

STATE OF OHIO
STATE EMPLOYEES RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of Fact Finding)
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Between)
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Teamsters Local 284, IBT,)
Employee Organization)
)
And)
)
Columbus State Community College,)
Ohio Public Employer)
)
)

SERB Case No. 02-MED-11-1200

FACT FINDING REPORT

Mitchell B. Goldberg,
Appointed Fact Finder

Date: July 18, 2003

APPEARANCES

For the Union:

Susan D. Jansen, Esq., Attorney
Darren Kempton, Business Agent
Bob Stockwell, Committee
Lamont Rambert, Committee

For the Employer:

Tim D. Wagner, Executive Director of Human Resources,
Karen Hughes, Human Resources Specialist
Jim Spencer, Director of Physical Plant
John Aldergate, Human Resources, Program Coordinator
Chris Hogan, Esq., Attorney
Terry Gehr, Vice President of Business

I. INTRODUCTION

Mitchell B. Goldberg, was appointed Fact Finder on January 15, 2003. A hearing was held on June 27, 2003 at the offices of Human Resources at the College. The parties agreed that the report is to be issued on July 18, 2003.

Each of the parties appeared with representatives and witnesses at the hearing. The principal representative for the Union was Susan D. Jansen, Esq., and the principal representative for the Employer was Tim Wagner.

Prior to the hearing, each party submitted a Pre-Hearing statement pursuant to §4117-9-05 of the Rules of the State Employment Relations Board. Included in the Statements were descriptions of the employee classifications in the bargaining unit. There are approximately 44 covered employees in the unit. This is the first collective bargaining agreement negotiated between the parties.

II. MEDIATION

Several of the issues which were originally in dispute between the parties were successfully mediated and agreed upon during the hearing. There remained seven issues in dispute for recommendations by the Fact Finder.

III. RECOMMENDATIONS

All issues which have been tentatively agreed upon between the parties are hereby included as recommendations for purposes of this Fact Finding Report. The following issues remain unresolved between the parties: (1) Performance Appraisal; (2) Fair Share; (3) Call Back-Hours of Work ; (4) Subcontracting; (5) Duration; (6) Personal Business Leave; (7) Wages. Consideration in this Report was given to all of the criteria listed in Rule 4117-9-05(J) of SERB.

Issue 1 – Performance Appraisal

The Employer has proposed extensive language for evaluating and appraising employee performance. The language contains an appraisal process, an evaluation period, and a probationary period. The College states that it has had a long history of using performance evaluations and professional development to determine merit raises for each individual employee. The College wants to continue using merit as a determining factor for wage increases in accordance with the established criteria. It believes that merit based increases are necessary because many public employers have performance issues relative to their employees, and there are no incentives for providing good or excellent work. As a result, most compensation systems reward mediocre work based upon longevity and seniority alone. The College believes that the public taxpayers are demanding accountability and efficiency as part of their expectations for public service. The College wants to retain this practice which has existed for more than 20 years.

The Union has responded with a proposal which only varies slightly from the Employer's proposal. However, the Union strongly opposes the determination of an Employee's financial compensation based upon the performance appraisal. The Union believes that no performance appraisal system can be truly objective and the Employees should not have their wages determined by a subjective determination of their performance. The College and the Union have already agreed to a discipline system which addresses disciplinary issues. Moreover, the College has agreed to the Union's proposal for its police bargaining unit.

Recommendation

The evidence established that problems have arisen in the merit based system of compensation used by the Employer over the years. Employees with comparable years of

service are paid at widely varying rates within the same job classifications. This issue is addressed more substantively in the discussion of wages below, but the problems relate to a merit based system of compensation. Fact Finder Gombert discussed the same issue in his report for the police bargaining unit. He believes that the subjective aspects of appraisals relating to compensation could result in multiple grievances over salary adjustments where employees complain that they are mistreated relative to other employees in terms of compensation. Accordingly, he recommended that the Union's proposal be adopted which contains an appraisal process, an evaluation period, and a probation period; but, removes merit increases from the equation. Moreover, there is an adequate discipline system in place making it unnecessary to address discipline in the compensation scheme. Therefore, it is recommended that the Union's performance appraisal language be adopted as follows:

Section 1. Purpose of Review

The purpose of employee performance appraisal is to provide an effective communication device to evaluate job performance, set performance goals, promote Human Capacity Development, and document performance that needs improvement.

Section 2. Appraisal Process

The employee's supervisor will formally document employee performance with input from the employee. Employee performance appraisal forms will be filled out and reviewed with the employee with a formalized plan of professional development. The performance appraisal form will be filed with the Executive Director of Human Resources with a copy to the employee. The employee shall sign the form, which only signifies and he/she received the form. A signature in no way acknowledges that the employee necessarily agrees with the evaluation. If the employee disagrees with any part of the evaluation, the employee may place a written rebuttal in his/her personnel files that will be attached to the evaluation.

