STATE EMPLOYMENT
RELATIONS BOARD

2005 JUL 14 A 11: 51

IN THE MATTER OF FACT-FINDING
BETWEEN

CUYAHOGA COMMUNITY COLLEGE	)	**CASE NO. 04-MED-09-0971**
AND	)	**RECOMMENDATIONS**
SERVICE EMPLOYEES INTERNATIONAL UNION DISTRICT 1199	)	

APPEARANCES:

FOR THE UNION

Carol Sims

FOR THE COLLEGE

Marc J. Bloch, Esq.
Meredith A. Lobritz, Esq.

SUBMISSION

This matter concerns fact-finding proceedings between Cuyahoga Community College and District 1199, Service Employees International Union, AFL-CIO. The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were held on May 13 and June 9, 2005.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. Pursuant to those mediation efforts, the parties reached tentative agreement on many of the issues initially presented to fact-finding. The parties requested that this fact-finder submit his recommendations on the issues remaining at impasse.

The parties waived a hearing and agreed that this fact-finder could issue his recommendations in summary fashion based upon the discussions and the presentations of the parties at the fact-finding proceeding. Therefore, the following recommendations are submitted in accordance with that understanding.

1. ARTICLE 8, BENEFITS

Revise date in Section 2 to be January 1, 2005.

RECOMMENDATION

ARTICLE 8 EMPLOYEE BENEFITS

During the period covered by this Agreement, the College shall continue to provide the employee benefits presently provided as follows:

Section 2. The College will maintain the level of benefits equivalent to those in effect in the Electives Program as of January 1, **2005**, unless the parties mutually agree otherwise. The medical plans and prescription drug plans are set forth in Appendix F.

2. ARTICLE 14, PERMANENT PROMOTIONS AND VACANCIES – JOB BIDDING

In summary, the provision is to be modified as follows:

The Office of Human Resources is empowered to make determinations concerning the use of a SAC for positions in Pay Grades 4 and below.

Notices announcing selected applicants will continue to be posted on the College's Infonet.

Other language refined to clarify and define job bidding process.

RECOMMENDATION

ARTICLE 14
PERMANENT PROMOTIONS AND VACANCIES-JOB BIDDING

Section 1

A. When a job vacancy occurs or a new job is created, and the College desires to fill that position, the College shall post a notice of the opening(s). The notice will be posted ~~first internally at each campus and the district office~~ on the designated posting day and shall remain posted for two (2) consecutive calendar weeks. The notice shall contain the job classification, title, salary, grade, department, shift and brief job description, including qualifications. The job postings shall accurately reflect the expected qualifications for the position. The job postings shall also be consistent with the job title and job duties. **A job description, if existing, and a position vacancy announcement will be available on the College's Infonet for examination by interested regular full-time employees, and notification of vacancies will be made available to the Union Delegates and the Union's Organizer Representative.** Bargaining unit members will be considered first for the vacant positions.

Regular full-time employees who wish to be considered for the posted job must file with the Office of Human Resources the appropriate ~~written~~ documentation in accordance with the job posting before the end of the posting period. ~~A job description and a copy of the position vacancy announcement will be available on the College's Infonet for examination by interested regular full-time employees and copies of such shall be made~~

~~available to the Union President, Stewards and the Union's Business Representative~~.

B. All required documentation timely filed will be reviewed by the Office of Human Resources. ~~In determining whether an applicant is qualified, the College shall give consideration to ability, aptitude, skill, experience, qualifications as stated on the position vacancy notice and such other matters as it usually considers in filling any vacancy. The position vacancy notice will be consistent with the actual job duties and responsibilities of the job.~~ **(Note: Move to Section C, remove "actual" from last sentence)**

The Office of Human Resources shall pre-screen all bargaining unit applicants. The Office of Human Resources pre-screening shall include confirmation that:

(a) the applicant is a bargaining unit member;

(b) the employee has met the seventy-six (76) day eligibility requirement in Article 14, Section 1H;

~~The Office of Human Resources also shall coordinate any skill level testing required for the vacancy. All assessment vehicles shall be fair and reasonable and related to the position~~. **(Note: MOVE to Section C)**

The Union will be allowed input into the structure and content of any proposed change to the current application form.

