries online, one scanned volume after the other.

It's all for free and you don't need any particular credentials to get access. A search for "China" provides 1,628 titles (mainly 19th-century books); a search for "Tocqueville" gives you 67 hits (lots of rare secondary sources). Although the past may be a foreign country, the friendly border guards at the Internet Archive hand out free visas to all travelers.

A neat feature of the site is that it allows uploads. As a result, you can treat the Internet Archive like an academic version of YouTube, a place where you can share material and promote your work. Remember your book on the transformation of Spanish political parties in the 1990s? The one that didn't sell that well? Why not deposit it online so that someone may actually read it? And why not be generous to fellow scholars and upload your source material once you've finished your research? Scholarship is all about collaboration, after all. And think of colleagues in less well-resourced locations who don't have easy access to fancy research libraries.

Not uncharacteristically, British research institutions are far behind the Americans when it comes to public online access to material. The contents of Hansard, which publishes the proceedings of the Houses of Parliament, are available online only from 1988. If you want access to older debates, bizarrely you have to visit a website at the University of Florida. Meanwhile American Congressional records dating back to 1774 are, naturally, available for easy browsing at the Library of Congress.

However, other British parliamentary papers are available online. All reports produced by the House of Commons have, for example, been scanned by a company called ProQuest. Its site is great—pages are searchable backwards and forwards. The only problem is that access is restricted and comes with a charge. Each downloaded parliamentary report bears a little inscription: "Copyright (c) 2006, ProQuest Information and Learning Company. All rights reserved."

Think about this for a second. Here is a company that lays exclusive claim to material produced by the elected representatives of the people. A company whose business idea it is to restrict access to our common heritage. This is upsetting first of all because it goes against the rights of citizens in a democracy to have the documents produced by their parliament freely available. Second, ProQuest is claiming copyright to material whose copyright has long expired. And finally it makes academic research far more difficult. Unless you belong to a university that's prepared to pay for the stuff, you won't get to read it.

So, I've taken it upon myself to start an organisation called MLOP, the "Movement for the Liberation of Old Papers". What I do is hack into restricted websites, download the documents I'm interested in, and then use my favourite open-source paint program to remove the copyright statements from each page. Next I assemble the pages into one single pdf file and upload it to the Internet Archive, where it will become universally available to both researchers and citizens. Yes, it does take a bit of time, but it's a very worthy cause (and I have a hardworking research assistant to help me).

I feel strongly about this, and I'm prepared to live with the legal consequences of my actions. This, after all, is the new frontier of civil rights—the right of access to information. How else can corruption be stopped and falsehoods exposed? How else can people in power be held accountable? I'd go to prison for the old parliamentary papers if I had to. Ever after I would proudly brag about having liberated an old House of Commons report from the clutches of market capitalism.

Why not join me in my revolution? It's easy and fun. If you have a university affiliation, you have access to all kinds of restricted material that easily can be redirected to an open-access website. Do it! If you have a scanner, you can even raid your university library and share the loot with the rest of us. Serve the common good and liberate an old document today!

Postscript : Erik Ringmar is professor of social and cultural studies at the National Chiao Tung University, Hsinchu, Taiwan. His books are available at the Internet Archive.

Curious Contradictions about Salaries?

From the *Stuff We Found on the Way to Looking for Other Stuff Department* come these two nuggets:

(1) The UNC Board of Governors is required by law to make annual recommendations to the NC Legislature about how much salary increase faculty in the UNC system ought to receive. For 2008-2009, the BoG is asking for more than \$69.5 million in order to make sure UNC faculty are not making less than 80% of what their peers are making at similar educational institutions. Faculty at UNC-Chapel Hill will get \$14.5 million of that.

In addition, the BoG is asking for more than \$72 million for merit-based increases for these same faculty as well as other exempt employees (including many high-level administrators as well as lower-level EPA-Non faculty staff employees). “This funding is particularly important,” states the BoG’s request, “given that the benefits package for faculty in North Carolina remains non-competitive and the salary component of total compensation must therefore be higher.”

There is no mention of how that \$72 million will actually be distributed among top-level administrators, faculty, and non-faculty staff.

The BoG has no legally required input regarding SPA staff salary increase requests, but in their request they do ask for a “meaningful” salary increase for these employees.

(See the *2008-09 Budget Priorities of the Board of Governors, The University of North Carolina*, pages 5-6. This report is available at http://intranet.northcarolina.edu/docs/finance/reports/FINAL_2008-09_Budget_Priorities.pdf.)

(2) Meanwhile, a recent article in the *Triangle Business Journal* reports that UNC-Chapel Hill ranks among the top three public schools in the country in terms of faculty pay. Citing an annual salary survey conducted by the American Association of University Professors, the *TBJ* article reports that salaries of full professors at UNC rose by 37.3% from 2000 to 2007.

The *InTouch* notes that during those same years, according to the UNC Fact Books for 1999-2000 and 2006-2008, pay for associate professors rose 26.9% and for assistant professors rose 30.1%. Office of State Personnel data indicate that for career staff employees during those years, pay rose 24.7%.

