

## Sabbaticals: A Test Case for College Presidents

### President's Report Tim Haresign

**D**uring the recent negotiations of the full-time agreement, there was a strong push from the state and the college/university presidents to move a number of provisions out of the master contract, leaving them to be determined through local negotiations. In the past, a number of them have made it clear that they would like to see our College Council diminished or even eliminated, and that all contracts should be negotiated at the local level. The issue of sabbatical leave may provide an interesting test case to begin to examine how the presidents deal with issues when they are moved to the local level.

While we were able to fend off attempts to move a number of items out of the master contract, on the issue of sabbaticals the college presidents were insistent that it should be determined locally. We finally reached agreement on that issue after insuring that some important language was included in the agreement. Specifically that:

*"Each State College/University shall have a sabbatical program for its full-time, tenured faculty members and librarians..."*

A further proviso establishes merit as the criterion for determining the award of sabbatical leave:



*"Sabbatical leaves shall be in half year leaves granted to those applicants with meritorious applications as evaluated pursuant to the procedures at each College/University..."* (underline added).

We wanted to make certain that sabbatical leave programs would continue to exist and that academic merit would be the sole criterion in determining the award. The procedure for determining academic merit is to be established through locally negotiated procedures. It is important to note that the number of sabbaticals to be granted at each institution is not addressed in the new contract and that there is no language that allows a local administration to unilaterally set a pre-determined limit on the number of sabbaticals that may be granted. "Meritorious applications" is the only criterion set forth in the article.

The language in the contract is clear and the College Council's position on this issue is straightforward: An administration cannot unilaterally establish a limit on the number of sabbaticals to be awarded. If they want to talk about establishing reasonable limits on the number of sabbatical leaves, they must do so through negotiation at the local bargaining table. We believed that this is what the college/university presidents desired by moving the issue to local negotiations. However, in the absence of a locally negotiated agreement on limitations, merit can be the only criterion used for determining the granting of sabbaticals.

During negotiations some college/university presidents told local union leaders that they would be better off negotiating locally with them, and that they would end up with a much better contract for their members. We were highly skeptical of that argument for a number of reasons. On the issue of sabbaticals the presidents have a chance to show us how we will fare when negotiable issues are moved to the local level. Will they attempt to make unilateral decisions? Will we do better than we did under the last contract? Are they even willing to discuss this issue at the local bargaining table? All of our members should be keenly interested in the answers to these questions.

— • —

SOLIDARITY SHOULD NOT BE JUST A WORD.

IT IS OUR ACTIONS  
THAT GIVE IT TRUE MEANING.

### Also In This Issue

A Tumultuous 2012 and Renewal.....	2
National Coalition of 100 Black Women Honors Faye Robinson - Rowan Librarian.....	4
The Little Local that Can— AFT Local 4277 A Powerhouse in Trenton .....	5
AFT Member Susan MacLaury's <i>Inocente</i> Wins Academy Award for Best Short Documentary Film .....	6
A Confrontation over Syllabus Ownership .....	7
Social Media – Emerging Arbitration Field.....	7

# A Tumultuous 2012 and Renewal

The Council and its locals faced many difficulties in 2012, including contentious and protracted negotiations and the tragic death of its President, Nick Yovnello. As we review both the successes and challenges of 2012, we look ahead with renewed energy to 2013.

## The Loss of the Commission on Higher Education

The Commission on Higher Education (CHE) was officially abolished effective January 2012. Its powers were transferred to the office of a single person, the Secretary of Higher Education. The Legislature could have prevented this action but made no effort to intervene.

The Governor claimed the elimination of the CHE would make State oversight of higher education more effective, streamline decision making and lower administrative costs. In reality, it was a wholesale power grab of New Jersey's higher education system. The Commission consisted of 17 members that included a faculty and student representative, which allowed for the expression of dissenting voices and the semblance of a deliberative process. Its meetings were open to the public and the Council routinely sent a representative who often spoke on agenda items. The reorganization, in contrast, concentrates the authority of the Commission in the hands of a single person directly beholden to Governor Christie. There are now no meetings, no discussions, and no input from affected stakeholders.