C. After completing its pre-screening process, the Office of Human Resources shall submit the names and applicant materials of all pre-screened bargaining unit candidates meeting the criteria to the Hiring Department/Manager~~.~~**, and** for review and recommendation to the Staffing Advisory Committee**, if applicable**. All candidates submitted to the Staffing Advisory Committee shall have access to the job description via the College's *Infonet* and are encouraged to review the description prior to the interview. If the Office of Human Resources determines that no bargaining unit candidates meet the pre-screening criteria as stated in Section B, external ~~recruitment~~ **candidates** may be ~~pursued~~ **considered**. All applicants that apply beyond the initial 2 week period will be considered concurrently.

~~The Staffing Advisory Committee shall interview~~ **E**each bargaining unit candidate submitted by the Office of Human Resources who meets the following criteria **shall be interviewed**:

a) the employee has met the education/certification requirements of the job posting; and

b) the employee has met the required experience level of the job posting.

A Staffing Advisory Committee may be formed at the discretion of the Office of Human Resources for positions that are Grade 4 and below. The composition of the Staffing Advisory Committee members may vary depending on the applicable vacancy, but the number of members shall be no fewer than ~~three~~ **two (2)** people nor more than ~~five~~ **three (3),** one of which is the Hiring Manager. Once the committee is established to review and interview candidates for a posted position, the composition of the individuals on the committee and the number of people on the committee shall remain constant for all candidates considered for the position. If the committee membership drops below the **two** ~~three~~ person minimum for reasons beyond the College's control, the Office of Human Resources and the Union shall consult about a resolution of that problem and the procedure to be followed.

~~In addition, the Staffing Advisory Committee shall formulate~~ ~~a~~ **A** list of standardized questions to be used to interview each of the ~~bargaining unit~~ candidates ~~for the vacancy~~ **will be formulated**. ~~The Staffing Advisory Committee may, however, ask~~ **F**follow up questions based on the standardized questions or other questions naturally flowing from the standardized questions **may be asked**. The intent is to standardize the structure of the interview so that no one ~~bargaining unit~~ candidate is given an advantage or interviewed within a significantly different context.

In determining whether an applicant is qualified, the College shall give consideration to ability, aptitude, skill, experience, qualifications as stated on the position vacancy notice and such other matters as it usually considers in filling any vacancy. The position vacancy notice will be consistent with the job duties and responsibilities of the job.

The Office of Human Resources also shall coordinate any skill level testing required for the vacancy. All assessment vehicles shall be fair and reasonable and related to the position.

D. If one or more employees covered by this Agreement applies for a new or vacant bargaining unit position as described above and one or more of the employee-applicants is or are qualified for ~~such~~ **the** new or vacant position, that position will be awarded on the basis of qualifications as defined in the position vacancy notice and seniority, with emphasis on qualifications. The parties to this Agreement recognize the necessity to place the most qualified applicant, but in those cases where applicants have substantially equal qualifications, the job will be awarded based on seniority. Qualified shall be defined as possessing the necessary prerequisite skills and abilities as contained in the job description and position vacancy notice to satisfactorily perform the required work.

E. A regular full-time bargaining unit employee awarded a job under these provisions will be provided with **an existing job description** ~~current Position Analysis Questionnaire~~. The employee also shall be provided consistent and appropriate training during the probationary period with clearly stated goals and objectives. The qualifying period shall be twenty-two (22) calendar days actually worked. This means that any of the employee's absences on a work day are not counted toward their probation.

