



Layoffs at UNC-TV – A Case Study in Undermining Employee Trust

by Steve Hutton

SEANC District 25 Supports Binding Arbitration and Reasserts Opposition to More Personnel Flexibility for UNC-General Administration

Introduction

SEANC District 25 will seek a pilot of binding arbitration in lieu of the current grievance process. This decision has been under consideration for some time but has become a priority as a consequence of the layoffs at UNC-TV in April, 2008.

Additionally, District 25 renews our objections to enhanced personnel flexibility for UNC General Administration (GA). Testimony in one of the layoff cases brought before the Office of Administrative Hearings (OAH), as outlined below, demonstrates why.

The Grievance Hearing

In April, 2008, six men over the age of 40 were laid off from UNC-TV. In August, one employee, Brent Judd, had a grievance hearing. During the prior June, it became apparent that Ann Lemmon, Associate Vice-President for Human Resources for GA and the University System, intended to be the hearing officer during the grievance. I pointed out to her that she was one of the people who had signed off on the layoffs. I noted that she might be called as a witness, and, therefore, it would not be proper for her to be the hearing officer. Shortly thereafter, another GA employee was slated to be the hearing officer. However, on the day of the hearing and without prior notice, Lemmon served as hearing officer.

In layoff cases, the burden of proof is on management, and management presents their case first. Judd was also asserting age discrimination. The burden of proof for that claim was on him. However, that should not have changed the order of presentation. Despite knowing this, Lemmon made Judd go first. This made for a less organized presentation to the panel.

The grievance panel found that the policy regarding reduction-in-force (RIF) had not been followed by management. They noted that alternatives to the layoff had not been explored and that the process had not been documented. They recommended that management start over with the layoff process and compensate Judd for time lost through an increased severance award. (Note that such an award is not permitted by law.)

The panel's recommendation was overturned by President Bowles, who upheld the original layoff without providing any reason.

Testimony at the Office of Administrative Hearings

In June, 2007, Tom Howe, General Manager of UNC-TV, created a small task force to review positions. Task force members were asked to categorize positions into three groups—Group A, those that were critical; Group C, those that were not critical; and Group B,

those that weren't clearly in Group A or C. Group A was to be approximately 80% of positions, and Groups B and C approximately 10% each. Other employees, including middle-level managers, were not aware of the task force or its charge.

In August, it was announced that some employees were being laid off effective April, 2008. At that time, only management was aware of the number of positions being eliminated and who was being laid off. It was later learned during the OAH discovery process that fifteen positions were eliminated. Ten of those positions were filled.

The question, then, before OAH was whether or not management had followed the reduction-in-force policy, particularly those provisions intended to prevent discrimination. The case was heard at the end of July, 2009.

Carl Davis, Director of Engineering and later Assistant General Manager of UNC-TV, testified that it wasn't necessary for him to follow the RIF policy because he had only been charged to classify positions in Groups A, B, and C. During his testimony it became clear that he was not cognizant of his employees' qualifications. For example, he was not aware that Judd had himself served as a director of engineering at three prior employers. He was also not aware that Judd was more qualified than the other two employees in his work group, including Judd's supervisor. Judd testified that Davis had told Judd's supervisor that his position had been selected for elimination because of Judd's higher salary. That testimony was uncontested.

Tom Howe, General Manager, testified that it wasn't necessary for him to follow all the provisions of the RIF policy because he was eliminating positions and not people, despite the fact that ten of the positions were filled. He indicated that he was confident that had he done anything wrong, he would have been notified by UNC-TV's in-house attorney or by Lemmon.

Melanie Holden, HR Manager for UNC-TV, testified that her position was not ultimately responsible for determining if policy was being followed. There was a layer of management above her, namely HR at GA. She primarily processed the paperwork. She did provide demographic information about UNC-TV's employees to the task force when asked.

Despite the fact that the current RIF policy has been used for decades with only relatively minor alterations, Lemmon testified that the current RIF policy was not suited to the layoff situation at UNC-TV—that the policy was designed for across-the-board layoffs due to budget cuts where there were a number of employees performing the same function. She was under the impression that the positions being eliminated at UNC-TV were "one-off," where only one employee was performing a specific function. According to Lemmon, in this case it didn't matter that there were other TV engineers with the same or similar classifications to Judd or that Judd might be qualified to perform other jobs in the engineering department.