The Secretary of Higher Education is a cabinet-level position and is the primary advisor to the Governor on matters of higher education, and is charged with making recommendations to the Governor and Legislature. The position is currently held by Rochelle Hendricks, former acting commissioner of New Jersey's Department of Education. She began her career

as a public school teacher and subsequently worked as an administrator at Princeton University before joining the Department of Education in 1987. Even though invited, she has never met with Council leadership.

The Governor's action effectively eviscerates Public Law 2009 Chapter 308, aka the "Lesniak Bill - S1609" we fought so hard to pass in 2009, which strengthened the oversight authority of the Commission and implemented many of the recommendations of the October 2007 Report of the State Commission of Investigation: "Vulnerable to Abuse: The Importance of Restoring Accountability, Transparency and Oversight to Public Higher Education Governance." Openness and transparency yielded to closed door bureaucracy under Governor Christie.

## Negotiations

*Full-Time, Part-Time Faculty, Librarians and Professional Staff Agreement* – Contract negotiations continued for 14 months from 2011-2012 with the Christie administration and the State College/University presidents. Pressure to conclude negotiations was intense throughout much of this time.

In April, 2012 there was a day of action. Over 1,000 faculty, professional staff, librarians, adjuncts and students, CWA and IFPTE members, State assembly members and the NJ-AFLCIO, held demonstrations on April 25 and 26. At eight campuses represented by

the AFT College Council, the protest theme "Working without a Contract!" highlighted the lack of progress in negotiations that had dragged on too long. At issue were the college/university presidents' and the state's outrageous and onerous proposals that sought to gut our collective bargaining agreement, an agreement that has been negotiated fairly for many decades under Republican and Democratic governors. The protests also highlighted the growing lack of credibility of the presidents' claims to be responsible administrators, given their willingness to incur expenses for buildings, public relations, their own salaries and bonuses at the expense of faculty, librarian and professional staff, adjuncts and specifically students saddled with excessive debt. There was a fair amount of media coverage. Unfortunately, NJ TV (New Jersey's revamped public television station housed at Montclair State University) chose to broadcast only an interview with Dr. Susan Waldron, president of William Paterson University. They ignored the presence of Assemblywoman Connie Wagner and the local union members and leadership who had contacted the station's correspondent to present other points of view.

Finally, after 14 months of difficult negotiations, the Council reached a tentative agreement on July 2nd. The State's long list of demands for give-backs was unprecedented in the Council's bargaining history, forcing the Council's team to tenaciously defend hard-won gains that were achieved over several decades. The new agreement protects working conditions for more than four thousand full-time faculty, librarians and professional staff, and was overwhelmingly ratified by the membership in October.

*Adjunct Faculty Agreement* – After over a year of difficult negotiations with the State and the State College/Univer-



TCNJ Day of Action - Photo by Ben Akuma

*Continued on next page*

## A Tumultuous 2012

(from previous page)

sity presidents, the Council of New Jersey State College Locals reached a tentative agreement late Friday, January 25. This agreement provides for a per credit hour base salary increase of 8.33% for more than four thousand adjunct faculty over the life of the Agreement. The State's initial proposal was a 0% increase for the duration of the agreement as well as other onerous demands. The State also firmly rejected most of the contract improvements the Council proposed, but the Council's negotiating team fought hard for the agreement that was ultimately reached. **This tentative agreement is subject to member ratification.** The Adjunct Faculty Contract Ratification vote will take place in March-April, 2013.

### Kean University

Kean University President Dawood Farahi won a vote of confidence from the University's board of trustees, barely surviving a months-long effort to oust him.

Amid jeers from outraged detractors who crammed into Kean Hall last winter, the board voted 7-4, with one abstention, to issue a statement backing Farahi. The Kean Federation of Teachers and student groups alleged that Farahi misrepresented his academic credentials and that he was guilty of gross mismanagement of the institution.

Kean's board of trustees later decided to renew Farahi's contract and grant him bonuses, but only after Kean University was required to make numerous reforms in order to retain its Middle States accreditation.

### The Rutgers-Rowan Merger

The Christie Administration announced its plans for the merger of the Rutgers Camden campus with Rowan University. After some changes in the legislature, the plan passed on June 28. Under the plan, in July 2013, Rutgers will take over most of UMDNJ, including its medical schools in Newark and New Brunswick-Piscataway. Univer-

sity Hospital and UMDNJ's teaching institution in Newark became an independent entity and partnered with a private hospital chain charged to run operations.

