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FREDONIA UUPDATE

Joint Labor-Management Individual Development Award Program



United University Professions (UUP, Local 2190 of the American Federation of Teachers, AFL-CIO) is the union which represents the faculty and professional staff of the State University of New York. The Fredonia Chapter of UUP represents the approximately 625 academics and professionals employed at SUNY Fredonia.

The recipients of the second round of awards for the joint labor-management Individual Development Award program have been decided.

A total of \$19,768 was available for the 2009-2010 academic year. A total of \$10,530 was available for the second round.

The maximum award for our campus program is \$1,000.

Due to the number of applications, the funds available met approximately half of the actual demand.

The Professional Development Committee was able to fully fund nine full-time applicants, as well as partially funding three full-time applicants.

A minimum of 15% of the funds are set aside for part-time applicants. Two part-time applicants were fully funded, exceeding the 15% set aside.

All members of the bargaining unit represented by UUP, employed at Fredonia during that period of time, are eligible to apply.

Statewide guidelines can be found at the Joint Labor-Management Committee website:

<http://www.nysuup.lmc.state.ny.us/development/individual.html>

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Letter from the President

SUNY Empowerment and Flexibility Act: What we can and can't live with at Fredonia

As we are all aware the Governor's proposed budget includes the Public Higher Education Empowerment & Innovation Act, which would grant SUNY greater flexibility in tuition usage, leasing land, realizing private/public relationships and reducing the bureaucratic red-tape involved with making purchases. Our local UUP chapter and our Faculty Senate have agreed to a Senate resolution that proposes four main points of agreement. These points of agreement are:

1. Tuition increase based on an annual "cap." This cap would be fixed in the range of 8% to 10% and not be based on the HEPI (Higher Education Price Index.) Dr. Smith indicated that 8% would be the highest he would be willing to support.
2. Eliminate the shell game of raising tuition and then taking the revenue out of the operating budget. This was termed "tax on tuition" by the senate and administration.
3. Move SUNY funds from State Assistance to Local Assistance, thereby placing SUNY into the same budgetary category as CUNY and community colleges.
4. Support the elimination of unnecessary duplication in the pre-approval process for construction and "goods" contracts.

Other points of agreement between UUP and our campus include urging the State of New York to make a commitment to "maintenance of effort" in the provision of state dollars, and to avoid using tuition increases as a mechanism for moving away from covering mandatory costs, especially during normal budget years. This resolution was based on many conversations with the University Senate, UUP Statewide President Phil Smith and our Campus President.

With the many points of agreement it may be the next logical question to ask "Why is UUP still opposing the Empowerment Act?" The answer is that the final draft of the bill continues to include areas of concern for UUP. The following still remain as concerns:

1. SUNY could lease campus properties and begin public/private agreements and partnerships that do not contain adequate oversight and do not protect employees through unionized workplaces. Furthermore, outsourcing could occur and legislative oversight would be removed.
2. We need a rationale tuition policy that is based on known increases, not based on rolling indexes or increases that do not seem to impose a cap. The above agreed increases are preferred and can be understood as rationale.
3. The claims that SUNY makes regarding revenue generation need to be explored. SUNY flex concentrates on tuition as the main source of added revenue growth. However, these tuition increases would have to account for the proposed 10,000 new campus jobs and 64,000 in construction. The tuition would have to be doubled to achieve this goal.

UUP has been actively engaged in coalition building this semester. We have had regular meetings with University Senate Chair, Dr. Bruce Simon, Campus President, Dr. Dennis Hefner and invited Statewide UUP President, Dr. Phillip Smith to our campus to discuss the Empowerment Act and budget shortfall. These joint meetings have cumulated in a working resolution we can all support. UUP's intent was to engage the campus community and motivate all factions to work together in avocation of SUNY funding and address the immediate concerns of enormous budgetary cuts to our campus and system. We will continue to address local and statewide UUP issues and inform our members of the events that affect them in the coming years. We need to continue our efforts in informing the local community how SUNY budget cuts effect tuition costs, program availability and maintaining economic stability in the area.

Please continue to be active in your local Union activities, workshops and events.

We all are stronger with knowledge!

In Union,

Bridget Russell, PhD
UUP Fredonia Chapter President

Membership Luncheon Meeting a Success (or Dr. Smith Goes to Fredonia)

More than 50 UUPers got together for a luncheon presentation at the Horizon Room, Wednesday, March 24, 2010. Chapter President Bridget Russell welcomed all to the event then turned the floor over to our special guest presenter, state-wide UUP President Dr. Phil Smith.