The grievance panel had noted the lack of documentation of the RIF process. Lemmon testified that policy did not require that the process be documented. This is true of OSP policy, but GA's policy states that every step must be documented.

After the grievance hearing, and at the request of President Erskine Bowles, Lemmon documented the RIF process in conjunction with UNC-TV. Still, there was no documentation of Judd's qualifications vis-à-vis others in his work group or in the engineering department. Lemmon testified that this wasn't necessary because if the positions were "one-off," there was nothing to document.

When questioned about her review of the RIF for potential age discrimination, Lemmon testified that she had done a quick calculation by hand, determined that there was no discrimination, and threw away her notes. That calculation, she said, was subsequently reconstructed. However, the calculation was simply of average and median age and not the one normally used by HR personnel—the one required by law and recommended by the Equal Employment Opportunity Commission.

Judd's expert witness, biostatistician Debra Weiner, provided affidavits and testimony that the group of laid-off employees was significantly older than retained employees and met the legal statistical requirement for age discrimination by disparate impact. Her testimony was uncontested.

Lemmon further testified that she withheld an important document from the grievance panel. This was the final report of the task force. She and others felt it contained personnel information best kept confidential. This was despite Judd's public records. When the document finally came to light, it didn't contain any information that was confidential according to the law. By providing this

document to President Bowles, Lemmon responded to the grievance panel's concern that the RIF process had not been properly documented even though the report was only a portion of the documentation required by GA's own RIF policy.

The Administrative Law Judge has submitted his ruling to the State Personnel Commission, which has granted itself an extension. Their decision is expected sometime between February and April, 2010.

The Consequences

The actions by Lemmon have made a mockery of the grievance process.

The intent of career-banding was to provide the state personnel system with greater flexibility in job classification and compensation. One aspect of that was to have more flexibility to retain the most qualified personnel during a reduction-in-force. That flexibility was not utilized in this case. Moreover, Lemmon has contended that when an employee is performing a "one-off" function, management can target that employee for layoff, regardless of classification, relative skills compared to their peers, years of service, or the impact on workforce diversity. That's a reading of the RIF policy that no reasonable HR professional would ever make.

Therefore, District 25 renews our objections to enhanced personnel flexibility for the UNC System. General Administration cannot be trusted to correctly use the flexibility it already has. They appear incapable of following policy and more than willing to manipulate process and ignore laws in order to cover-up their failings and to mislead superiors, including President Bowles.

District 25 will be seeking a pilot of binding arbitration as a substitute for the grievance process.

Reductions-in-Force and Sovereign Immunity

by Steve Hutton

Recently, I was asked how it was possible for some administrators at UNC-Chapel Hill to get away with reductions-in-force that don't follow law or policy. The intent of the question was to address individual responsibility rather than institutional responsibility. Obviously, a reduction-in-force that doesn't follow law or policy can be overturned by the courts. The public agency in such cases is held accountable, even if individual administrators are not.

I explained to the former employee the doctrine of sovereign immunity, by which public officials and employees tend to be protected by the legal concept of "the king can do no wrong," as they carry out their functions for the state.

However, there are exceptions to sovereign immunity, such as gross negligence or deliberate violation of law and/or malicious intent. There have been instances of reductions-in-force and discrimination in which individual public officials have been named in legal actions and held personally accountable. The law in these situations is complex¹, and employees or former employees are encouraged to consult an attorney.

It does appear likely, however, that in the near future some officials at UNC-Chapel Hill will be named individually in one or more law suits for alleged intentional violations of laws covering reductions-in-force and discrimination.

¹ *Daye and Morris, North Carolina Law of Torts, §19.43.5 at 398.*

UNC Staff Assembly

What We've Been Up To

by Alan Moran

What is the Staff Assembly?

The Staff Assembly of The University of North Carolina represent the staff of the University, in cooperation and concert with the University Chancellors, President, and Board of Governors.

The Staff Assembly (SA) serves in parallel function with the University Faculty Assembly and the Association of Student Governments to address constructively the concerns and interests of our respective campuses and the whole University.

