

# American Association of University Professors

## COUNCIL OF CHAPTERS

Summer 2005

**Newsletter**

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### **RWJ and SOM Clinical Membership Vote to Approve Restrictive Covenant MOA**

Despite an Administration attempt to interrupt the voting (see article entitled "Administration Attempts, Unsuccessfully, to Interrupt Vote on Restrictive Covenant MOA"), AAUP completed balloting of its clinical members on the RWJ and SOM faculty on the issue of post-employment restrictive covenants on July 5, 2005. The majority of the valid votes cast (59.2%) were in favor of ratifying the Post-Employment Restrictive Covenant Memorandum of Agreement ("Restrictive Covenant MOA").

It should be noted that the Council of Chapters of AAUP decided that the vote on the Restrictive Covenant MOA would be open to AAUP members directly affected by it: our clinical members on the RWJ and SOM faculties. (The Restrictive Covenant MOA, by its terms, does not apply to clinicians at Newark schools and does not affect non-clinicians.) The text of the Restrictive Covenant MOA may be found on page 2 of this *Newsletter*. Based on the vote of the affected clinical membership, it is anticipated that the Administration and AAUP will proceed with the paperwork to finalize the Restrictive Covenant MOA (including the exception for employment in Philadelphia described in the ballot summary).

The Administration at RWJ and SOM wants to be able to execute post-employment restrictive covenants with clinicians, but in negotiations with AAUP, the Administration agreed to significant limitations on its ability to require and enforce such restrictive covenants. Further,

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### **Administration Attempts, Unsuccessfully, to Interrupt Vote on Restrictive Covenant MOA**

On June 7, 2005, AAUP informed the Administration that: "...the AAUP Council decided to put the Restrictive Covenants MOA to a vote of our clinical members at RWJ and SOM. The last day for ballots to be returned is July 5, 2005." What followed was a flurry of letters from the Administration demanding that the AAUP Council recommend ratification of the Restrictive Covenant MOA to the voting membership.

The Negotiating Committee that had negotiated the Restrictive Covenant MOA had recommended ratification and approval to the AAUP Council. However, the AAUP Council decided that it would not itself accept or reject the Restrictive Covenant MOA, but that it would instead put the Restrictive Covenant MOA to a vote of AAUP's clinical members at RWJ and SOM, without a recommendation for or against ratification. As stated in the Ballot Summary: **"Given that there are pros and cons of agreeing to the Restrictive Covenants MOA, and you, the clinical faculty at RWJ and SOM will be the ones benefited or harmed, the Council of AAUP-UMDNJ does not want to decide for you, but wants you, our clinical members, to decide for yourselves through this vote."**

The Administration had a different view, and continued to demand that the AAUP Council recommend ratification of the Restrictive Covenant MOA to the voting membership. AAUP continued

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## Vote to Approve Restrictive Covenant MOA...*continued from page 1*

the Restrictive Covenant MOA allows, but does not require, the Administration to enter into post-employment restrictive covenants with individual clinicians at RWJ and SOM, which means that the Administration has flexibility to decide whether to ask a clinician to sign a restrictive covenant, and if so, what limitations (within the permissible) it seeks. Also, if you, as a RWJ or SOM clinician, are asked to sign a post-employment restrictive covenant, remember that:

- 1) you are grandfathered (and not required to sign) if you had not signed a

post-employment restrictive covenant before 5/9/05,

- 2) if you did sign a post-employment restrictive covenant before 5/9/05, it's terms can only be changed to your detriment at the time of your contract renewal, and
- 3) if you are involuntarily separated from your job (*e.g.*, you are terminated or do not have your contract renewed by the Administration), any post-employment restrictive covenant you have signed is inapplicable.

Please address any questions you have about this matter to our Executive Director, Debra Osofsky, Esq., at [osofsky@aaupumdnj.org](mailto:osofsky@aaupumdnj.org) or (973) 972-5875.