In South Jersey, UMDNJ's School of Osteopathic Medicine will become part of Rowan University. A joint Rowan University/Rutgers-Camden Governing Board will be established to oversee joint programs in health sciences.

### A Change in Leadership Follows Tragedy

On July 2, 2012, the Council and the Governor's Office of Employee Relations reached a tentative agreement for a new FT/PT agreement. Six days later, on July 7<sup>th</sup>, the Council suffered a great loss when President Nick Yovnello was killed in a car accident in Washington Township, NJ. The entire Council, AFT NJ State Federation and the higher education labor community were thrown into deep shock over the tragic loss of its long-time leader. Pres. Yovnello, Assistant Director/Professor in the Campbell Library at Rowan at the time of his death, brought profound experience, institutional memory, wisdom and friendship to the Council and its members (See Council website *In Memoriam*: <http://cnjscl.org/News/Nick%20Yovnello.html>).



Nicholas Yovnello

The Council thanks Executive Vice President William Sullivan of Montclair State University for his service as Interim President of the Council after Nick's death. As Interim President, Sullivan

oversaw the ratification of the new FT/PT agreement.

On September 14<sup>th</sup>, at a meeting attended by 100 Council delegates representing the Council's eleven locals, Tim Haresign from the Stockton Federation of Teachers was elected Council President to serve the remainder of Nick Yovnello's term of office. Tim has a distinguished history of service to his local and to the Council as a delegate and member of the Council's negotiating team.

Tim is an associate professor of biology at Richard Stockton College. His experience at Richard Stockton Federation of Teachers, AFT Local 2275, includes service as the local's grievance officer, as Executive Vice President, and four terms as President. He also served for eight years on the local's negotiating team, as president of the Stockton Faculty Assembly, chair of the college-wide personnel committee and as the Biology Program Coordinator (the Stockton equivalent of department chair).

The Council held a Remembrance Celebration for Nick on November 15<sup>th</sup>. The Council's Executive Director Steve Young, Council President Tim Haresign, NJ Senate President Steve Sweeney, NJ State Senator Donald Norcross, AFL-CIO President Charles Wowkanech, AFT NJ President Donna Chiera, IFTPE Local 194 President Franceline Ehret, NJ AAUP President Dan O'Conner, and CWA Area Director Hetty Rosenstein and Council Staff Representative Bennett Muraskin on behalf of Council staff all paid tribute to Nick. Members of Nick's family attended along with Council delegates, many guests from other labor unions and elected officials from around the State. The Remembrance was preceded by music performed by pianist Frank Pavese of WPUNJ and vocalist Yolanda Simmons of MSU, both Adjunct Faculty Council delegates.

### Support in a Storm

Superstorm Sandy devastated the New Jersey coastal communities and many AFT members are among those who were displaced from their homes

*Continued on next page*

## National Coalition of 100 Black Women Honors Faye Robinson - Rowan Librarian

In March, the National Coalition of 100 Black Women, Inc. (NCBW, Southern New Jersey Chapter) will honor Rowan Librarian and Council representative Faye Robinson with the 2013 *Candace "Jewels of Excellence"* Achievement Award for Education. She will receive the award at the 11th Annual Candace Women of Achievement Awards Ceremony and Luncheon on March 28.

The *Candace Award* is the symbol of the NCBW, an advocacy group that strives to empower black women to meet their professional goals. Historically, *Candace* is a royal dynasty name for the long line of queens of Ethiopia. The 2013 *Candace "Jewels of Excellence"* awards honor outstanding achievement in many areas: Arts and Culture, Civic Awareness, Community Service, Corporate Trailblazer, Education, Economic Development, Humanitarian, Religious Leadership, Youth Leadership, Science and Technology, and Health.

Faye grew up in Philadelphia, PA, and attended Kensington High School. She came from a family of eight children. Her mother died in 1963, leaving the care for five younger children to her and her father. Her father was a long-standing member of the Teamsters, Local 169 and was a strong advocate of unionism, something she never forgot. She mar-



ried in 1968 and became a homemaker raising three children.

In 1986, she began her studies at what was then Glassboro State College and graduated in 1991 with a B.A. in English/Liberal Arts. She worked for a period as a part-time librarian on the reference desk at the Rowan University Campbell Library and began work on a Master of Arts in English at Arcadia University in 1992. Subsequently, she enrolled in the School & Public Librarianship program at Rowan and graduated in 1999.