Section 3. Evaluation Period

Because the main purpose of employee performance appraisal is to improve performance and maintain high levels of results achieved, it is important that employee performance appraisals be conducted on a regular basis. Therefore,

each employee's performance and professional development plan will be evaluated in writing on the anniversary date of employment or the effective date of a classification change.

Performance evaluations are normally done annually. However, a supervisor may choose to do a special evaluation based on a need to correct certain salient deficiencies.

Section 4. Probationary Employee

In an effort to assist probationary employees in becoming proficient in their jobs as quickly as possible, the performance of all new employees will be reviewed by their supervisors a[t] the midpoint of their initial probationary period.

In the event the supervisor, Physical Plant Director or College believe that the probationary employee is not meeting the minimum acceptable performance standards, the probationary period may be extended by the College as prescribed in Article 19 – Probationary Period.

Issue 2 – Fair Share Fee

The Union requests a Fair Share Fee based upon all of the traditional arguments. The Union should not be required to shoulder the entire financial burden for the administration of the contract including the representation of non-members or objectors. These free-riders should at least have the responsibility for paying their fair share of the Union's expenses for administrating and maintaining the collective bargaining agreement. In this case, the responsibility is more profound because the Union may not be able to continue to represent Fair Share Fee contributors. This financial burden should not be imposed upon the remainder of the membership. The College has agreed to the Fair Share provision proposed for the police officers, police sergeants and police dispatchers represented by this same Union.

The College opposes the Fair Share Fee for philosophical reasons. No employee should be forced to pay for a Union which they want no part of. The right to participate in a Union should be voluntary. The College further points out that this is a first contract and it is customary not to recommend a Fair Share Fee for a first contract. The CSEA Union which

represents the faculty did not negotiate for or request a Fair Share provision to be included in their contract.

Recommendation

The evidence shows that 11 employees of the 44 employee unit voted against the Union. While there is a significant minority of employees who may not wish to join the Union, there is a clear majority of the employees who support the Union. The Ohio legislature has established a system for non-members to pay Fair Share Fees in accordance with established court cases to protect non-members from having their fee payments used for matters other than those related to the collective bargaining agreement. Unions may not use the funds from Fair Share Fee payers for political or ideological matters unrelated to collective bargaining.

Fact Finder Gombert recommended a fair share system in the police contract. He was not persuaded that it was inappropriate to recommend a Fair Share clause simply because it was the first contract. Nor did he believe that a Fair Share clause was necessary to maintain the economic viability of the Union. He concluded that the Fair Share Agreement costs the College no money. He found that two thirds of the bargaining unit supported the Union and that the other third will benefit from their efforts. Based upon this evidence, he recommended the Fair Share language purposed by the Union. Because the above stated reasons are applicable to this bargaining unit, and because the police contract now contains a Fair Share clause, it is recommended that this contract include a Fair Share provision with the same language. The provision shall state the following:

Fair Share Fee

Any employee who is not a member of Local 284 shall pay Local 284, through payroll deduction, a contract service fee or fair share for the duration of this Agreement. This provision shall not require any employee to become or remain a member of Local 284, nor shall the fee exceed the dues paid by members of Local

284 in the same bargaining unit. Local 284 is responsible for notifying the Employer of the proportionate amount, if any, of its total dues and fees that was spent on activities that cannot be charged to the service fees of non-members during the preceding year. The amount of service fees required to be paid by each non-member employee in the unit (during the succeeding year) shall be the amount of the regular dues paid by employees in the unit who are members of Local 284 less each non-member's proportionate share of the amount of Local 284's dues and service fees spent on activities not chargeable to such service fees during the prior year. If an employee challenges the propriety of Local 284's use of such fee, deductions shall continue, but Local 284 shall place the funds in an interest bearing escrow account until a resolution of the challenge is reached pursuant to the provisions of ORC 4117.09 (C) and other appropriate provisions of federal and state law and rules of the State Employment Relations Board. The Union agrees to provide, annually to the Employer, a copy of the fair share fee rebate procedure.

ISSUE 3 – Hours of Work and Overtime

The parties have agreed to previously disputed language in Article 6, Section 2. They have agreed to the following language in the fourth paragraph as follows:

In the event the College expands to include additional campuses that require full-time staffing, employees may submit their campus work location preference on an annual basis. The Parties will meet to discuss how locations will be staffed. The Physical Plant Director will make campus location assignments based on seniority within the classification, based on operational need.

Section 6 also contains language which was agreed upon between the parties. The second paragraph should read as follows:

In the event that no employee or a sufficient number of employees do not accept the overtime opportunity, the Supervisor may mandate overtime for the least senior employee(s) in the Department on a rotating basis. When an employee is required to work overtime as a result of this procedure with less than twenty four (24) hours notice, the employee will be paid call-in time in addition to pay for hours worked at the overtime rate.