Dr. Smith gave a 40 minute presentation, focusing primarily on the issues surrounding the Public Higher Education Empowerment and Innovation Act (PHEEIA). Several areas of the act were covered, including:

Public/Private Partnerships – The PHEEIA calls for more public/private partnerships to be created without oversight. There is no evidence that these partnerships will generate any income for SUNY, and several examples of such partnerships costing SUNY money were given. Furthermore, workers employed by these partnerships are not recognized as public employees by the Public Employees Relations Board, and as such are not protected in the same ways that public employees would be including union representation.

Tuition – Currently all tuition dollars stay on each campus. What decreases is the amount of money the State allocated to SUNY. Giving SUNY the ability to raise tuition without any “maintenance of effort” assurances from the State would not stop the State from further reducing our budget allocations.

Construction/“Goods” Contracts – The pre-approval process for such contracts can cost SUNY significant amounts of money due to price increases during the lengthy approval process.

After the presentation Dr. Smith answered questions from the audience.

Dr. Smith’s presentation helped clear up many misconceptions surrounding this controversial issue as the audience was presented with facts, real-life examples, and solid information.

Pictured below (clockwise from top left): Dr. Phil Smith, UUP state-wide President and Dr. Bridget Russell, UUP Fredonia Chapter President; Dr. Smith discusses the PHEEIA; the audience listens as Dr. Smith explains the issues



Vice President for Academics Report

Some members of our faculty and staff have expressed concern over their potential legal liability when evaluating administrators, colleagues, and students. At times, university officials have alluded vaguely to “possible legal difficulties” in regard to administrative review processes. The following is intended for general informational purposes only and not as legal advice to UUP members. I am grateful to Steve Kershner and Ed Giblin for their helpful suggestions to an earlier draft of this report.

General Elements. “Defamation” is defined as the communication of false information that injures the good name or reputation of another person, or which tends to bring that person into disrepute. Defamation gives rise to two legal causes of action: libel and slander. Libel may occur when a false, defamatory communication is written and seen. Slander may occur when a false, defamatory communication is spoken and heard.

Plaintiffs lodging a claim of libel or slander bear the burden of persuasion in demonstrating that the defendant did communicate a defamatory statement; that at least one other third party heard or saw the communication; that the plaintiff was identifiable as the subject of the communication; that the communication injured the plaintiff’s reputation; and that the defendant was culpable when communicating.

Legal Defenses. Defendants have several possible defenses. They may argue that the defendant consented to the publication of the defamatory statement; or that the publication was accidental or, in special cases, privileged (such as in a legal proceeding). For example, often letters of recommendation forms require applicants to release evaluators from liability for statements made therein. This would be a case of consent. Moreover, defendants may challenge whether plaintiffs have established the elements of the cause of action (Was there truly an injury to the plaintiff’s reputation?).

The most important defense is truth. If Janie’s grandmother really does wear combat boots, someone who utters, “Hey, Janie’s grandmother wears combat boots,” is not guilty of slander even if granny’s reputation is thereby setback. In addition, the statement does not have to be *literally* true as long as it is *substantially* true. For example, if Al writes that Bob was convicted of larceny, but Bob was in fact convicted of embezzlement, then Bob may not recover damages for defamation.

Some states allow defendants to avoid liability by retracting their statements. Also, although not a constitutional requirement, most jurisdictions recognize a defense of “opinion.” If a person advances only his or her opinion about another person – as opposed to a statement of fact – the statement probably will not support a legal cause of action. The distinction is between (a) advancing your *judgment* about another person and (b) asserting a *fact* about that person. To utter, “In my judgment, Jones has poor composition skills” will typically be construed as mere opinion. To utter, “In my judgment, Jones is a convicted felon” will typically be construed as an assertion of fact. A totality of circumstances approach is typically used to distinguish mere opinion from assertion of fact.

Public Figures. The United States Supreme Court (*New York Times v. Sullivan*, 1964) has held that First Amendment rights of free speech outweigh the rights of public officials to be protected from defamatory communications unless the public official can prove that the defendant acted with *malice* (defined as “communicating a defamatory statement while *knowing* that the statement was false or highly probably false or with reckless disregard of the truth”). The malice standard applies only to defamatory statements communicated about several categories of public figures:

elected politicians; non-elected government employees with substantial responsibility over public affairs; candidates for public office; public figures—such as movie actors, famous musicians, pro athletes, and the like— whose prominence allows them to use mass media to influence policy; and limited-purpose public figures who, although generally unknown, voluntarily thrust themselves or are thrust into the public spotlight for a particular purpose.