She was hired as a full-time librarian in 2000 and immediately joined AFT Local 2373. She is now Head of

Resource Sharing/Interlibrary Loan (ILL). She is also a writer and has published in *The King's Daughters*, an online newsletter and *WOW! (Women of the Word)*, a print and online magazine, and in *How to Write for Magazines: Consumers, Trades, and Web* (Allyn & Bacon, 2001).

The Council extends its warm congratulations to Faye Robinson for this prestigious award in recognition of her years of achievement in education.

— • —

### NOW MORE THAN EVER, SIGN UP FOR COPE!

Our governor and his anti-union allies in the State Senate and Assembly constantly attack our contracts, wages, pensions and benefits. COPE (Committee for Political Education) funds your union's legislative efforts and supports candidates who support and promote issues important to you and your union. COPE contributions come through

payroll deductions – you set the amount you wish to contribute from your paycheck. COPE funds are needed more now than ever before to support legislators who will protect our bargaining rights and labor's agenda. Without a union-friendly legislature there will be no checks and balances. Ask your local (or call the Council at 908-964-8476) for a COPE card today!

### A Tumultuous 2012

(from previous page)

by the storm and continue to be seriously affected by the damage. The Council and the AFT-NJ State Federation of Teachers contributed to the relief efforts by establishing a Sandy Relief Fund for AFT members and by donating blankets and cleanup supplies to the relief effort. The Council also made a \$10,000 donation to the Community Food Bank of New Jersey.

### Council Endorses Winning Candidates

President Barack Obama and Vice President Joe Biden won re-election, as did numerous congressional, state and local Council and AFT-endorsed candidates.

### New Challenges in 2013

Although our long contract negotiations have just been completed, it is nearly time to prepare for the next rounds of negotiations. The antagonistic behavior of the State and college

and university presidents displayed in their proposals will hopefully not be as bad.

The Council continues to work hard to build coalitions among other unions and supportive political leaders. This is essential given the continued challenges to the rights of collective bargaining for public workers. We hope you will look for ways to help give voice to rights and respect for not only our unit members, but all workers who are struggling in this difficult economy.

— • —

## The Little Local that Can— AFT Local 4277 A Powerhouse in Trenton

**A**FT Local 4277 of Thomas Edison State College is the smallest of the Council's locals. The College has no faculty and none of the typical attributes of a college such as student centers, dorms or even a resident student body. AFT Local 4277 is comprised of approximately 126 professional staff members who bring college studies to an on-line adult student community with the assistance of mentoring faculty from other higher education institutions. Yet, as small as it is, Local 4277 is the "Little Local that Can" — or in other words, the Council's powerhouse in Trenton.

We are all familiar with the early 20<sup>th</sup> century children's story about the *Little Engine that Could* and how, with a positive attitude, it pulled a stalled train at the bottom of a mountain up and over while repeating the mantra: "I think I can, I think I can." For years, Local 4277 has shown that it isn't the size of the Local that determines its value, but rather, the determination and will of the members to push forward.

Thomas Edison State College is located next door to the Statehouse and across the street from the New Jersey AFL-CIO offices, so it's well positioned to participate in the democratic process in support of union principles. It's also the Local's good fortune to have had three presidents in the last ten years who have long been involved in the social justice movement and who recognized how engagement in the political process benefits unions and their members.

The Thomas Edison local underwent a sea-change in its local personality that began with the election of Annie Klopp in 2005. Annie was determined to bring inclusiveness to the governance structure of the local and she did this by attracting colleagues who impressed her with their dedication to the labor movement and to each other. Where once the local had no real voice at the College, Annie's drive (some say stubbornness) and dedication to workplace rights inspired her colleagues to run for office and build a stronger local to deal with an administration that wasn't used to being challenged.