Our goal is to improve communication, understanding, and morale throughout the whole of our respective communities, and to increase efficiency and productivity in campus operations.

We strive to accomplish this goal by seeking out the issues, interests, and participation of staff employees; developing considered, informed recommendations on these concerns; advocating these recommendations to administrators and staff; fostering constant, open communication between administrators and staff; and supporting the teaching, research, and public service missions of the University. (Taken from the SA Charter)

UNC Chapel Hill has three delegates and one alternate representing our staff on the Staff Assembly, which was given its Charter by UNC System President, Erskine Bowles. Those delegates are: Tommy Griffin, Chair of the Employee Forum (EF), Faith Thompson (School of Government) and myself, Alan Moran, (Facilities Services, Design and Construction Services). Our Alternate is Mike Hawkins (ITS) who has stepped in on more than one occasion to take our place when needed.

You can find out more about the Staff Assembly by visiting; <http://uncstaffassembly.northcarolina.edu/about/index.htm>

We've had a very busy year at the Staff Assembly. We touched on most of the issues employees were anxious about including the State Health Plan, Tuition Waiver, Flexible Scheduling, RIF's, and budget cuts.

So what have we done? Much like the Employee Forum the Staff Assembly gathers information through its delegates from constituent institutions and finds issues that affect us all. It then charges a particular committee to work on those issues. The Staff Assembly's Human Resource Diversity and Benefits Committee (HRDB) is where we tackle most of these issues. The Chair of that committee is our very own Faith Thompson, who is doing a stellar job reaching out to other member institutions to ensure that we are tackling universal issues. Some of the issues we worked on were:

Flexible Scheduling

We had early success with developing and recommending a Flexible Scheduling policy that was passed by the Staff Assembly for recommendation to the UNC System President.

Salaries

Economic difficulties for the state and the nation necessitated the HR Committee take action and draft a letter to the UNC System President to highlight the conditions employees were facing such as salaries consistently falling below the benchmark averages.

Among the HR Committee's recommendations to the administration were;

Pursue cost-of-living increases for staff

Take a similar approach to staff as they do with faculty in regard to benchmarking salaries.

The letter was sent to the Executive Committee for review, unfortunately the HRDB Committee was unsuccessful in getting the Executive Committee to act on it in time for the budget process. The letter is still under review by the Executive Committee.

Tuition Waiver

The budget as passed by the legislators in Raleigh was not very kind to employees. Not only did it fall short in providing cost-of-living adjustments for employees, it went further and cut into the Tuition Waiver Program, a major benefit to employees who wish to better themselves and the organizations they work for.

Indeed, many employees have remarked that this benefit was one of the most attractive reasons for working at the university.

The HRDB Committee was tasked with interpreting an Educational Benefits Survey, conducted by the SA and utilizing it to augment employee benefits.

After much discussion with SA leadership it was proposed that we recommend an expansion of the Tuition Waiver Program to include spouses of employees. This measure, we believe, could help with employee morale, retention and recruitment, which are issues that continue to arise, especially during tough economic times. The committee has agreed to draft a letter in support of overturning the reduction and it may also include recommendations to expand the waiver as outlined above. This idea has found favor with some in administration but it remains to be seen if we have adequate support in Raleigh. This issue is ongoing.

State Health Plan

The HRDB Committee has recently taken steps to help augment the information about the State Health Plan (SHP) relating to changes enacted due to legislative mandate. Those changes included “wellness initiatives” that included “incentives” for individuals who use tobacco and/or have a BMI over 40 initially and over 35 subsequently.

Two motions were made by the HRDB Committee and then passed by the SA, asking that:

1. The Staff Assembly work with the Faculty Assembly in crafting a response to changes to the SHP
2. The SHP do a better job in disseminating information about how changes to the SHP will impact employees.

The changes include:

1. Effective July 1, 2010, members who use tobacco products must remain in the 70/30 plan.
2. Effective July 1, 2011, members who have a Body Mass Index.(BMI) of 40 or greater must remain in the 70/30 plan.
3. Effective July 1, 2012, members who have a Body Mass Index (BMI) of 35 or greater must remain in the 70/30 plan.