F. The employee will be considered to have qualified on the new job when the employee satisfactorily performs the required duties with no more supervision than is required by other qualified regular full time employees on the same or similar jobs and when the employee record as to quality and quantity of work meets the standards applicable to the job. If the employee fails to qualify, the employee shall be returned to their former job, and, to the extent necessary, those who followed in the advance also shall be set back. In addition, an employee may elect to return to their former position within such qualifying period upon mutual agreement between the College and the Union. An employee who is reassigned or elects to return to the employee's former position will be paid at their former regular rate of pay plus any regular step and/or wage increases that would have been received by such employee in the former position, during the time the employee was in the new or vacant position.

G. ~~If a vacancy exists in an employee's job title within the employee's department, as defined in Appendix A, and the employee has greater overall seniority (as defined in Article 13, Sec. 1) than all applicants seeking a promotional opportunity, the employee may claim the vacant position after the job posting closing date as a true lateral transfer. True laterally transferring employees (true lateral) must make their application for transfer known to the District Director of Staffing, in writing, prior to the end of the posting period.~~

~~If the true lateral transfer applicant is not the most senior, the employee will be included in the applicant pool for the vacant position but will not be required to submit to the Staffing Advisory Committee process. If the Staffing Advisory Committee determines that the more senior applicants are unqualified, then the true lateral transfer applicant will be awarded the position.~~

~~A lateral transfer is defined as a transfer from the same job in one department to one in a different department. Lateral transfers must still participate in the Staffing Advisory Committee interview process.~~

~~The Phrase: "True Lateral Transfers will be given priority after seniority." will be added to appropriate bargaining unit job postings.~~ **(See Separate Tentative Agreement dated June 9, 2005 for changes to foregoing Section G – Lateral Transfers)**

H. Newly hired employees or employees who are appointed to vacancies or who are promoted and/or transferred must remain in their current position for seventy-six (76) days to be eligible to apply for a posted position.

Section 2

A. In addition to background checks that are required by federal and state law, the College may perform criminal background checks on employees who are promoted or laterally transferred into the following positions:

(a) Student Financial Assistance Supervisor;
(b) Student Financial Assistance Advisor;
(c) Student Financial Assistance Accountant;
(d) Student Financial Assistance Specialist;
(e) Business Support Specialist I, II;
(f) Lead Teacher;

(g) Assistant Manager--Book Center;
~~(h) Student Support Accountant;~~
~~(i) Enrollment Specialist;~~
(j) Dispatcher;
(k) ~~Non-Credit Coordinator~~ **Business Support Supervisor**;
(l) Assistant Manager of Child Care.

Any new or reclassified position that requires an employee to handle significant amounts of money or allows the employee access to confidential financial information of College personnel, or any new or reclassified position involving child care, may be subject to a criminal background check.

True lateral transfers or involuntary transfers shall not be subject to the background check outlined under this section **unless required by law.**

B. Except for broader checks required by state or federal law, background checks will search for any felony conviction within seven (7) years from the time of the check.

C. If a background check is performed on an employee, the employee will be notified of the background check and ~~will be~~ **his or her right to request and be** provided a copy of the report. The background check shall be performed by an agency independent of the College. The results of background checks will be kept confidential.

D. If the employee's background check reveals a felony conviction that has a nexus to the job for which the employee is applying for a promotion or lateral transfer, the employee shall be disqualified from the job and shall remain in their current position. If the felony conviction has a nexus to the employee's current position, the College will transfer the employee into another position at the same rate of pay **that is vacant and for which the employee is qualified.**

E. If the employee's felony conviction is one that could create potential liability on behalf of the College for negligent retention, the College and the Union shall consult about the issue and resolve it in a way that minimizes the College's liability for negligent retention.

Section 3. A notice announcing the applicant selected for the promotion or transfer **will continue to** ~~shall~~ be posted ~~in the FYI~~ **on the College's infonet** which shall be made available to all employees.

3. ARTICLE 22, TRAINING AND PROFESSIONAL DEVELOPMENT

The amount of money allocated to the Education fund is to be increased by $10,000 per year and the amount of money allocated to Supplemental Training to be reduced by $10,000 per year.