Annie served a little more than one year as president before her life path took her to New Haven, Connecticut. Local 4277's Vice-President Peggy Allan took up where Annie left off. Peggy's entire life has been devoted to the peace and environmental rights movements, but being in a leadership position in a union was a groundbreaking development for her. As Local 4277 president, she watched the membership blossom into a small force for the good of the State's labor movement as meeting attendance grew and interest in local politics took shape. Peggy recalls that: "Becoming engaged in the democratic process was a matter of overcoming inertia and taking a walk at lunchtime, whether it was for a rally, a mailing or appearance at the State house to support a union friendly legislative issue or politician. Our engagement was made easier for us by the close proximity to the State seat of power and the NJ AFL-CIO headquarters, where some



Photo Credits -L to R, front row: Karen Bitner (Past Vice President), Kathy Griffis, Charlene Martucci (President), Deborah Ware (Secretary), Shirley James, Second Row, L-R: Jenn Montone (VP), Peggy Allan (Past President), Linda Soltis, Larsicena Vance-West, Jen Stark, Back row: Ken Lightfoot

of our members became a solid backbone for its campaign work during elections."

Thanks to the current Local president Charlene Martucci, Local 4277 members now volunteer on their lunch hours across the street at the NJ AFL-CIO stuffing mailers and preparing Labor Walk packets with a zeal that amazed John Shea, the NJ AFL-CIO's Political Director, who couldn't believe so much could be done in a lunch hour.

Under Charlene's watch, the Local's activism took a personal turn as a matter of necessity. When the State proposed that Thomas Edison should merge with Rutgers, Local 4277 members rallied on lobbying day to meet with legislators to discuss the reasons why the proposal was a bad idea and to urge them to vote against the plan. Charlene and Local Vice-President Karen Bitner took to the roads, traveling the State to meet with legislators and educate them about Thomas Edison and what they did at the College, which many legislators never really understood. After these meetings, Charlene and Karen reported back to their members to encourage them to email or call legislators to find out when they would be at the State House so they could meet with them.

## The Little Local that Can

Continued from previous page

Charlene remembers traveling to Fort Lee, NJ, to meet with Assemblywoman Joan Voss: "She was absolutely delightful. When we walked in the door, she said 'I have to tell you right up front, that I'm a former educator and I'm not a fan of online education. I love what you do with the military – I think it is fabulous, but I am just not a fan of online education.' By the time we finished our meeting, and explained everything that we do at Thomas Edison, Assemblywoman Voss said she was amazed. She asked us to send her information on our nursing program so that she could give it to a friend. The legislators realized that Thomas Edison is unique and should remain unique – the merger was a really bad idea and was voted down. I do feel that the work that our membership did to prevent the merger was instrumental in this decision. Of course there were many other forces working along with us, but we did do our part, for sure."

Their work had the desired impact: Thomas Edison remains in the State College/University system because legislators heard personally from members of Local 4277. Over time, the Local has broadened its activist role to encompass the Trenton community and the online community it serves.

Thomas Edison is an educational opportunity for many men and women who serve in our Armed Forces, and coincidentally the interface between service personnel and veterans is Charlene Martucci's department at the College. Charlene saw a connection between the local and men and women in uniform and made it work.

As small as the it is, Local 4277 tries to make an impact on the community whenever it can. The "Support Our Troops" campaign is an ongoing project that involves the whole College, which sends boxes of goodies to deployed students and

their units. This effort is dear to Charlene because it began in memory of Sgt. Keith Buzinski, who was killed in Afghanistan. Keith's father and Charlene grew up in the same neighborhood and have been friends for many years. The day after the funeral, she received an email from one of the students in Afghanistan. Charlene explained she was the President of the Union and had wanted to start a partnership project for a long time. She asked him if they could "adopt" him and his unit and send them care packages in appreciation for all that they do every day. He was thrilled. On behalf of the local, Charlene sent out an email to the College and said that they would be placing boxes in each building and encouraged our College family to help support our troops. The response was overwhelming and Charlene claims "this committee has made my presidency worthwhile."

Recently, Freeholder John Cimino, and his wife Jeannine requested assistance from Local 4277 to collect food donations for Homefront. Emails went to the membership and once again the TESC family stepped up to the plate. Everyone helped with the project.

Local 4277 sponsors an annual Holiday Gift Drive as well. For the past few years, Marybeth Lynch has chaired the project, and she's done a great job. This year, Kathy Griffis offered to help her, and together they coordinated the project. The Children's Home Society and Homefront were the recipients of these efforts.

The efforts spearheaded by Local 4277's presidents and brought to fruition by its members go beyond the usual business of contract bargaining and administration. The "Little Local That Could" has established itself as a force to be reckoned with legislatively and as a group of concerned citizens who roll up their sleeves to improve life in the community they serve.