All employees will default to the 70/30 plan, but employees who “attest”, (online, during open enrolment) to meeting the requirements will be allowed to enroll in the 80/20 plan.

Employees and covered dependants who use tobacco can remain in the 80/20 only if they are enrolled in a physician-certified plan. They may “attest” to this online during open enrolment.

Random testing of members and/or covered dependants will be carried out by an outside vendor. A vendor has not yet been chosen but one stipulation is that the vendor has testing locations within 15 miles or 30 minutes of members’ homes.

Issues regarding privacy concerns, i.e. what happens to samples taken during testing are being reviewed by general administrations legal department.

More Information about the Wellness Initiative can be found here: <http://www.shpnc.org/comp-wellness.html>

Frequently asked questions to the health plan can be found here: <http://www.shpnc.org/cwi-faqs.html>

The precipitous downturn in the economy forced all of us to rethink our approach to a myriad of issues. Instead of asking for increases in salaries or expanding tuition waivers or other benefits, as is usual for staff organizations, we found ourselves fighting to keep employees whole; something we still fight for today.

It has been inspiring to meet individuals across the state who are dedicated to the well-being of their fellow employees and to the communities in which they live and work. We have a strong nucleus of individuals who go out of their way to represent the best interests of both employees and the university community. We meet with disappointments along the way, but your Staff Assembly delegates are doing their utmost to safeguard the best interests of all employees. I trust and hope we have energy left for the coming year.

Update on Dental Lab Techs' Legal Proceedings

by Steve Hutton

Two of the fifteen employees laid off in January 2007 from the dental laboratory have appealed their case. Sharon House and

Jackie Maynard contended that the School of Dentistry (SOD) violated the law by outsourcing their work without demonstrating that there would be cost-savings. They also contended that they were discriminated against on the basis of age.

After losing their case at the Office of Administrative Hearings (OAH) and their appeal to the State Personnel Commission, House and Maynard appealed to the Orange County Superior Court. The appeal asserts that they were denied both substantive and due process rights because the SOD failed to follow UNC Chapel Hill's reduction-in-force policy. Former Dean John Williams admitted to such failure during the OAH hearing.

The appeal is based on due process rights granted in the first sentence of Article I, Section 19 of the North Carolina Constitution, which states:

Sec. 19. Law of the land; equal protection of the laws.

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

On December 7, 2009, Judge Paul Ridgeway denied the State's motion to dismiss the due process claim. A trial date has been set for the week of May 17.

A positive outcome for House and Maynard will broaden the basis on which reduction-in-force cases can be heard by the Office of Administrative Hearings. It will be a victory not only for themselves but also for all state employees

Former Dean John Williams, after being denied renewal of his deanship, has accepted the position of dean of the SOD at Indiana University.

House and Maynard are represented by Elizabeth Haddix of Pittsboro and Travis Payne of Edelstein & Payne in Raleigh.

Time for Employee Forum Elections!

The time for electing new delegates to the Employee Forum is fast approaching. You should soon receive a nomination form in the mail. Think of your fellow co-workers; who would be a good representative to serve on the Forum? Alternatively, you may decide that now is the time for you yourself to make a difference by running for delegate to the Employee Forum.

You can make a change by running for the Forum. Delegates are expected to attend monthly Forum meetings the first working Wednesday of the month, as well as serve on one committee. Terms are for two years.

If you're interested, or have a co-worker who you've contacted and is interested, send an e-mail to forum_office@unc.edu with their contact information. Please specify "Nominations" in the subject line for easier processing. Nominations are due March 10, so act now!

Staff Relations, Policies and Practices

We Work For You

by Marc ter Horst

The Staff Relations, Policies and Practices (SRPP) committee welcomes concerns from groups of employees from all units and departments across campus. Based on comments received over the past few years, the committee has decided on a short list of topics to focus its efforts. Our goal is to work collaboratively toward tangible results on these areas as well as other needs as they arise. This year, we were encouraged to learn the Office of Human Resources is leading a review of the grievance policies. The committee worked with HR to identify aspects of the policy and procedures for consideration, details of which have been highlighted elsewhere.

