



Representing Wayne State Faculty and Academic Staff

NEWSBRIEFS

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Code Violations

Administration's "Code of Ethics" Violates 1st Amendment and Michigan Labor Law

Union Acts to Block Imposition, Negotiate Issue

In a disturbing escalation of unilateral management, President Jay Noren recently launched another top-down initiative that, if unchecked, would have further eroded collegial governance, freedom of speech, and collective bargaining at Wayne State University.

The "Code of Ethics" recently issued by the President's hand-picked committee has already ignited widespread condemnation in the university community, and rightly so. Without the knowledge or participation of anyone in the Union or the Academic Senate, the President's committee has produced a document that is shockingly ignorant of the law and indifferent to the actual ethics of teaching and research.

A legion of critics has drawn attention to the many flaws in management's Code (see the quotes on page 3). Under its vague and draconian terms, Administrators could discipline and fire employees whose words or actions "raise questions" about the University's integrity or "otherwise damage its reputation." The pettiest of Code violations could also lead to discipline— using the University's email to send holiday greetings, or accepting desk copies from textbook publishers.

Who decides whether an employee's activities "may" raise questions about the University's integrity? Who decides if their activities "otherwise damage" the reputation of Wayne

State— or that of its administrators? Remarkably, there is no provision for any due-process procedure that would protect free speech or the rights of whistleblowers before they were disciplined.

The Union's Role

These punitive terms are not only at odds with the Bill of Rights and demeaning of faculty and academic staff, they also violate Michigan labor law and our Collective Bargaining Agreement (CBA). Both the law and the CBA

expressly forbid the unilateral implementation of rules that change the terms and conditions of employment. Both require that such rules be the subject of collective bargaining.

What this means in practice is that the Administration *can* propose a Code of Ethics to the Union's elected representatives, who will then negotiate the matter on behalf of the university's academic employees. The Administration *cannot*,

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Faculty and
Academic Staff*

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however, issue such a Code unilaterally, nor can it distribute such a Code to an alternative committee of employees, claiming that this is adequate input. On either of these scores, the President's proposed Code of Ethics is in violation of the Collective Bargaining Agreement and Michigan labor law.

The Academic Senate will undoubtedly protest the Administration's actions and give advice to the Board of Governors on this matter. The Faculty Council of the College of Liberal Arts and Sciences has unanimously condemned the proposed Code "in the strongest possible terms," citing "issues of free speech, academic freedom, and a lack of provisions for due process."

These actions are worthy of support, but the Union and the Academic Senate will play distinctly different roles in opposition to President Noren's actions. The Senate is the collegial body that represents the faculty and academic staff in academic matters; the Union represents the same academic employees in matters related to compensation, benefits, and the terms and conditions of employment.

In this role, the Union can do more than simply pass a resolution or ask the Board of Governors to restrain the President. It can act under Michigan labor law to prevent such egregious violations of the basic rights of the members of our faculty and academic staff. We intend to pursue every legal remedy to achieve this end.

Laying Down the Law

The President's creation of a new committee chaired by Provost Nancy Barrett to consider his Code of Ethics clearly bypasses the Union in favor of a body that management prefers to deal with (though belatedly, since the Administration solicited no faculty input until the proposed Code triggered widespread protest). This is an "unfair labor practice" (ULP) under Michigan labor law, which requires an employer to engage in "good faith"

negotiations over such matters when the affected employees are represented by a union. We have therefore filed a ULP charge with the Michigan Employment Relations Commission (MERC) to prevent the Administration from proceeding without negotiating the issue with the Union.

In addition, we have filed a formal grievance citing the Administration's violation of the Collective Bargaining Agreement. Specifically, the Letter of Agreement of August 1, 1994, appended to the CBA (page 152) requires the Administration to notify any "internal consultative body" that "it cannot recommend or develop policy on matters subject to collective bargaining."

President Noren was notified that his proposed committee falls under this provision of the CBA and that he should abort the effort forthwith and agree to negotiate the matter with the Union. The grievance addresses his failure to do so.

Further, the Union has notified the Academic Senate that, in accordance with the Letter of Agreement cited above, it should not participate in the selection process for members of President Noren's proposed committee while the unfair labor practice charge is pending before MERC, and while the grievance makes its way towards arbitration, if necessary.

The attempt to impose a punitive Code of Ethics on the University reveals why having a Union to protect our basic rights is so important. Without a collective bargaining agreement to protect these rights the Administration could have implemented this Code, overriding even the strong protests to it that have emerged across the campus.

The Union is seeking input from faculty and academic staff on the appropriate elements of a Code of Ethics that would be positive rather than punitive. We welcome ideas and input, which can be emailed directly to our office or communicated with members of the Union's Executive Board and staff, listed on page 4.

"The attempt to impose a punitive Code of Ethics on the University reveals why having a Union to protect our basic rights is so important."

Code Commentary

The Union and the Academic Senate have received critical commentary on the Administration's proposed Code of Ethics from nearly 100 members of the faculty and academic staff. Select comments are printed below, along with the section of the Code (in bold italics) to which reference is made. A longer selection of quotes is available at our website, www.aaupaft.org.

4.1:.... Members of the university community shall not engage in conduct or activities that may raise questions as to their or the University's ethics, honesty, integrity, impartiality or otherwise damage its reputation.