— • —

## AFT Member Susan MacLaury's *Inocente* Wins the Academy Award for Best Short Documentary Film

Congratulations to Susan MacLaury for her film *Inocente* which has won the Academy Award in the category for best short documentary! She shares her Academy Award as co-producer with her husband Albie Hecht. This is the second documentary from her production company to be nominated for an Academy Award. Susan is dually degreed in social work and health education and teaches at Kean University. She is a member of the Kean Federation of Teachers, AFT-AFL/CIO and serves as Member-at-Large as part of the local's elected leadership.



entertainment for Nickelodeon and Spike TV. He is currently president of Worldwide Biggies, a transmedia company he founded. Susan is the Executive Director of Shine Global. Shine Global is ded-

The Academy Award® winning husband and wife team are the co-founders and driving force behind the non-profit production company Shine Global and Emmy winners for its first film, *War/Dance*. Together they executive produced Shine's second feature documentary *The Harvest/La Cosecha*. Albie is the former president of

icated to ending the abuse and exploitation of children through films that raise awareness, promote action, and inspire change.

Susan stated "I believe strongly in the power of film to educate, both in and out of the classroom, and to promote genuine social change. We hope the win brings more attention to the millions of kids like *Inocente* who are homeless, undocumented, and/or affected by cuts in arts education funding". We salute her for the commitment and integrity with which she puts her values into action in her films, in her classroom and in her service to our colleagues as an elected member of the KFT leadership.

For more about *Inocente* and Shine Global go to <http://inocentedoc.com/> - or - <http://www.shineglobal.org/> - • -

## A Confrontation over Syllabus Ownership

An adjunct professor at Rider University has become embroiled in a lawsuit over intellectual property rights after using another professor's syllabus. Hired to teach a graduate course for the first time, he used the syllabus at the request of his department chair, and did not ask the permission of the professor who created the syllabus. After posting the syllabus on Blackboard and started to teach the course, he was accused of theft by the originator of the syllabus.

Despite apologies and the acknowledged involvement of the department chair, an arbitrator sanctioned the adjunct professor for unethical conduct and suspended him for two semesters from teaching. In turn, the adjunct professor sued the faculty member for libel, invasion of privacy, and false light invasion of privacy. The case is currently in litigation. The university has stated it believes there is no basis for the adjunct's claims. Nevertheless the case continues.

Jeffrey Halpern, (contract administrator and chief grievance officer of the Rider AAUP who served as the

adjunct's union representative) was quoted in the *Rider University News*: "At Rider, your syllabus is your property under intellectual property rights. To be an intellectual property, it has to be a creative work. As an institutional decision, we said it belongs to the individual and copyright resides with the faculty member, not the University."

The AAUP encourages sharing of intellectual property, and Halpern feels syllabi should generally be available to professors, "particularly for an adjunct who wasn't there for the creation of the course." A *sample* syllabus is usually property of the University. If a syllabus has a professor's name on it and contains specifics such as assignments and essay questions, creative elements, then it is the personal property of its author. Anyone else who wants to use it, adjunct faculty or full-time faculty, must seek permission from its author, even if these elements are not used in their entirety.

The adjunct in question has taught for many years at several colleges and universities. However, his experience did not stop him from taking the de-

partment chair's suggestion literally and triggering a chain of unfortunate events.

While it might seem that for consistency's sake it makes sense to share syllabi for courses taught by different individuals, it is not good practice unless there are clear guidelines. The AAUP and the University have agreed to work on guidelines for department chairs and adjuncts regarding syllabi use to avoid a similar conflict in the future.

The Council recommends several steps for avoiding another episode like this: If are you teaching a new course, unless the syllabus is a sample syllabus owned by the college or university, check with its author before using it, certainly before posting any part of it on the school's Blackboard or equivalent system. Or better yet, devise your own syllabus. Recycling someone else's syllabus may appear to be an acceptable shortcut; but in this case it became a shortcut to animosity, suspension and litigation.

— • —

## Social Media – Emerging Arbitration Field

In past *VOICE* articles we've discussed how the meteoric rise of email and web use raises the issue of employees' expectations of privacy regarding email and internet technology in the workplace. It's time to update our past reminders about the consequences of your computer use in the workplace to include the use of social media.