Reports from various staff describe perceived poor decisions in management of personnel and resources. We also recognize that well-intentioned individuals earn promotions to positions of leadership without receiving basic management training. Some newly assigned supervisors are then forced to learn by trial and error. We believe all managers and supervisors should obtain basic knowledge of best practices along with opportunities to develop effective skills appropriate for their new positions. There are programs run by HR and support within units and departments across campus to provide this training. Our goal is to have these opportunities offered to and received by all staff who can benefit from them.

Evaluations are an integral part of assisting staff in addressing job responsibilities and provide direction when changes in operations are implemented. Traditional top-down evaluations would ideally include an interactive conversation of observations and ideas yielding a more effective and efficient work environment. However, we hear that is not always the case. Whether out of incorrect perceptions of job responsibilities or misunderstanding of expectations, both the supervisor and the direct report suffer from limited communication. Another option to consider is bottom-up evaluations where staff are empowered to interact with their supervisors in a constructive manner. The committee is interested in hearing about any existing implementation of bottom-up evaluations.

There is a recognized need for everyone to take breaks during the work day. Whether it is to eat, take a "nature break", or simply to catch your breath, a moment away from daily responsibilities improves our ability to complete our tasks. The University does support reasonable breaks for all employees. Concern builds when uncertainty surrounds when and where individuals are permitted to take their breaks. Staff in housekeeping can fall into this category and are representative of other staff who do not experience the sufficient

latitude for managing their work day. Compounding the issue is uneven application of privileges across units and employment categories. While it is not obvious that decisions are necessarily made in violation of University Policy, indications of preferential treatment do lead to perceptions of negligence. The SRPP has engaged in conversations with supervisors and representatives from HR to address these concerns. I am encouraged by the willingness of those involved to balance the many demands on their time and allotted resources to address the issues. Progress has been made and we welcome further efforts to foster positive working conditions.

Communication continues to present a problem we face at UNC. In particular, sharing information on employee rights – for example, HR policies, guidelines for evaluations, and grievance procedures- with all staff remains a challenge. Internet webpages do permit access to significant amounts of information, however, finding particular information can become a daunting task, especially for those less familiar with keyword searches. In the past, a question and answer section in the InTouch addressed by the Office of Human Resources has proven helpful. The committee has also discussed an updated employee handbook.

In response to a greater proportion of employees with English as a second language (ESL), we have seen a greater need to provide education and support in languages other than English. It has been suggested the University should provide translations of policies related to staff. Unfortunately, this is an extremely challenging task. Which languages and dialects to use? Who will provide the initial translations and stay current with policy revisions and additions? Are print editions required for all translations? An alternative is to provide a summary of the more pertinent policies, perhaps in the form of a multilingual employee handbook.

In this age of computers and the Internet, it's no surprise everyone can benefit from having computer skills and access to the World Wide Web. Indeed, an abundance of University information is available on UNC websites and university wide emails (University policies, notices related to transit, parking, inclement weather conditions, health and safety, pay stubs, etc.). For those of us who spend a significant portion of our day on a PC or Mac, it is difficult to imagine completing our work responsibilities with out a computer. Yet, there are staff whose job responsibilities do not require instant access to computers and some feel an entire world of information is not accessible. We understand there are limited resources (space and time) but encourage the sharing of resources and allowing flexibility during the work day for staff to access electronic information while maintaining a strong work ethic. The committee hopes all staff at this great educational institution can obtain the knowledge, skills and access to computer technology appropriate for their responsibilities and as a member of the UNC community. We encourage the expansion of training programs and opportunities to access computer resources.

Even though there are areas for improvement, the environment at UNC is generally good. Staff and faculty from various levels of the university organizational chart do communicate as needed to address concerns. The SRPP wants to make the community better, to contribute positively to staff morale and advocate for continued efforts to foster an effective work environment for Carolina and its staff, faculty and students. To this end, the committee appreciates any comments or suggestions related to the above focus areas. We also welcome any other concerns staff may have. Please contact me directly (terhorst@unc.edu) or the Forum web site, <http://www.unc.edu/forum>, under the Committees link.