Certain language in Section 5 remains unsettled. The Union's proposed language for calculating an Employee's overtime include hours actually worked by the Employee and time spent while on paid leave such as vacation leave, personal business leave, holidays, and court

services. The Union agreed to exclude sick leave for purposes of calculating an employee's overtime; however, the Union proposes that if an employee is called in or required to work outside their regular work hours, sick leave used during the week in which the mandatory overtime occurs will be considered as hours worked.

The College wants to exclude sick leave hours from any computation of overtime. The College does not believe it is prudent to include sick leave because it has no control over the use of sick leave or the abuse of the leave time. The other leaves at least require mutual agreement between the Supervisor and the employee as to whether a leave is granted. Overtime is a major cost item for the College. Therefore, it must maintain its ability to manage its impact upon the budget. The College is proposing the same language adopted in the safety contract.

Recommendation

It is recommended that sick leave not be included for the calculation of overtime in accordance with the Employer's proposal. It is further recommended that the Union's proposal for additional language providing for call-back pay for emergencies, including snow and ice removal outside regular work hours, should not be included in this Article. It is noted that the employees already receive overtime pay when they are required to work emergencies before their regular starting time or after their shift has ended. The language of Section 5 shall state the following:

For the purposes of calculating an employee's overtime, paid status shall include hours actually worked by the employee and time spent while on paid leaves to include vacation leave, personal business leave, holidays, and court service.

Section 7 shall state:

Employees who are called to report to work and do report at a time outside their regular work hours will be paid a minimum of three hours at the straight time regular rate of pay in addition to actual hours worked at the applicable rate of pay.

Time actually worked will be included in the overtime calculations, however, call-back or call-in pay at straight time is excluded from the overtime calculation.

Issue 4 – Subcontracting

The Union proposes restrictive subcontracting language if the subcontracting results in the layoff of bargaining unit employees or results in a decrease of bargaining unit work. The language permits subcontracting for work that the bargaining unit employees are not qualified to perform. The Union believes that the security of the bargaining unit could be in jeopardy because the College currently subcontracts some housekeeping functions that the bargaining unit members are able to perform. The Union wants to protect the unit's existing work.

The College wants to maintain its right to subcontract as a management right. It states that it does not intend to contract out work to the extent that the bargaining unit will be materially affected, but its subcontracting decisions may be required to meet its budget restrictions. The College proposes language permitting subcontracting when needed, but before it makes decisions it will consult with the Union and explore other options.

Recommendation

The economic evidence concerning the State's budgetary crisis persuades this Fact Finder that the College should maintain its flexibility to contract out work when necessary to stay within its budget and to maintain the required level of services for the students. The Employer's "meet and confer" language is a reasonable compromise of this issue. The Employer's language is accepted with the following modifications:

The College intends to utilize bargaining unit employees to perform work that they normally perform. However, the College reserves the right to contract out any work it deems necessary or desirable because of greater efficiency, economy, programmatic benefits or other related factors. The College will notify the Union 30 days prior to contracting out new bargaining unit work, and representatives of the parties shall meet and confer about the subcontracting decision after there has been full disclosure by the College and an exchange of relevant information.

Issue 5 – Duration

The Parties disagree over the termination date for the Agreement, although both are in agreement with a three year term. The Union proposes that the term of the Agreement run from July 1, 2002 to June 30, 2005. The Employer proposes the term of January 1, 2003 to December 31, 2005.

The safety contract and the contract for the faculty run from July to June. The Employer wants to extend this contract because all of the agreements will terminate at the same time if the Union's proposal is accepted. The Employer believes that it will be unduly burdened by being forced to negotiate three contracts at once.

Recommendation

Because of the burden placed upon the Employer of negotiating three contracts simultaneously, it is recommended that the term begin January 1, 2003 and end December 31, 2005 with the proviso that any increase in wages or benefits agreed upon between the Parties be retroactive to July 1, 2005.

Issue 6 – Personal Business Leave

The Union proposes the maintenance of the current practice which provides that on January 1 of each year the employees will be credited with 48 personal business hours for the calendar year. At the end of each calendar year, any unused personal business leave will be paid at the hourly rate of pay in the pay of the year up to 20 hours. The Union proposes that if the College implements a Personal Business Leave policy for all of their employees at the College which differs from this proposal, this Section shall be amended to be consistent with the policy issued for all of the College's employees.

The College wants to adopt a uniform Personal Business Leave policy for all of its employees. The policy has been adopted in the faculty contract and the safety contract. The Board of Trustees intends to institute the policy for all of its non-represented staff and administrators.