"It is illegal and nonsensical to ban conduct that 'may raise questions' about the actor's honesty or the university's honesty, etc. What about the Lumigen case, when lots of high people in the administration were found by the court of appeals to have engaged in dishonest conduct?"

"Let's say I organize a conference and decide to invite a very controversial speaker.... Perhaps this might spark a public outcry, that the university was endorsing the speaker's views.... This is not too far from what happened at Columbia recently, when they hosted the president of Iran."

"Surely the General Counsel's office should be able to see that this is problematic."

"It was clearly written by someone who either has no idea what a university does... [or] is opposed to it!"

"It's vague, it's meaningless (until they come after you), and it's a limit on academic freedom that entirely conflicts with our collective bargaining agreement as well as general principles held dear in academia."

"It reminds me of the infamous Alien and Sedition Acts of 1798."

"Suppose that the institution itself is acting unethically (discriminating against minority employees, underpaying women employees compared to male employees, etc.).... One would have to be unethical by not revealing the truth about the institution. Surely an ethical rule cannot require unethical behavior."

5.2: A "bribe" or "kickback" includes... an exchange of money, favors or anything else of value, which is promised, given to, or taken from an individual or organization in an attempt to influence his/her decisions....

"This section is far too broad. It prohibits my requesting of an examination copy of a book that I am considering for

adoption; and it prohibits my acceptance of an unsolicited examination copy from a publisher. It is plainly obvious that academics were not involved in the formulation of this policy."

"It is standard for publishers to pay honoraria to faculty for reviews of manuscripts and to participate in focus groups.... I am concerned that the university could accuse faculty members... of receiving bribes or gifts, even if (as is usual) they act in good faith."

"Would a dean's acceptance of a holiday gingerbread house model of the law school, from a law firm that is mainly made up of alumni but could perhaps be brought on for advice about a particular matter, be a breach?"

5.5:.... All personal relationships with vendors must be disclosed immediately on the Conflict of Interest Disclosure Form.

"Many of our medical school faculty have legitimate commercial relationships with drug companies and medical device manufacturers that are also vendors for university related entities. Are these faculty supposed to be completing university conflict of interest forms...?"

"I know all the math publishers' representatives and meet with them regularly to keep up with new publications and trends. Is this a conflict of interest?"

"I don't think I should need to report to the Board of Governors every time I say hello to the Scientific Supply Company Representative who lives down the street."

5.8: Members of the university community shall use University computer and technology resources solely for university business....

"What if I e-mail my wife or my family?... It sounds like I am not allowed to e-mail friends or look up a funny YouTube movie that a colleague sends me. That seems excessive to say the least."

"...My use of email to respond to your email on this new ethics policy might not be considered 'university business'."

7.1: Members of the university community are expected to report allegations of conduct that are reasonably believed to violate this code to management.... Individuals reporting violations should not discuss or provide copies of their report to others.

“Shall we now have to wonder whether our colleagues are, in fact, informants, lying in wait?”

“I gather that... if we do not look for trouble-makers, if we do not tell on people we think are violating rules, even if we think it’s none of our business— as it often is not, since we are not always in a position to make good judgments based on partial evidence— we can be fired?”

“I’m now expected to secretly report when I notice that a graduate student is using the department copier to print a news article or a personal resume? It’s now part of my job to be a professional tattletale?”

“This sort of surveillance environment is predicated on a basic distrust of the faculty... and will seriously damage if not destroy the very essence of collegiality.”

8.2: Any violation of this policy may subject an employee to disciplinary action, up to and including termination of employment....

“Would ‘conviction’ be in the sole hands of the administration? What about penalties? Is there going to be any provision for a hearing or appeals process? What role would the union play?”

“The tone of this document is one of dictation as shown in the use of words such as ‘forbidden’, ‘comply’, ‘shall not’, and ‘must not’ as well as in threats about termination of employment.”

9.1: This University Policy is revocable by the President at any time and without notice.

“How can a President revoke ethical standards without notice?”

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General Comments:

“Bottom line.... this comes across as yet another ‘slap’ in the face from the administration and implies that there is a lack of ethical conduct from current employees.”

“There certainly isn’t anything in this entire document that suggests a scintilla of mutual respect or cooperation!”

“I wonder which third grade class drafted this document. It ranges from the obvious to the absurd. This might have been circulated in Eastern Europe or Germany during the Soviet occupation.”

“I am shocked at the poor draftsmanship in this document. It is appalling that the University did not include faculty as a large part of the drafting body....”

“This ‘ethics’ policy is so full of ethical violations that it makes one cringe. I fear for this university, when a committee of our administrators... can produce such a document with equanimity.”

“Well, this is an interesting missive from the dictator.”

“The proposed “Code of Ethics” is reminiscent of some of David Adamany’s more outrageous executive orders. It seems to confirm that we again have a control freak at the helm.... Oh my, I think that I may have just violated the Code. Please don’t turn me in.”

“It seems likely that this new code should be titled ‘The Prevent Parrish from Calling Me Mussolini Act’ Noren has been censored twice; perhaps three times is the charm....”

“I agree wholeheartedly that the ‘here’s a document, what do you think’ approach, without a process for negotiating how we move forward, is hardly the stuff of a functional university.”

Go to our website: www.aaupaft.org for an electronic copy of this newsletter.