**“...if you are involuntarily separated from your job... any post-employment restrictive covenant you have signed is inapplicable.”**

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### ***The following is the text of the Restrictive Covenant MOA, referred to in the articles beginning on page 1 of this Newsletter.***

The AAUP and UMDNJ, subject to ratification and approval, hereby agree to resolve all issues in dispute at conciliation as follows:

- (1) At RWJ and SOM the Employer shall have the right to enter into restrictive covenants with unit members, having a duration of one year following the last date of service with the University. These restrictive covenants can prohibit the unit member from establishing or working in an office or providing care for patients in any established facility in locations up to:
  - (1)(A) 20 miles of the unit member's principal practice location at the time of leaving the University if the unit member is a specialist or sub-specialist, including sub-specialists of the primary care discipline.
  - (1)(B) 10 miles of the unit member's principal practice location at the time of leaving the University if the unit member is a primary care physician (*i.e.* internal medicine, family medicine, pediatrics or obgyn).
- (2) Unit members at RWJ and SOM who never signed a restrictive covenant agreement as of 5/9/05 shall be grandfathered and not required to sign them.
- (3) Restrictive Covenants shall apply to resignations and not involuntary separations (including non-renewals).
- (4) The 20/10 mile standard shall be applied upon contract renewal for any unit member currently working under a contract with a restriction of a lesser distance.
- (5) The parties agree that nothing in this Memorandum shall serve as a precedent nor shall it establish a negative implication nor undermine the position of either party with respect to the question of restrictive covenants for unit members in Newark area schools.

The Undersigned hereby agree to recommend ratification and approval and shall act within sixty days.

## Administration...continued from page 1

to reiterate to the Administration that the Council had no obligation to recommend ratification, and that the Council had made a proper decision to submit the Restrictive Covenant MOA to its voting members without a recommendation.

On June 28, 2005, the Administration, still arguing that the AAUP Council was required to recommend ratification of the Restrictive Covenant MOA to the voting membership, filed an 85-page "Unfair Labor Practice Charge and Application for Interim Relief" against AAUP with the New Jersey Public Employee Relations Commission (NJ PERC). In its Legal Brief, the Administration requested the following as a remedy:

"UMDNJ is hereby requesting that its petition for interim relief be granted and that the ballots for any vote by the Union membership on the MOA be impounded, or alternatively, that the results of any vote by the Union membership on the MOA be sequestered. Further, UMDNJ is requesting a hearing prior to any vote by the Union membership, or alternatively temporary restraints until a hearing can be scheduled in this matter."

On June 29, 2005, NJ PERC postponed a hearing on the Administration's June 28<sup>th</sup> "Unfair Labor Practice Charge and Application for Interim Relief" filing until after AAUP's membership voting was completed, with a hearing to be held only if the RWJ and SOM clinical membership rejected the Restrictive Covenant MOA. As the majority of the clinical membership of AAUP at RWJ and SOM voted for the Restrictive Covenant MOA, the Administration's "Unfair Labor Practice Charge and Application for Interim Relief" against AAUP should be withdrawn.

**Much ado about nothing? Yes and No.** The AAUP Council saw that there were pros and cons of agreeing to the Restrictive Covenant MOA, and decided that our clinical membership at RWJ and SOM should be the ones to decide whether to accept the Restrictive Covenant MOA, not the Council. The Administration took a lot of time and money (and AAUP's time and money) to try to interrupt the membership vote and require that the AAUP Council recommend ratification to its membership. AAUP is glad that the membership vote on the Restrictive Covenant MOA was not interrupted by the Administration, but considers it a negative development that the Administration should make such an attempt.

### AAUP UMDNJ Newsletter

The **Newsletter** is published by the UMDNJ Council of AAUP Chapters.

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Kenneth R. Miller presented the 2005 AAUP Heikkilä Memorial Lecture in April. His talk was entitled "Origin of the Specious - Why Darwin Still Matters in an Age of Genomics." Dr. Miller (center) with (l. to r.) Roger Howell, Robert Schwartz, Anthony Boccabella and Debra Osofsky.