RECOMMENDATION

ARTICLE 22 TRAINING AND PROFESSIONAL DEVELOPMENT

Section 5. Education Fund. The College will establish an educational fund of **$20,000.00**. This **$20,000.00** will be made available annually to eligible and qualifying bargaining unit employees for use in defraying tuition costs toward obtaining a degree above the Associate Degree. The scholarship dollars will be awarded in 2005, 2006 and 2007. The Labor Management Committee shall establish the criteria, conditions and limitations on the receipt of said scholarship dollars and recommend individual awards.

Section 7. Supplemental Training. Notwithstanding the limits in Section 8B below, a **$30,000** pool of money (**$10,000** per year) will be set aside to be used for credit, non-credit, or non-traditional training during the term of the contract. This pool of money is above what is already paid for the College to the Education Fund or through tuition remission. This means that the money can only be used to cover expenses not otherwise covered under the terms of Sections 5 and 8 of this Article.

In order to qualify for such funds, the training or coursework must be related to the employee's job and prior approval must be received from Human Resources in consultation with the employee's supervisor. If the bargaining unit employee uses the training funds and leaves the College voluntarily within one year after the employee's training, the employee shall pay back the money used for training. If the employee is involuntarily separated from the College, no reimbursement is necessary.

4. ARTICLE 23, NEW JOB CLASSIFICATION

The current Section 1 will remain as it currently exists. Section 2, regarding reclassification, will be moved into a separate article, Job Audits.
(See also tentative agreement reached with respect to the
New Article, JOB AUDITS.)

RECOMMENDATION

ARTICLE 23 NEW JOB CLASSIFCATION

Section 1. The Union will be notified of the creation of any new classification in the support personnel salary schedule. The College and the Union shall meet and discuss the inclusion and/or exclusion of such classification within the bargaining unit and the appropriate wage rate therefore. In the event the College and the Union are unable to reach agreement on the issue, the College shall establish a temporary rate and classification and will promptly notify the Union in writing. Thereafter, the Union can file a grievance to Step 4 of the grievance procedure; and if the matter goes to arbitration the Arbitrator shall have the authority to establish a new rate and classification or to place the job in an existing classification rate which shall be retroactive to the date the College placed the temporary rate into effect. The Arbitrator shall be ruled by the criterion set forth in Article 2 on the question of inclusion or exclusion and shall be ruled by pay grades in similar jobs at the College with respect to wage rates.

~~**Section 2. Reclassification.**~~

~~**A. Job Evaluation**~~

~~During an employee's annual performance evaluation, the employee and/or supervisor believe the employee's job has or will significantly change, a request for reclassification and a complete Position Analysis Questionnaire shall be submitted to the Office of Human Resources for consideration.~~

~~If a request for reclassification is for a position for which the Office of Human Resources has created a current Position Analysis Questionnaire based on its audit of the position, the Office of Human Resources will evaluate any such reclassification request based on the current documentation.~~

~~If no current Position Analysis Questionnaire for the position proposed to be reclassified exists, then a job audit and/or other investigation, including interviews with co-workers, may also be conducted. The Union President, Vice President and the employee will be provided with copies of all materials used to analyze the reclassification request. This Article will not be utilized to obtain the job evaluation formula. However, the Union does not waive any right it may have pursuant to the Public Records Act to obtain such information if the Union deems it necessary to do so.~~

~~1. A request for reclassification outlined above may be submitted to the Office of Human Resources by an employee, the Union, and/or a supervisor/ unit head. Such a request must be submitted between August 1 and September 30. Copies of all request shall be provided to the Union President and Vice President by the Office of Human Resources by October 15th. The request shall be signed by the employee's supervisor indicating it has been reviewed. If the supervisor refuses to sign, the employee may forward the request to Human Resources noting that the supervisor refused to sign.~~

~~2. A Labor-Management Reclassification Committee consisting of two (2) Labor and two (2) Management members will review the reclassification request. Labor and Management will select its members by October 15th. Committee members will not be directly or personally involved in their own or subordinates reclassification. If the Labor-Management Reclassification Committee is unable to reach a decision by a majority vote, the request shall be automatically forwarded to the Labor-Management Reclassification~~ **Review** ~~Committee.~~