(The Triangle Business Journal article can be found at <http://triangle.bizjournals.com/triangle/stories/2008/04/28/story4.html?b=1209355200^1625296>.)

Editorial Opinion

Black and (Carolina) Blue: Racism and Classism in South Building

by David Brannigan, Facilities Services

Once again our housekeepers have been the victims of the persistent institutional racism and classism that pervades this University's higher level administration.

Each month, Forum members meet for one hour to share ideas and concerns with the Provost (Bernadette Gray-Little), Vice Chancellor for Finance (Richard Mann), Associate Vice Chancellor for Human Resources (Brenda Malone), and Associate Vice Chancellor for Campus Services (Carolyn Elfland). At the April Provost meeting, two white female employees—not Forum members—came to report their concerns about a reduction in a bus service linked to the CAP program and to seek an explanation for its sudden demise. This topic dominated more than half the meeting time. The employees were articulate and knowledgeable about the issue at hand, and the Administration was at pains to explain its rationale for axing the service.

At first this would seem to be an excellent example of the exchange of information that serves to inform and educate both parties. However when I initially walked into the conference room in South Building and saw employees that I knew were not Forum delegates, I was shocked at their presence. I was shocked because at the Provost meeting two months earlier, five of our lowest paid employees—all black people wearing Carolina blue work shirts—had been blatantly denied the privilege of discussing their concerns in this same setting on the grounds that they were not Forum members.

As the delegate elected to represent Division II, in February I had arranged to have four non-Forum housekeepers and a housekeeping Forum delegate attend the Provost meeting so they could directly report threats made to their jobs by the Director of Housekeeping (Bill Burston). In the past, Forum delegates had brought guests to these meetings to discuss a variety of staff concerns, and the concerns that had been shared with me by the housekeepers certainly deserved the Administration's attention. It seems

that all the housekeepers working in dorms had been told by him that there would not be any more summer overtime, that they would have to figure out how to do their former overtime work within regular work hours, and that they would now have to work split shifts over the weekends. When they objected to these changes, they were told once again (as they have often been told in the past) that temps could also do their jobs.

As some of UNC's lowest paid employees, these workers had come to count on being able to earn overtime pay in the summers, when the turnover in the dorms is high and the need for housekeeping services is greater than normal. Because their wages are so low, many of them also work second jobs on the weekends, to make ends meet. So this plan by the University to save money by changing their working conditions was coming at the expense of these low-paid employees—in more ways than one. Add to this the not-so-veiled (and not uncommon) threat implied by the “temps” comment, and I felt that these issues were more than worthy of the Forum's most urgent attention, so I asked the Forum assistant to add these peoples' names to the list of attendees and make their concerns an official agenda item for the Provost meeting.

As the meeting was about to convene, the Forum delegates and our housekeeping guests were sitting in the room awaiting VC Man, Provost Little, AVC Malone, and AVC Elfland when Forum Chair Ernie Patterson entered the room and told us the housekeepers would have to leave.

To say I was shocked would be an understatement. He said that since they were not delegates, they could not attend the meeting, which was for delegates only, and they must leave. When I pointed out that we had on many occasions over the years had non-delegates attend these meetings, the Forum Chair just stood up and said, “Ok. Meeting's cancelled.” When I attempted to reason with him, he just repeated his threat. Either the housekeepers had to leave or he would cancel the meeting, and he went so far as to again declare the meeting cancelled and began to gather his notes and papers.

I was almost dumbfounded, and I looked around the room for support for my line of reasoning that this is not what had happened on many other occasions and that the primary role of the Forum—and this meeting—was to represent the interests of our fellow employees to the Administration.

But there was precious little comment from any one else at the table. I asked why this ultimatum was being issued, and he declared that the Administration had told him either the housekeepers leave or they would cancel the meeting. Frankly, at the time I was not inclined to believe this, though subsequent information indicates that it was the truth.

As I looked around the room and tried to defend the right of the housekeepers to be afforded the same opportunities as other employees, I was doing a rapid mental audit of my duties and responsibilities toward those people who had elected me. If I stood by my view that the housekeepers were being abused and ignored yet again by the Administration, if I called the Administration's bluff and let them cancel the meeting, the

very real and urgent concerns that they wished to air would not be heard at all and in the interim the Administration would be able to offer all sorts of spurious rationales for their position.

As the Forum Chair once again rose to say the meeting was cancelled, one Forum delegate dared to brave the opinion that it might be prudent at this time to ask our housekeeping friends to leave and let the one housekeeper who is a Forum delegate remain to bring forward the issue.

And so it was that with Mann, Malone and Elfland hovering outside the door, the four housekeepers who had been brave enough to step up and speak out despite a very real threat to their jobs—and all the attendant victimization and harassment that speaking out might provoke—stood up and silently left the South Building conference room, excluded once again from a seat at the table.

On the day this happened, the 48th anniversary of the famous Woolworth's lunch counter sit-in by four black men in Greensboro had just passed. This event was one of the defining moments in the civil rights movement of the 1960s. How ironic that decades later, black staff employees at Carolina were still being denied a “seat at the table.”