For private figures, plaintiffs must show that defendants were at least negligent. That is, a defendant must demonstrate that the defendant knew or should have known that his or her statement was false. If a defendant should have known that his or her statement was false then the defendant was negligent when communicating it. Establishing negligence turns on determining what a “reasonable person” would have known about the matter at hand.

Recovery. Someone who recovers for defamation may receive compensatory damages. This requires a showing of direct loss and can include both business and personal losses (“special harm”) arising from humiliation, lost friendships, illness, and the like. The plaintiff may receive punitive damages only if the defendant knew or recklessly disregarded the truth. The plaintiff also might receive nominal damages.

Defamation suits are overrated. Suing for libel and slander is generally unwise. First, the suit creates a wider audience for the allegedly defamatory communication. Second, such cases are difficult to win and, even when successful, they typically yield relatively meager damage awards. Third, even when the defamatory communications are false, plaintiffs may fail to establish the other elements of libel and slander. In such cases, plaintiffs would not prevail and the public may wrongly conclude that the communications were accurate.

Practical guidelines. Obviously, when evaluating administrators, colleagues, and students, never include statements you know to be false or you know are most likely false. When writing a letter of evaluation or speaking to an interested party by telephone, preface your remarks with “In my judgment, the person at issue is _____” or “Based on information, belief, and experience, I judge that the person at issue is _____.” You might also add an occasional “in my opinion” or “in my judgment” in your letter or conversation.

Public policy recognizes that honest, full, good faith evaluations of administrators, colleagues, and students are critical for a host of important purposes. Accordingly, the threat of possible legal difficulties is greatly exaggerated.

If you are sued. In the extraordinary event that a union member is sued for a cause of action based on defamation that arises from his or her actions as a State employee, then the member is probably entitled to have the State provide for his or her legal defense and indemnification under Section 17 of the Public Officers Law. Please be advised that you must contact UUP *immediately* should this occur. The employee has only *five* days after being served by a summons, complaint, process, notice, demand, or pleading to deliver the original or a copy of such service to the state attorney general or assistant attorney general. Tardiness will relieve the State of the responsibility of providing legal defense and indemnification.

—Ray Belliotti

Legal questions have a way of piling up...

Maybe it's time to consider enrolling in the Legal Service Plan!

Stuff happens. You may be facing a speeding ticket, a house closing, a divorce, identity theft, elderly parent issues, and the list can go on and on. In today's world, at some point, you'll most likely need the advice or services of an attorney.

When that time comes, you can turn to the Legal Service Plan endorsed by NYSUT Member Benefits Trust.

When you enroll in the plan, you'll receive a multitude of benefits for personal legal matters. Anytime you wish to talk with an attorney, whether for advice or consultation, you have toll-free access weekdays during normal business hours. There's even a toll-free hotline for emergencies occurring beyond these hours.

You'll receive two, hour-long office consultations with a plan attorney, legal document review and legal letters written on your behalf.

If a problem can't be resolved by letter or phone, you'll be referred to a plan attorney. Referral attorneys are located throughout the continental US and charge plan members \$200 an hour or 40 percent less than their standard hourly rate, whichever is lower.

Many personal legal matters have fees that are capped, and there are guaranteed discounts on probate fees and personal injury cases.

Also included is a Legal Security Package each year of plan enrollment. This package includes forms to request a:

- **Simple will** - allows you to select a guardian for your children and beneficiaries of your estate. Without a will in place, the state makes these decisions. A will also speeds up the probate process and makes settling your estate much easier.

- **Power of attorney** - allows you to give another person the right to sign your name and transact your financial affairs.

- **Living will** - enables you to express your wishes regarding end-of-life treatment.

- **Health care proxy** - allows you to appoint someone to make medical decisions on your behalf if you are unable to make them yourself; it also contains directions regarding organ donation.

The plan offers advice and guidance with identity theft issues, debt consolidation and mortgage foreclosure.

You can purchase an Elder Law rider to help you in

your health and estate planning as well as assisting you with these issues for your parents and grandparents.