## AAUP Chapter Elections Coming Soon

Your opportunity to vote for the Officers and other representatives on the 2005-2006 Board of Governors of the Newark Chapter or the Executive Committee of the RWJ/SOM Chapter will be coming soon. The Officers of the Board of Governors and the Executive Committee (the Officers being the President, Vice President, Secretary and Treasurer), plus the immediate Past President and two additional "At Large" members from each body, then form the Council of the AAUP. These leaders of AAUP elected by you to the Board of Governors, the Executive Committee and the Council make many decisions regarding the functions of AAUP: whether to pursue a grievance to arbitration or file an Unfair Practice Charge, what events or functions AAUP-UMDNJ should hold or sponsor, who should be on various negotiating committees, and the like.

The RWJ/SOM Executive Committee chose a Nominating Committee on July 6, 2005: Frederick Lepore, Catherine Monteleone, Robert Nagele, and Paul Stein. The RWJ/SOM Nominating Committee is searching for candidates to fill numerous open positions, and you are welcome to contact any of its members if you would like to be considered, or to recommend someone else who you believe would like to be nominated. The RWJ/SOM Nominating Committee will then present its suggested candidates at a Chapter meeting and at which any additional candidates can be nominated, after which an election ballot will be sent to all full members of the RWJ/SOM Chapter.

It is expected that the Newark Board of Governors will soon also be selecting a Nominating Committee, and a similar process to that just described for RWJ/SOM will occur for Newark elections. If you have any questions as to the election process, please see the Bylaws of the RWJ/SOM Chapter, the Newark Chapter, or the Council, which may be found on the AAUP-UMDNJ website ([aaupumdnj.org](http://aaupumdnj.org)), or you may contact Amy Reeder at (732) 235-4196 or [reeder@aaupumdnj.org](mailto:reeder@aaupumdnj.org).

## Guest Column: Infection Prevention (Bloodborne Pathogens)

Faculty who handle potentially infectious materials should make sure they're protected from bloodborne pathogens, especially HIV, hepatitis B and hepatitis C viruses. All Newark campus faculty with the potential for exposure should get the free hepatitis B vaccinations and serologic testing from the NJMS Occupational Medicine Service (OMS) to be certain they're immune to hepatitis B. In addition, all faculty should follow standard (formerly universal) precautions, and wear gloves, goggles, masks and gowns as indicated.

To best protect themselves, faculty should report all percutaneous and permucosal exposures to blood or body fluids, including needlesticks, scalpel and sharp exposures. After an incident that results in a potential exposure, an incident report must be filed, and the affected person should report immediately to the designated campus office for evaluation, counseling and possible medical treatment.

On the Newark campus, faculty should report to the OMS or the UH Emergency Department (if the OMS is closed). The OMS is located in the Stanley S. Bergen Building, Suite GA-167, and is open Monday to Friday 7:30 a.m. to 4:00 p.m. Faculty at RWJMS should contact Employee Health at (732) 445-0123 during business hours or go to the RWJMS emergency room after business hours for treatment. On the southern campus, employees should contact Dr. Timothy Dombrowski of the SOM Department of Internal Medicine at (856) 566-6845 for immediate evaluation and or referral to a local emergency room and post exposure medical management.

This article was contributed by Lawrence D. Budnick, M.D., Director, Occupational Medicine Service and Associate Professor of Medicine, NJMS (2-2900/budnicla@umdnj.edu). If you are an AAUP member interested in drafting an article for publication in this *Newsletter*, please contact Debra Osofsky, J.D. at [osofsky@aaupumdnj.org](mailto:osofsky@aaupumdnj.org) or (973) 972-5875.

# AAUP-UMDNJ New Faculty Lunch

Did you become a UMDNJ Faculty member in 2000 or later? Are you interested in having an opportunity to meet some other recently-hired faculty and learning the answers to the following questions:

- When am I entitled to salary increases, and how much?
- What is the range of salaries for faculty in my position?
- How can I get a higher salary?
- What increase is required if I get a promotion to a new rank?
- What are my vacation and holiday entitlements?
- If I'm on a term contract, what notice must I receive regarding renewal?
- What other job rights and protections do I have?