~~3. Reclassification shall be based on an evaluation of job content, including, but not limited to, the results of the incumbent's completion of a Position Analysis Questionnaire, where no current completed job audit exists. For example, changes in job duties, increases in job responsibilities and the restructuring of a position's duties shall be examined to decide if a position should be reclassified.~~

~~4. The Labor-Management Reclassification Committee will issue a written decision on the request by November 30, including a rationale for the decision. If the party who submits the request does not agree with the decision, the party may appeal in writing~~

~~to the Labor-Management Reclassification Review Committee. The Labor-Management Reclassification Review Committee shall consist of a total of three (3)~~
~~Labor and three (3) Management members including one (1) labor and one (1) Management member of the Reclassification Committee. The written appeal shall be~~
~~sent to the District Director of Labor/Employee Relations within thirty (30) days of~~
~~the date the denial was issued. The District Director of Labor/Employee Relations~~
~~will submit the employee's appeal to the Labor-Management Reclassification Review~~
~~Committee which shall render its decision within thirty (30) days of the date it meets~~
~~and shall notify the employee and the Union of its decision and its rationale. If the~~
~~Labor-Management Reclassification Review Committee is unable to reach a decision~~
~~by a majority vote, the request shall be considered denied.~~

~~5. The position for which a reclassification has been denied may not be submitted for~~
~~another request until the next annual reclassification period.~~

~~**B. Significant Change in Job Duties**~~

~~1. A party, as defined in A1 above, can request, without the requirement of the job audit or Position Analysis Questionnaire, a reclassification where the employee's job has been changed significantly.~~

~~2. Requests for a reclassification based on a significant change in a job must be done in writing to the Office of Human Resources. In the letter for reclassification, the party shall explain in detail what significant changes the party believes have occurred in the job since the last job audit/Position Analysis Questionnaire for the position. Upon receiving the request for reclassification, the Office of Human Resources will investigate and provide a written reply to the employee and the Union by November 30.~~

~~**C. Annual Job Audit**~~

~~One-third of the bargaining unit positions will be audited by the Office of Human Resources each year until all positions have been audited and current~~

~~Position Analysis Questionnaires have been created. Affected employees will be asked for their input during the auditing process. They will be notified of the result of the audit.~~

~~D. Classification and Compensation Study~~

~~A committee of bargaining unit employees appointed by the Union shall meet and confer with the appropriate consultants on a one-time basis prior to the beginning of the process to evaluate bargaining unit positions for the job classification and compensation study.~~

~~Section 3. Job Descriptions~~.

~~Upon request, the College shall provide the Union with copies of descriptions for all job classifications in the bargaining unit. Whenever a significant change occurs in the description of any such job, the College agrees to provide the Union with a copy of the new job description.~~

~~The Office of Human Resources shall provide training and appropriate materials for employees and supervisors on the reclassification process.~~

~~If a position is reclassified because of job duty changes that have occurred since the last reclassification application period, the employee will receive retroactive pay from the date the new duties were assumed. Any pay increase arising from reclassification as a result of the performance evaluation process shall be effective at the start of the next calendar year. If the applicant is assigned the additional duties prior to the reclassification decision, appropriate retroactivity will be paid to the applicant to the date the additional duties were assigned.~~

5. ARTICLE 30, DISPATCHERS

The College will provide vouchers for the purchase of uniform items up to $300 per year.

RECOMMENDATION

ARTICLE 30 **DISPATCHERS**

Section 3. The College will establish a voucher system identifying up to three (3) approved vendors for Dispatchers to purchase uniform items. Full time Dispatchers may purchase up to $300 of uniform items each fiscal year. Uniform item purchases must be made no later than May 30 of each fiscal year.

Upon initial hire, Dispatchers shall receive an initial allotment of uniform items outlined in Appendix ___. If the College initiates a change in the uniform allotment items as listed in Appendix ___, the College shall furnish the new items at its expense.