Recommendation

It is recommended that the current practice be adopted together with the statement that requires the policy to be changed to conform with the policy for all of the employees including those represented by the other Unions and the non-represented employees. The language will read as follows:

Section 1. Definition

Personal Business Leave is defined as an absence of an employee to transact personal business and/or religious observances that cannot be accomplished at times other than normal working hours. Personal Business Leave should be requested and approved in advance through the employee's immediate supervisor. Personal Business Leave includes emergency personal problems, legal business or sudden loss of property.

Section 2. Accrual

Effective January 1 of each year, employees will be credited with 48 personal business *hours* for the calendar year. The bank of personal business *hours* shall not exceed 48 *hours*. At the end of each calendar year, any unused Personal Business Leave will be paid at the *hourly* rate of pay in final pay of the year *up to 20 hours*. Those employees who work less than 100 percent of full-time shall have their personal business *hours* prorated by the percentage of full-time. New employees hired during the year will be credited with a percentage of the months left in the year.

If the College implements a Personal Business Leave policy for all other employees of the College which differs from this Section, this Section shall be amended so as to be consistent with the Policy for all other employees.

Section 3. Granting of Leave

The supervisor may refuse to grant part or all of a requested Personal Business Leave for operational need/reasons or if Personal Business Leave is *not for a*

reason as described in Section 1. Personal Business Leave cannot be taken in increments of less than 1 hour.

Employees may use Personal Business Leave for a Family and Medical Leave qualifying absence after all sick leave has been used.

Issue 7 – Wages

The Union's wage proposals attempt to address its perceived inequities resulting from the restructuring and reclassification of wages which were performed by the College. In December, 2001, the College revised its classification system and rewrote every position description. All of the prior classifications were consolidated into Building Services I and II, Maintenance I and II, and Grounds Keeper I and II. The reorganization consolidated employees into fewer classifications and redistributed employees into different pay grades associated with their new classifications. This resulted in a great disparity when the pay rates for employees are compared with years of service. The College did not consider seniority or years of service when they consolidated the classifications. As a result, employees with long service received lower wages than less senior employees in the same classification. The Union's proposal attempts to address these inequities.

The Employer's proposal attempts to reflect the fact that the employees in this unit received the same wage increases received by all other employees of the College because the unit became certified after the effective date of the pay increases. This is the reason the College is proposing a one percent increase in year one and a four percent increase in each of the following two years. This provides parity and is consistent with the same increases received by the other Unions and non-unionized groups.

The College is further willing to hold out some money to pay employees who obtain certifications in identified areas that benefit the employees and the College. If this is done, the

across the board increases must be adjusted. The College is opposed to salary schedules. The Fact Finder's report for the safety unit was turned down by the Board of Trustees because of a proposed salary schedule. The safety contract and the faculty contract were both settled with no salary schedules included. The College and the Board of Trustees are opposed to providing for increases based purely on length of service in grade.

The Employer presented considerable economic evidence regarding its financial condition. The State's financial problems have now adversely affected the College. It has lost 11.3 percent of its state subsidy dollars. One million dollars was cut from the revenue of this fiscal year. The trend of decreasing state support is expected to continue. This has caused an increase in the students' contributions for tuition. It is important for the College to control tuition increases because of its stated mission to be an affordable alternative to other public and private institutions of higher learning.

The College has received additional revenue because of increased enrollment, but it continues to receive less per full-time equivalent for each student, while the number of FTES has grown during the same period by 31.3%. This trend is expected to continue.

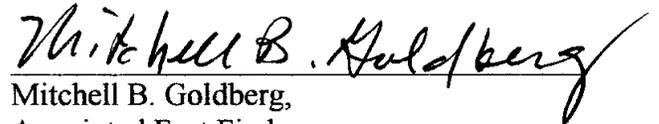
There are certain legal limitations in place preventing large tuition increases. In order to qualify for Access Challenge subsidies, the College has agreed to cap its tuition rate increases. Accordingly, the above financial considerations require that the College be conservative in administering its budget.

Recommendation

It is recommended, based upon all of the economic evidence presented, that certain of the existing 41 employees, based upon their seniority, receive one time equity pay increases effective July 1, 2004. The following employees shall receive equity adjustments of 5%: Sills,

Shelley; Williams, Cecil; Aekins, John; Owensby, Anthony; Yuille, Mike; Stockwell, Robert; Milliser, Barry; Hershberger, Mark; McQuire, Roger; Combs, Thomas; and Tepper, Richard. The following employees shall receive 3% equity adjustments effective July 1, 2004: Gray, Roderick; Minion, James; Sumner, Justin; Pike, Larry; and Collins, Byron.

All of the employees shall receive a 1% one-time bonus effective July 1, 2002, a 4% across the board increase effective July 1, 2003 and a 4% increase effective July 1, 2004.


Mitchell B. Goldberg,
Appointed Fact Finder

Date of Report July 18, 2003



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