If so, please join us for an

**AAUP-UMDNJ  
NEW FACULTY LUNCHEON**  
Wednesday, September 7, 2005, 12:00 noon  
Dean's Conference Room, Piscataway  
OR  
Monday, September 26, 2005, 12:00 noon  
CAB 3404, New Brunswick

*AAUP is in the process of scheduling New Faculty Luncheons on both the Newark and Stratford campuses, though faculty from these locations are welcome to RSVP to and attend the luncheons already scheduled in Piscataway or New Brunswick.*

**Lunch will be provided. Please let us know if you will attend by filling out and returning the slip below by fax (732.235.5163) or campus mail (TR3, RWJMS, Piscataway) or by calling the AAUP office (732.235.4196) or responding by e-mail (council@aaupumdnj.org).**



\_\_\_\_\_ I plan to attend the AAUP-UMDNJ New Faculty Luncheon on September 7, 2005 in Piscataway at 12:00 noon

\_\_\_\_\_ I plan to attend the AAUP-UMDNJ New Faculty Luncheon on September 26, 2005 in New Brunswick at 12:00 noon

\_\_\_\_\_ I'm interested in the AAUP-UMDNJ New Faculty Luncheon, but I cannot attend on September 9 or 26, 2005, so

\_\_\_\_ Please let me know of the date, time and location if you hold another Luncheon and/or

\_\_\_\_ Please give me a call so that we can discuss the answers to the above questions.

Please Print:

\_\_\_\_\_ name school e-mail address

\_\_\_\_\_ department office phone

**Please join! We urge you to become a voting member of the AAUP. WE NEED YOUR SUPPORT!**

If you are paying \$15.87 per pay period, you are paying a representation fee, not AAUP dues. AAUP dues are \$20.00 per pay period for (only \$4.13 more per pay period for full membership) 26 pay periods per year.

Dues include local, state and national AAUP membership fees. Members can vote in chapter elections and on contract ratification. Members also learn about **AAUP member benefits** through **Academe**, the AAUP's national magazine.

**Once you join, the AAUP will send you a gift to express our appreciation to you for becoming a member.**

To join the AAUP, just fill out this authorization form and return it to us at the address below.

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY  
**AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS (AAUP)**  
PAYROLL DEDUCTION AUTHORIZATION

Please print clearly:

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HOME PHONE \_\_\_\_\_ OFFICE PHONE \_\_\_\_\_

ACADEMIC RANK \_\_\_\_\_ DEGREE \_\_\_\_\_

SCHOOL \_\_\_\_\_ DEPARTMENT \_\_\_\_\_

CAMPUS ADDRESS \_\_\_\_\_

PERCENTAGE OF FULL TIME EMPLOYED BY UMDNJ \_\_\_\_\_ SEX: M F

UMDNJ I.D. NUMBER \_\_\_\_\_ DATE HIRED \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_ BIRTH DATE \_\_\_\_\_

(All of the above information will remain in the strictest confidence unless we are otherwise instructed by you.)

I hereby authorize my AAUP Chapter to have deducted from my earnings twenty dollars (\$20.00) dues per pay period, which includes national, state and local AAUP membership dues.

This authorization shall remain in effect unless terminated by me upon written notice of withdrawal or by termination of my employment. The filing of notice of withdrawal shall be effective to halt deductions as of the July 1st or January 1st next succeeding the date on which the notice of withdrawal was filed.

While contributions or gifts to the UMDNJ Council of AAUP Chapters are not tax deductible as charitable contributions for Federal income tax purposes, they may be tax deductible under other provisions of the Internal Revenue Code.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

PLEASE RETURN TO:

**AAUP**  
**American Association of University Professors**  
**Council of Chapters, UMDNJ**  
**30 Bergen Street**  
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**Newark, New Jersey 07103**

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