Message from the Chair

by Tommy Griffin

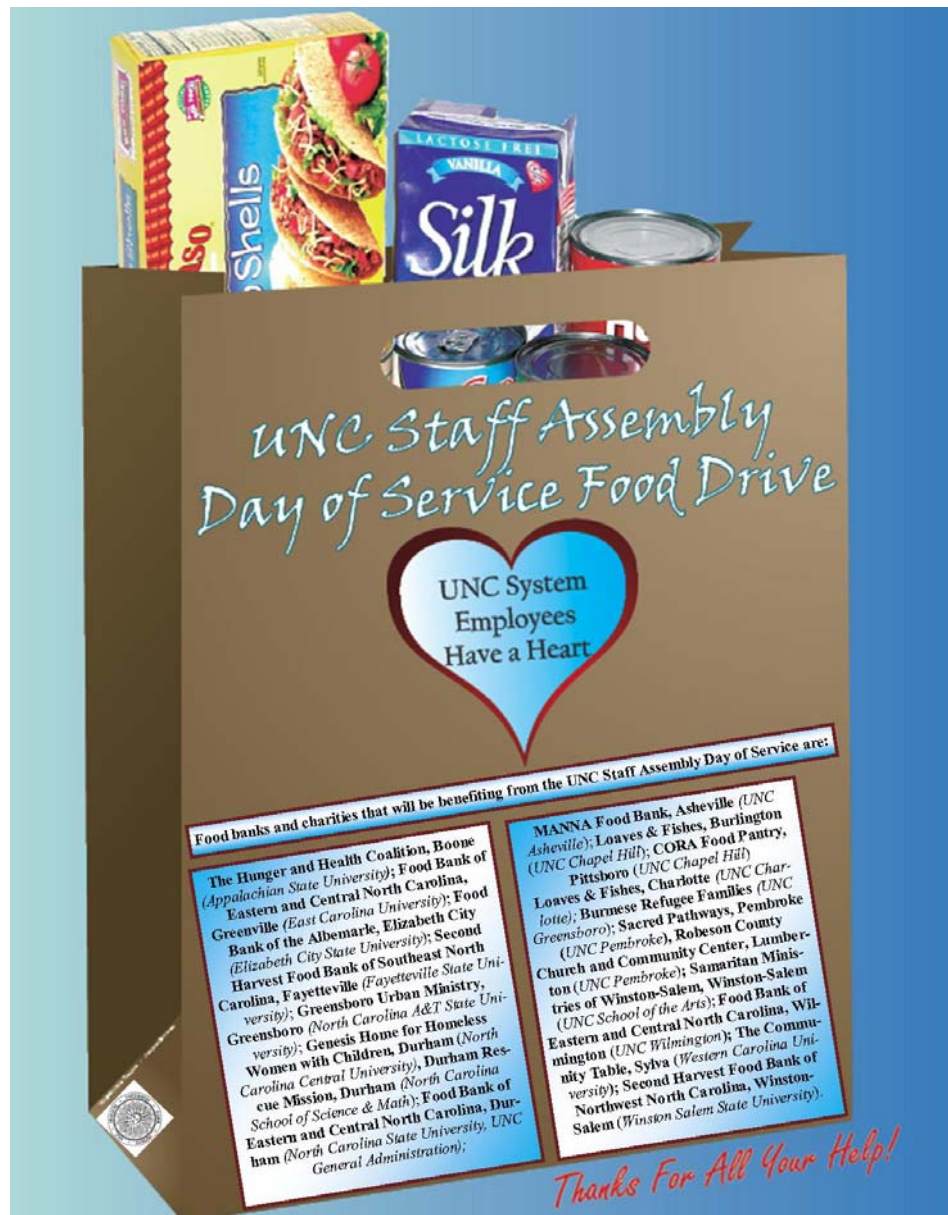
I'd like to thank everyone who came out and braved the weather to help clean the campus last Sunday and Monday. We had a grand time with everyone there showing what I like to call "Tar Heel Heart." "Tar Heel Heart" means that we all pull together to do something greater than ourselves. We showed that this past weekend when the snows came. I've heard from faculty, staff and students all across campus how much they appreciated the work that was done, and I thought it would be best to share those good thoughts and kind feelings with you all.

