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March 31, 2011

*Via Electronic Mail*

esullivan@upilocal4100.org

Ms. Ellie Sullivan, President  
University Professionals of  
Illinois (UPI), Local 4100  
AFT/IFT/AFL-CIO  
11 East Adams, # 1106  
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Dear Ellie:

You have asked me to comment on the memorandum that President Hahs sent to the Administrative Team regarding the meaning of the term "Last, Best and Final Offer."

According to President Hahs, the term is a "collective bargaining term" which means "bargaining has ended" and that "there are no more concessions that can be made." Defined this way, the term is inconsistent with the duty to bargain set forth in Section 14(a)(5) of the Illinois Educational Labor Relations Act. Under that statute, one side cannot walk away from the bargaining table by declaring no more concessions can be made. Rather each side has a continuing duty to bargain until further bargaining is futile and all avenues for reaching agreement have been exhausted. The fact that one side believes that this point has been reached in no way proves that a bargaining "impasse" has occurred. Instead, one must examine the pace of negotiations, the counter-offers that are on the bargaining table, whether there are outstanding information requests with respect to the issues on the table, and whether either party has additional proposals to make.

My understanding is that the union may have further proposals and that we believe that further bargaining would be productive. Under such circumstances, the University risks committing an unfair labor practice by declaring that "bargaining has ended" and that it will make "no more concessions." It also risks committing an unfair labor practice if it retaliates against the union by going into "a more confrontational mode" if the union rejects the offer.

Assuming for the sake of argument that further bargaining at this time would be futile and that all avenues of reaching agreement have been exhausted, you should know that such an impasse is a temporary condition that only suspends the bargaining obligation for a period of time. Many things may break an impasse: a new proposal, a membership vote, or even a strike. When a

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significant new event occurs, the parties have an obligation to return to the table and continue to bargain in good faith.

There is no statute that requires that a union take a "Last, Best and Final Offer" to its membership for an "up or down" vote. Nor is there an established practice at NEIU of doing so. The union may, in its discretion, have such a vote. Or it may elect to make a counter-proposal or even to call a strike.

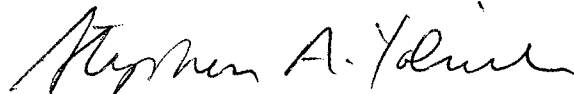
The President's memorandum implies her frustration at the slow pace of negotiations. The fact that the University is frustrated, however, does not give it the legal right to "pick up its marbles and go home."

The University's decision to make a "Last, Best and Final Offer" also implies that it believes that it has made a serious offer intended to resolve the contract. Such a serious offer deserves a serious response.

If you have any further questions, please do not hesitate to call me.

Very truly yours,

CORNFIELD AND FELDMAN



Stephen A. Yokich

SAY/bf

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