



State of Ohio  
 State Employment Relations Board  
 65 East State Street, 12<sup>th</sup> Floor  
 Columbus, Ohio 43215-4213  
 (614) 644-8573  
 ULP@SERB.ohio.gov

Case No. \_\_\_\_\_

**UNFAIR LABOR PRACTICE CHARGE**

**INSTRUCTIONS:** File *one original and one copy* of this form with the State Employment Relations Board at the above address. Serve *one copy* on the party against whom the charge is brought. See Ohio Administrative Code Rule 4117-1-02. If more space is required for any item, attach additional sheets; please number the items accordingly.  
**NOTE:** If you wish to file unfair labor practice charges against both the employer and the union, then separate Unfair Labor Practice Charge forms must be filled out. For the form(s) to be filed against the union, fill out all sections of this form. For the form(s) to be filed against the employer, fill out all sections except section four, which is used to identify the employer for charges filed against the union or its representative(s).

**1. Party Filing Charge: (Check One)**  
 Employee Organization/Union     Employee     Employer     Other \_\_\_\_\_

Name:  
 AAUP Wright State University Chapter

Address: 113 Medical Sciences Bldg, Wright State University  
 Telephone: work (937) 775-3608  
 home (    )

City, County, State, Zip: Dayton, Greene, OH 45435  
 E-mail: aaupwsu@gmail.com

**2. Name of Person Representing the Party Filing Charge:**  
 (Representative must file a Notice of Appearance form.)  
 Susannah Muskovitz

Address: 1621 Euclid Ave., BF Keith Bldg, Suite 1750  
 Telephone: (216) 621-2020

City, State, Zip: Cleveland, OH 44115  
 E-mail: muskovitz@mllabor.com

**3. Party Against Whom This Charge is Brought: (Check Only One)**  
 Employee Organization/Union     Employee     Employer     Other \_\_\_\_\_

Name:  
 Wright State University

Address: 3640 Colonel Glenn Hwy.  
 Telephone: (937) 775-1000

City, County, State, Zip: Dayton, Greene, OH 45435  
 E-mail:

**4. Employer: (If different from item 1 or 3)**

Address: \_\_\_\_\_  
 Telephone: (    )

City, County, State, Zip: \_\_\_\_\_  
 E-mail:

**5. Basis of Charge:** Check all the boxes that apply. (See item #5 on the instructions for a link to the information needed to complete this section).

Charges against employers: (A)(1)  (A)(2)  (A)(3)  (A)(4)  (A)(5)  (A)(6)  (A)(7)  (A)(8)   
 Charges against unions: (B)(1)  (B)(2)  (B)(3)  (B)(4)  (B)(5)  (B)(6)  (B)(7)  (B)(8)   
 Jurisdictional Work Dispute O.R.C. 4117.11(D)

**6. Statement of Facts:** Provide a detailed statement of the facts explaining the alleged violation(s). Include who, what, where, when, how, and all dates. If you need more space, you may attach a separate sheet containing the Statement of Facts.

See attached.

A failure to provide the above information could result in the charge being dismissed for failure to provide a clear and concise statement.

**DECLARATION**

I declare that I have read the contents of this Unfair Labor Practice Charge and that the statements it contains are true and correct to the best of my knowledge and belief.

To distinguish originals, please do not use black ink for signatures.

Jan. 10, 2019

Signature of Person Confirming the Content of Form

Date

Susannah Muskovitz

Print or Type Name

**THIS UNFAIR LABOR PRACTICE CHARGE WILL NOT BE ACCEPTED FOR FILING UNLESS THE PROOF OF SERVICE IS FULLY COMPLETED AND BEARS AN ORIGINAL SIGNATURE OF A REPRESENTATIVE OF THE PARTY FILING THE CHARGE.**

**PROOF OF SERVICE**

I certify that an exact copy of the foregoing Unfair Labor Practice Charge has been sent or delivered to:

Cheryl Schrader, 3640 Colonel Glenn Hwy, Dayton, OH 45435, cheryl.b.schrader@wright.edu

(Name and complete address of party against whom this charge is brought)

and Daniel J. Guttman, 200 S. Civic Center Dr., Columbus OH 43215, dguttman@bakerlaw.com

By  Regular U.S. Mail  Certified U.S. Mail  Hand Delivery  Other email

this 10th (day) of January (month), 2019 (year).