Secondly, I should let you know about the UNC Has a Heart Day of Service. We'll be collecting food for the Chatham and Alamance County food banks as well as collecting shoes for Haiti. Look for collection boxes near your recycling bins or contact the Forum Office at 962-3779 to contribute your food. Let's all pull together to show our "Tar Heel Heart" in this time of need. Thank you.

UNC Staff Assembly to Conduct Statewide Day of Service to Benefit Local Charities

The Employee Forum will be collecting food for the Chatham and Alamance County food banks as well as shoes for Haiti during the UNC Staff Assembly's Statewide Day of Service. From February 8-12, the 17 campuses that make up the UNC System and UNC General Administration will embark upon a statewide effort to collect canned goods and toiletries for local food banks and charities. The effort will culminate on February 15, when each campus will deliver their collected donations to the charity of their choice.

Items can be dropped off at the Employee Forum office located at 134 East Franklin Street, Room 207, or at various locations across campus. Contact your Forum representative, or email the office at: forum_office@unc.edu for more information about what to donate, and where you can donate. Show everyone how much heart Carolina has – every little bit helps!



Massey Award nominations due Feb. 11

Nominations are due no later than 5 p.m. on Feb. 11 for this year's C. Knox Massey Distinguished Service Awards. Given for "unusual, meritorious or superior contribution made by an employee, past or present," these awards may be conferred by the UNC chancellor upon "any living full-time or part-time employee, whether faculty or staff." Holden Thorp, current chancellor, will present each of the six recipients with an award of \$6,000 during the spring Massey awards luncheon.

Nominations may be submitted by completing an online nomination form located at www.unc.edu/masseyawards/nominate. Letters of nomination may be sent instead to the address below. Each nomination should include the name of the proposed recipient, indicate whether the nominee is a present or past University employee (if past, include the dates when the nominee was employed), describe briefly the service rendered by the nominee, explain why this service is thought to be a contribution sufficiently "unusual, meritorious or superior" to deserve an award, and be signed by the nominator or anyone seconding the nomination. The Massey Awards Committee has retained nominations made in 2008 and 2009 and will again consider them, together with additional nominations received this year.

Because of the signature requirement, nominations and seconds made by letter will not be accepted by fax or e-mail. Nominations made online will require a valid Onyen ID and password.

Nomination letters should be addressed to: Carolyn Atkins, C. Knox Massey Awards Committee, CB# 6100, 208 West Franklin Street. Nominations received after 5 p.m. on Feb. 11 will be considered in 2011.

Information about the Massey Awards nomination process, guidelines and a list of the former recipients is available online at www.unc.edu/masseyawards, by calling Atkins at 962-1536 or by e-mail at: carolyn_atkins@unc.edu. Winners will be announced in April.

UNC Institute of African American Research Humanities Writing Competition, March 1, 2010 DEADLINE

The Institute of African American Research (IAAR) will offer a \$1000 prize for the best cross-disciplinary, collaborative effort in the Arts and Humanities that yields a historically-grounded script on a topic of African American research.

Established and aspiring scholars and writers with expertise in creative writing, literary criticism, philosophy, history, communications, performance studies, sociocultural anthropology, and other relevant disciplines are encouraged to apply. Submitted scripts will be considered for production. There are no limits on the historical time frame or genre of writing.

Scripts should be submitted electronically and in hard-copy format to the IAAR by March 1, 2010. Acceptable submissions should reflect African American sensibilities, cultural norms, and perspectives. Submissions should be no more than 50 pages in length, double spaced.

Contributions become the property of IAAR which will retain exclusive rights for subsequent distribution and use. Entries will be judged by a panel of experts in the Arts and Humanities. Faculty, staff, students, and community members are welcome to apply. The contest is sponsored by the Endogenous Knowledge Unit (EKU) of the IAAR.

Two hardcopies of each submitted script should be sent to ECU, IAAR, 150 South Road, Campus Box 3393, University of North Carolina, Chapel Hill, NC 27599-3393, USA. An electronic version of the same submission should be sent to: jaar@email.unc.edu Submissions will be judged by experts in script writing, and the winners of this contest will be acknowledged in spring 2010. There are no limits to the number of entries that can be submitted.