If you have a business of your own, for example, a rental income property, you can purchase the Business Protection rider to obtain business legal services.

To find out more, call Member Benefits at 800-626-8101. Or go to www.memberbenefits.nysut.org to view or print a brochure and enrollment form. You can also enroll online.



For information about contractual endorsement arrangements with providers of endorsed programs, please contact NYSUT Member Benefits or refer to your NYSUT Member Benefits Trust Summary Plan Description.

Agency fee payers to NYSUT are eligible to participate in NYSUT Member Benefits-endorsed programs.

Mar/Apr '10

Permanent Appointment and Promotion Workshop for Professionals a Success



On April 9, 2010 a workshop on Permanent Appointment and Promotion for Professionals was held in the Horizon Room of the Williams Center. John Marino, state-wide VP for Professionals and Ed Giblin, UUP/NYSUT Labor Relations Specialist, presented on the aspects of permanent appointment and promotion that fall under the UUP Contract and the Policies of the SUNY board of Trustees.

The group of approximately 30 attendees was able to have many questions answered throughout the luncheon session.

Copies of the handouts from the presentation are available in the UUP office for those who would like them.



Photographs (clockwise from top-left):

John Marino, UUP State-wide VP for Professionals, speaks about promotion opportunities

Ed Giblin, UUP/NYSUT Labor Relations Specialist, discusses permanent appointment

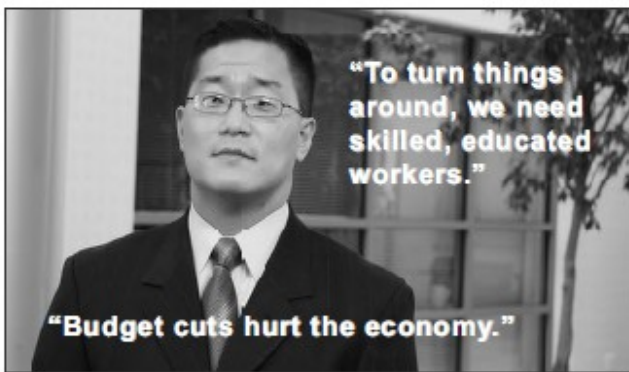
John Marino and Idalia Torres, SUNY Fredonia UUP chapter VP for Professionals



The governor says he'll keep cutting millions from the State University of New York.

If the latest cuts are approved, SUNY will have lost \$528 million in two years.

What do you say about the budget cuts?



We can't afford to sacrifice our children's future. Tell Albany to reject the cuts and save SUNY.

Go to SaveSUNY.org



UUP Are You a Member?

CHECK PAY STUB TO MAKE SURE

In order to be a member of the union, your paycheck **must** say "UUP Member." If it says "UUP Agency Fee," then you are included in the Professional Services Negotiating Unit, but are *not* a member of the union.

Thomas P. DiNapoli New York State Comptroller		JOHN DOE		Total Gross		Fed Taxable Gross	
Advice # 123456789		Pay Start Date 07/13/2009		Current 3456.78		1234.56	
Advice Date 07/12/2009		Pay End Date 07/27/009		YTD 45,678.90		34,567.89	
Department ID 1234		Pay Rate 78,910.11		Net Pay 1,234.56			
EARNINGS							
Hrs./Days		Current Earnings		YTD Earnings		TAX DATA	
Regular Pay Salary Employee		3456.78		45,678.90		Federal 4, State 4, NYC 0, Yonkers 0	
Location Pay		56.78		678.90		TAXES	
						Current YTD	
						Fed Withholding 3,456.78 1,234.56	
						Medicare 45,678.90 34,567.89	
						Social Security 3,456.78 1,234.56	
						NY Withholding 45,678.90 34,567.89	
BEFORE TAX DEDUCTIONS				AFTER TAX DEDUCTIONS			
Regular Before Tax Health		Current 456.78		YTD 1,234.56		UUP Member 26P 34.56	
Supplemental Ret. Annually Prog.		678.90		5,678.90		456.78	
TIAA Retirement Before Tax		56.78		1,234.56			

UUP Membership Entitles You To:

- Vote on collective bargaining agreement
- Hold union office
- Attend union meetings
- Elect union leaders on your campus and choose your representatives at the state and national levels
- Maintain UUP membership after retirement and be eligible for benefit programs
- Upon separation of service, obtain Associate Membership with NYSUT and be eligible for benefit programs

Please contact your chapter officers for a membership card.