Susannah Muskovitz

Signature of Person Confirming Service of Form

Print or Type Name

**AAUP-WSU attachment to Unfair Labor Practice Charge, Section #6:**

The Wright State University Chapter of the American Association of University Professors (“AAUP-WSU” or “Union”) is the bargaining representative for all full-time tenured and tenure-track faculty, senior lecturers, lecturers, instructors, clinical assistant professors, clinical instructors, and visiting faculty employed by Wright State University (“University”). There are approximately 564 bargaining unit members.

The AAUP-WSU and the University are parties to a Collective Bargaining Agreement which expired on June 30, 2017. The parties have been negotiating since January, 2017 (SERB Case No. 2017-MED-02-0172).

On January 13, 2017, representatives of both parties signed Ground Rules. Ground Rule #14 provided that it was the intent of both parties that negotiations be conducted at the bargaining table and in good faith towards achieving a contract mutually beneficial to all. Ground Rule #16 provided that the CBA ending June 30, 2017 would remain in effect “until a new agreement is ratified.”

The parties were not able to reach an agreement at the bargaining table and elected to proceed to Fact-finding. A Fact-finding hearing was held on April 3, April 4, May 22, and May 23, 2018.

After the final day of Fact-finding and before the Fact-finding Report was issued, the AAUP-WSU offered to continue to negotiate in order to reach an agreement and the University agreed. There were two meetings held with a small group from both sides, including AAUP-WSU President Martin Kich and Wright State University President Cheryl Schrader. During those meetings, Dr. Kich identified areas in which the AAUP-WSU was willing to make concessions in order to achieve an agreement. The parties returned again to the table and participated in two additional negotiation sessions on October 8 and 9, 2018. Again, the AAUP-WSU outlined areas in which they were willing to make concessions. No agreement was reached.

The Fact-finding Report was issued on October 29, 2018. The Board of Trustees voted unanimously to accept the Fact-finding report. The AAUP-WSU members voted to reject the Fact-finding report on November 7, 2018 by a vote of 95% of all eligible voters. That same day, the AAUP’s chief negotiator, Rudy Fichtenbaum, notified Dr. Schrader of the results of the vote and stated: “We are ready to negotiate.” On November 8, 2018, Dr. Schrader thanked Dr. Fichtenbaum for the message and stated she would forward the offer to negotiate to the Board of Trustees. She also stated that the administration, including the Board of Trustees, will want to meet with the AAUP-WSU to discuss “next steps.” However, that never occurred.

Also on November 8, 2018, Dr. Fichtenbaum sent an information request to the University’s General Counsel, Larry Chan, in order to assist the AAUP-WSU with the upcoming negotiations. Each of the items requested by Dr. Fichtenbaum related directly to the areas in which the AAUP-WSU indicated it was willing to make financial concessions during the October 8 and 9 negotiation sessions.

On November 29, 2018, President Schrader's senior executive assistant, Teresa Bedwell, contacted Dr. Kich and asked to schedule a phone call. That same day, Dr. Kich responded as follows:

Teresa:

Please pass this response on to President Schrader.

Since my efforts to jump-start negotiations through informal conversations have produced no substantive results whatsoever, our Executive Committee has decided that, especially at this late stage in the process, all communication that is at all related to the contract should occur within the framework of actual negotiations.

We are prepared to offer proposals that we believe take into account the university's financial situation, and we are very willing to listen to proposals or counter-proposals from your side. But, at this point, our members simply will not accept the idea of trading off one unacceptable proposal for another, especially not when we will be back at the table negotiating the "next" contract in January 2020. (Surely, as you are reading the previous sentence, it sounds as insane to you as it does to me.)

Although I believe that it is very unfortunate that things have reached this point, I will remain hopeful that reason will prevail and that we will reach a contract that both sides can live with, even if they aren't actually happy with it.