The one housekeeping delegate remaining, now lacking the moral and numerical support of her fellow housekeepers, had to present the Administration with their claims. The whole idea of asking all these housekeepers to the meeting was that there might be certain strength in numbers and consequently that their confidence would be boosted sufficiently to be able to report what a large number of them had witnessed and heard.

Also, I personally hoped that the newer members of the administration, Dr. Mann and Brenda Malone, would benefit from being able to hear firsthand from a few employees the very serious allegations that were being made—rather than hearing such things (yet again) from me as their elected representative. (It would appear that my instincts were spot-on. I have been informed that the Administrators wanted to verify the claims without those claims being filtered through me.)

I walked away from this meeting both angry at the treatment the housekeepers had received and amazed at how “rules” about these meetings being strictly for delegates had materialized apparently out of thin air. I have never seen or voted on any such rules. In fact, I recalled numerous occasions in the past in which Forum delegates, including the Forum Chair himself, had brought non-delegates to these meetings. And on none of these occasions were these apparent “rules” ever invoked.

So you can see why it was that when I walked into the Provost meeting just two months later and saw non-Forum delegates there, my anger was kindled all over again.

I do not make the claim that individual members of the Administration are in any way deliberately and overtly racist. But their selective application of supposed “rules” in order to exclude the housekeepers and their abject failure to apply these same “rules” to

two white, middle-class women is a testimony to the institutional racism and classism that still exists within South Building.

When inquiries were made to Dr. Mann as to why the two non-delegates had been allowed to be present in April, he claimed he did not know they were to be there and it was only after the meeting started that he realized that they were not delegates. He admitted that according to the spontaneously minted “strict protocols” put in place for these meetings, they should not have been.

However, it is in the very nature of institutional racism and classism that it would never have occurred to him to verify the *bone fides* of two white, middle-class women who appeared in the meeting, in contrast to his treatment of black, working-class women.

Additional information has it that Elfland was apparently told a couple of days prior to the meeting that Patterson wished to have these people attend. Once again, it seems never to have occurred to her that allowing these two employees to attend while having previously been a party to excluding some of her own working class, black employees represents a gross and hypocritical double standard of unequal treatment and access. This is an especially egregious insult given that she is the person directly responsible for the management of one of the historically most abusive and problematic areas of employment within the University, as witnessed by the litany of formal complaints from housekeepers over the years about the same supervisors and managers, many of whom continue to be employed here.

And of course there is the role of our own Chairperson, himself now a willing enabler of the long history of exclusionary, institutional racism and classism. He manifestly forgot the supposed “rules” that he had invoked on behalf of the Administration to summarily exclude and humiliate the housekeepers. When two white middle-class women wished to engage the Administration on an issue, he facilitated it for them, and the Administration, in its complacent and institutionally racist and classist way, had no problem accommodating them.

And lastly, there is me. At the April meeting, I was once again conflicted. Part of me wanted to ask who these non-delegates were and why they were allowed to be present. If I had done so, I would have done them a disservice—but I would have thrown into sharp relief the appalling double standard being allowed to prevail.

I confess part of me wanted to do this. I wanted them to suffer the same humiliation that the housekeepers had had to endure as they filed silently out of the February meeting, but I realized that this would be equally unfair to them and two wrongs do not make a right. So once again, in deference to the employees present and not wishing to deny them their chance for an audience with the Administration, I chose not to raise the issue.

But I raise the issue now. The Chair of the Forum has been complicit in an act of Institutional Racism and Classism. When I asked him immediately after the April meeting about this, he offered vague and meaningless justifications, visibly taken aback that someone had called his actions into question. When I refuted his justifications and asked him again to explain his actions, he chose to walk away, finally admitting “You’re right. Maybe I just fl@@&* up.”

Well, Mr. Chairperson, you got that right.

I wonder if the Administration will make as frank an admission. Somehow I doubt it.

As this newsletter was just about to go to press, I learned that while the Administration quickly took positive action on the problem presented by the non-delegates in April, the housekeepers’ problem will not be addressed.

[Editor’s Note: It is my great embarrassment and shame to admit that I was at both of these meetings. Unlike Dr. Mann, I knew perfectly well from the outset that the two women sitting at the table in April were not Forum delegates, but guests. Unlike David Brannigan, it never occurred to me that their presence there that day was a slap in the face to the housekeepers who had been denied seats two months earlier on the grounds that they were not Forum delegates. While I was not pleased at the exclusion of the housekeepers in February, given that they had been excluded then, I should have been more aware of the double standard being enacted in front of me during the April meeting. I accept my witless participation in what happened, I acknowledge the racist and classist nature of it, and I regret it. Sometimes improvements in consciousness come in small increments—and at the cost of very embarrassing failures.]

<p>The InTouch is a newsletter published by the Employee Forum of the University of North Carolina at Chapel Hill. The editor is Brenda Denzler, Chair of the Forum Communications Committee. If you have comments, story ideas, or need help getting the full newsletter, contact the Forum office at 962-3779.</p>
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