### RECAP

#### Privacy Clause Article

Our privacy clause under Article XI Section M. states, "The Colleges/Universities will not abrogate the lawful rights of employees as to opening of their mail or the privacy of their offices or personal belongings." When the Council negotiated this language, email was not the subject of the clause and so it does not prohibit an employer's legal right to monitor your email usage. However, when the Union files a grievance regarding the monitoring of email we argue that the intent and the language of XI.M. reasonably includes email. Nonetheless, the Council operates under the premise that all employee email is the legal property of the College/Univer-

sity. In fact, the Union strongly advises grievance chairs not to file grievances or conduct any but routine union business over the College/University email system.

#### Using the Web

For the most part, internet use in the workplace ranges from gambling, playing games, shopping, conducting personal business and even searching for another job. However, seventy percent of all internet pornographic traffic happens between 9 a.m. and 5 p.m., Monday through Friday<sup>1</sup>. Downloading materials from questionable or illegal sites and spending time surfing the web on "company time" are very risky. Do not think that you will never be found out. We reported a while back about a unit member who was discharged after tech services entered his office to repair equipment and found downloaded pornography. The employee thought no one would ever see this material and argued that an employee has a right to privacy in such matters. This is not so. Because equipment and time belong to the employer

*Continued on next page*



**Social Media**  
*Continued from previous page*

and all campuses have well-defined policies regarding email, webpage development and general internet use, the Union could do very little to help the involved unit member.

**The Emergent Use of Social Media in the Workplace**

When the use of social media first cascaded into the workplace, arbitrators found it difficult to adjudicate cases based on what constitutes inappropriate use of social media in the workplace. However, the "more social networking becomes a part of everyday life, the more social network issues will figure prominently in arbitrations."<sup>2</sup> By now, arbitrators agree that the same expectation of privacy rule about emails and internet use applies to using social media in the workplace - employees have no reasonable expectation of privacy.

**What's Different**

Email and internet use in the workplace are easily regulated through well defined employer policies on usage and clearly stated consequences for violating established policies. What is different about social media is that employers are attempting to discipline employees for the **content they post on social media outlets** such as Facebook, whether the postings are sent over the employer's network OR whether they are at work or off-duty.

This is new arbitral territory and a far cry from cases about email and internet usage that were deemed inappropriate because of the nature of a website or construed as theft of the employer's resources because some programs use an enormous amount of bandwidth.

Facebook and other social media outlets such as Twitter and LinkedIn have changed social norms and union representatives and arbitrators have had to change views about handling discipline cases related to employees' use of them. Early court decisions about privacy found postings on Facebook are not private because they are "instantaneous, interactive, far-reaching and accessible."<sup>3</sup> Employees should be very careful about "friending" co-workers and supervisors because

no privacy setting will protect an employee from discipline if an employer finds a work-related posting offensive.

Even with the growing body of arbitral case law on the use of social media with respect to discipline cases, in a majority of cases, arbitrators have ruled that employees are to be held accountable if their off-duty conduct harms the employer's reputation, makes other employees feel threatened or otherwise disrupts the operations of the employer. Fortunately, arbitrators are expanding their decision making process as they become more familiar with the territory so that these conclusions are drawn only when there is a direct connection to the workplace. Arbitrators are now demanding proof of actual damages and insist that allegations of harm to the employer are not based on mere speculation, which too often occurs in cases of off-duty misconduct.

**Protected Activity**

Following arbitral case law on social media cases helps unions with respect to negotiating new rules as they relate to privacy in the workplace, social media and what kind of activities are protected by employment law. While the Council doesn't arbitrate cases related to protected activity, we can look to arbitrators' decisions in discipline cases because they can help the Union argue that (1) an employer's policy on social media is overly broad so that it bans protected activity, i.e., discussion of working conditions among employees, that is covered by the Public Employer-Employee Relations Act or (2) that an employer must provide proof that an employee's general complaint posted on a social media site poses actual harm to the employer and (3) that the punishment fits the "crime"<sup>4</sup>.

The use of social media at work and off-duty provides interesting challenges to your Union in terms of mounting a defense for members who become caught up in a discipline case based on a social media posting about the employer. Be assured that as in all just-cause cases, your Union will look at whether the employer's policies are reasonable, well established, uniformly applied to all employees equally on an equal basis.



<sup>2</sup> Ibid    <sup>3</sup> Ibid

<sup>4</sup> Ibid