At the risk of stating the obvious, if we end up on a picket line, it is going to be much more difficult to convince our members to accept compromises.

Marty

On December 3, 2018, Mr. Chan responded for the first time to Dr. Fichtenbaum's information request by sending a copy of the monthly summary notes from Horan for September and October, 2018. He then asked Dr. Fichtenbaum to explain the need for the remainder of the information requested. The summary notes were not even remotely responsive to the request.

On December 5, 2018, Dr. Fichtenbaum responded to Mr. Chan and explained the need for the information requested. Dr. Fichtenbaum also stated:

As we mentioned in the informal talks that President Kich and two other members had with President Schrader [before the Fact-finding report was issued] and at our last meeting at the negotiating table [on October 9, 2018], there are areas where we might be willing to make financial concessions in health care and other areas such as summer teaching and overloads that would provide the University some temporary financial relief. The information we requested is needed so we can cost out these items.

This communication from Dr. Fichtenbaum indicated the clear intent of the AAUP-WSU to negotiate.

On December 7, 2018, Mr. Chan responded to Dr. Fichtenbaum and said he would provide the information requested. However, the information has never been provided. Dr. Fichtenbaum followed up with an email on December 21, 2018 and again on January 4, 2019, but to date, has never received a response.

January 4, 2019 was winter break at the University. (Classes are not scheduled to resume until January 14.) However, on that day, Dr. Kich, Dr. Fichtenbaum, and other AAUP-WSU bargaining unit members read a newspaper article in the Springfield News-Sun, which stated that the Board of Trustees had implemented its "last, best offer" on terms and conditions of employment to the school's faculty union after failing to reach a deal on a contract. The Board of Trustees' attorney is quoted in the newspaper article at stating that the Board "[did] not believe that any continuation of discussion with the AAUP would be fruitful at this time."

After reading about the Board's alleged "last, best offer" in the news media, President Kich received a letter, via email, from Mr. Chan with a copy of the resolution that had been passed by the Board of Trustees and a copy of the labor contract that the Board was unilaterally implementing. The Board resolution, as well as the "last, best offer," had been communicated to the new media before being communicated to the AAUP-WSU.

In fact, the Board's purported "last, best offer" *has never been offered* to the AAUP-WSU. In addition, the unilateral implementation of this "last, best offer" is substantially worse than the Fact-finding report that the Board of Trustees unanimously approved and constitutes regressive bargaining. Below are some examples:

1. Merit Pay – The Board's unilaterally implemented "last, best offer" includes provisions that the Fact-finder rejected in his report.
2. Non-Tenure Tracked Appointment and Promotion - The Board's unilaterally implemented "last, best offer" includes provisions that the Fact-finder rejected in his report.
3. Health Care – The Board's unilaterally implemented "last, best offer" waives the rights of all faculty to negotiate health care, a mandatory subject of bargaining.
4. Furloughs – The Board's unilaterally implemented "last, best offer" allows the administration to require faculty to work for free by implementing "cost-saving days" with no corresponding reduction in workload or other responsibilities. Although there was language to this effect recommended by the Fact-finder, the "last, best offer" eliminated the recommended cap on the "cost-saving days" and allows the administration to require faculty to work for free without any limitations.

As a result of the action of the Board of Trustees to (1) unilaterally implement a "last, best offer" which was never offered to the AAUP-WSU; (2) negotiate in public by presenting its "last, best offer" to the news media before presenting it to the AAUP-WSU; (3) refuse to provide information requested which is critical to allowing the AAUP-WSU to present an offer that could meet the financial needs of the University; and (4) unilaterally implementing a collective

bargaining agreement which is even worse than the Fact-finding report which the Board unanimously approved, among other actions, the AAUP-WSU had no choice but to file a Notice of Intent to strike, with a strike deadline of January 22, 2019.

The above actions by the University and the Board of Trustees constitute an Unfair Labor Practice in violation of R.C. 4117.11(A)(1) and (A)(5).

Because these actions have occurred during the statutory dispute resolution process, a Motion to Expedite the investigation is being filed with this ULP.