If a Dispatcher is hired on or after January 1st in any fiscal year, the Dispatcher shall receive an allotment, but no uniform allowance money until the following fiscal year. If an Dispatcher is hired on or before December 31st of a fiscal year, the Dispatcher receives an allotment, plus a prorated portion of the uniform allowance money. For example, if a Dispatcher is hired in November, he shall receive his respective uniform allotment and receive eight-twelfths (8/12) of his respective uniform allowance money.

Normal wear and tear of uniform allotment items are replaced and repaired from the Dispatcher's uniform allowance.

6. ARTICLE 31, DURATION

Agreement will be in effect through midnight on December 31, 2007.

RECOMMENDATION

ARTICLE 31 **DURATION**

The parties recognize that this Agreement totally supersedes and integrates all wages, hours, benefits and terms and conditions of employment existing between the parties. Furthermore, the parties acknowledge that each had ample opportunity to submit proposals and bargain over all negotiable matters and that this Agreement shall be the sole source of any and all rights and/or claims regarding wages, hours, benefits or other terms and conditions of employment. Where this Agreement is silent on a wage, hour, benefit and term or condition of employment, the College may act with discretion consistent with applicable law. Where no applicable law exists, the College reserves the right to act at its' discretion.

This Agreement shall be effective from the date of ratification of this Agreement **until midnight on December 31, 2007**, and thereafter from year to year unless at least ninety (90) days prior to said expiration date, or any anniversary thereof, either party gives timely written notice to the other of an intent to negotiate on any or all of its provisions.

7. NEW APPENDIX, DISPATCHER UNIFORMS

Lists initial items distributed to full-time dispatchers.

RECOMMENDATION

APPENDIX

List of initial items distributed to full-time dispatchers:

a) 2 long sleeve shirt
b) 2 short sleeve shirt
c) 2 pairs of pants or skirts
d) 1 name plate
e) 1pair of shoes
f) 1 sweater
g) 1 set of collar brass
h) 1 tie (i.e. female:cross, male: clip-on)
i) 1 tie clip for male
j) 1 belt
k) 1 badge

8. TENTATIVE AGREEMENTS

This fact-finder further recommends that all tentative agreements reached by the parties be incorporated into their new Collective Bargaining Agreement. A summary of those tentative agreements is set forth below.

RECOMMENDATION

TENTATIVE AGREEMENTS

Following is an itemized summary of all resolved issues.

I. Tentative Agreements

- Article 3, Check off
  The College will provide newly hired bargaining unit employees with a copy of the collective bargaining agreement.

- Article 5, Union Representation
  "Steward" will be changed to "Delegate"

- Article 6, Hours of Work and Overtime
  Vacation will be included as work hours for purposes of calculating overtime worked.

- Article 7, Wages
  The salary schedules will be increased by 3% in each of the years of the agreement. First year wages will be retroactive to January 1, 2005.

- Article 14(G), Job Bidding (Lateral Transfers)
  Lateral transfers were redefined to simplify the process for employees transferring within their existing job title.

- Article 16, Bumping Procedure and Rights
  The department list for determining an employee's opportunity to bump was expanded to recognize the existing organizational structure of the College.

- Article 19, Grievance Procedure
  - The Campus Human Resources Directors were added to Step 2 of the procedure.
  - A mediation step was added to enable the parties to mediate a grievance prior to referring the matter to an Arbitrator.

- New Article, Job Audits
  The reclassification process identified in Article 23 of the expired Agreement will become a separate article entitled "Job Audits". The language was revised to better define the process. A commitment was made to the union to actually create job descriptions for the entire bargaining unit over the course of the three years of the agreement.

- Appendix A
  Revised list of job families.

- Letters of Agreement
  - The College will provide Board meeting informational packets to the Union President.
  - The College committed to revising current policies to incorporate Domestic Partner in the areas of personal leave, extended leave of absence, employment of relatives and remission of fees.
  - Equity issues will be considered on case-by-case basis for job audits

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

JULY 12, 2005

James M. Mancini

JAMES M. MANCINI, FACT-FINDER