

FACT FINDER'S REPORT

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF:

2007 NOV 27 A 11:04

Service Employees International Union (SEIU), District 1199

And

Cincinnati State Technical and Community College

Case Number:
07-MED-06-0688

Before Fact Finder
N. Eugene Brundige

PRESENTED TO:

Edward E. Taylor, Administrator
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And

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N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced case and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 C (3). The Fact Finder was notified of the appointment by letter dated September 6, 2007.

The parties agreed upon October 31, 2007, as the hearing date.

Pursuant to the Ohio Revised Code and Administrative Rules, a good faith effort was made to resolve the remaining issues through mediation. The parties were unable to reach a mediated settlement. A hearing was conducted.

The parties timely filed the required pre-hearing briefs.

In their pre-hearing filings one or more of the parties identified the following issues, and/or contract provisions as being unresolved:

ARTICLE 31 Wages

ARTICLE 32 Longevity

ARTICLE 44 Cafeteria Benefit Plan

The parties mutually agreed to waive overnight delivery of the *Recommendation and Report*. The Fact Finder agreed to submit a draft of the *Report* via electronic mail with a paper copy mailed by regular U.S. Mail.

In addition to the principal advocates, the full bargaining team representing the College and the Union, respectively, were present and participated in the mediation effort and subsequent hearing.

The College was represented by Attorney Dershaw, Eugene L. Breyer, Jr., Director of Human Resources; Mark Cain, Chief Information Officer; Sandra

Simpson, Chief Financial Officer; Susan Paddock, Dean of Enrollment and Student Development; Dan Ramsey, Assistant Treasurer; and Rayma E. Smith, Dean of Humanities and Sciences Division.

The Union was represented by Attorney Hunter; Khalid Jalil, Administrative Organizer; Margorie Moseley, Organizer; Tom Hail, Negotiating Committee Chair; Deborah Powers, Chapter Vice President; Gail Quinlan, Steward; Joy Sunderman, Steward; Diana Stephenson, Steward; and John Thomas, Staff.

BACKGROUND:

Cincinnati State Technical and Community College is a bustling two (2) year school located within the metropolitan area of Cincinnati.

The employees in this bargaining unit are represented by SEIU, District 1199. The bargaining unit is comprised of approximately 128 full and part time office and technical employees.

Negotiations leading to this Fact Finding process will result in the fourth collective bargaining agreement between the parties.

The parties met for at least twelve (12) sessions and were able to resolve all items presented except for those listed above.

At hearing each party was given the opportunity to present evidence and arguments to support their respective positions.

This report will include the position of each party regarding each open issue. The Fact Finder will then offer a recommendation regarding each of those issues.

ARTICLE 31 – Wages

POSITION OF THE UNION:

SEIU notes that in each round of bargaining the College argues that it is in a difficult financial situation. The Union notes that the situation of the College is much improved over its position three (3) years ago.

The first document submitted by the Union lists those raises already negotiated for other bargaining units for the years 2007 and 2008. AAUP Unit 1 will receive a 3.5% increase in 2007 and has not agreed upon a 2008 salary increase at this time. AAUP Unit 2 has a 3.5% increase in both 2007 and 2008. The Operating Engineers (Environmental Services) received a 3.5% increase in July 2007 and will receive a second 3.5% increase in July 2008.

The Operating Engineers (Engineering, Maintenance, and Grounds) received a 3.5% increase in October 2007 and will receive another 3.5% boost in October 2008.

The only unit for which SEIU did not have data was the Public Safety Officers Unit.

The Union submitted minutes from the Trustees meeting indicating that the College had identified a “placeholder” amount of 2.5% for SEIU employees until negotiations were completed.

SEIU also asked the Fact Finder to consider data submitted in which wage increases for all Cincinnati State bargaining units are compared from 1997 through 2005.

Over this period of time cumulative salary increases show that SEIU employees received the second lowest level of increases.

Non union employees received an increase of 41.64%. AAUP 1 totaled 45.08%; AAUP 2 was 55.50%; IUOE Environmental Services was 40.29%; IUOE Maintenance was 40.29%; and SEIU was 38.60%. Only IUOE Safety was lower with 35.48%.

The Union also called the Fact Finder's attention to newspaper accounts reporting that enrollment was up 2.8% from last year and first time student enrollment was up 17%.

The SEIU notes that the State of Ohio has imposed a tuition freeze but notes that the State has provided general fund revenue in excess of 200 million dollars for colleges to offset the freeze.

SEIU concludes that its members have fallen behind on salary increases and thus urges the Fact Finder to recommend its salary proposal which would provide a \$1,200 lump sum adjustment beginning 9/4/07 plus a 2% increase on the base. In the second year ((9/2/08) SEIU requests a 5.5% increase and in the third year (9/8/09) a 5% increase.

POSITION OF THE COLLEGE:

The College notes that Cincinnati State is operating under a very tight budget and that there are significant restrictions that have been placed upon the College.

Counsel for the College notes that the State of Ohio has placed a moratorium on tuition increases.

While the College acknowledges a slight increase in early fall term enrollment over last fall, it points out that the current increased enrollment is still below the enrollment of two (2) years ago.

The College also must be concerned about requirements placed under Senate Bill 6 wherein the school achieves a “score” reflecting its financial strength. The factors that make up the Senate Bill 6 score include the *Primary Reserve Ratio* which accounts for 50% of the score, the *Viability Ratio* with a rate of 30%, and the *Net Income Ratio* which accounts for the remaining 20%.

The Employer explains that if a school achieves a score of less than 1.75 for more than two (2) years, the school is placed in receivership. The College provided data showing the scores of the College from the period of 2003 – 2006, (2003 = 1.3; 2004 = 1.8; 2005 = 1.5; 2006 = 2.6). The estimated score for 2007 is 3.4.¹

The College Administration believes that in order to properly manage the operation and meet the requirements of Senate Bill 6 it needs to maintain an operating reserve of 20%.

The College notes that in order to take advantage of the tuition replacement funding provided by House Bill 119, the school must demonstrate efficiency savings of \$500,000 in the current year and \$1,500,000 next year.

The College believes the tight financial situation of the School justifies its wage proposal which is:

Effective September 4, 2007, \$512 lump sum increase in base pay.

Effective September 2, 2008, 1.5% increase in base pay.

Effective September 8, 2009, 1.5% increase in base pay.

DISCUSSION AND RECOMMENDATION:

Cincinnati State appears to be a well run, fiscally responsible institution that is working very hard to live within its budget and the statutory mandates established by the State of Ohio.

Neither party can seriously expect any Fact Finder to recommend either of their proposed wage increase. The difference between the College's proposed 1.5% and the Union's requested 5.5% is a wide chasm. But such proposals are merely a part of the dance that accompanies traditional bargaining.

The College does face financial challenges but it certainly is in as good as or better shape than it was three (3) years ago when bargaining the previous agreement.

The Union depends heavily on internal comparables to establish its case that employees are underpaid compared to other Cincinnati State employees. The nine (9) year comparison does add credence to that argument.

However, it is hard for a neutral to know the circumstances that surrounded each set of negotiations leading to that outcome. While SEIU is on the low end it is not greatly out of line.

I do conclude that some valid disparity has been established and nothing in this report should diminish the standing of SEIU employees from their relative

¹ Data from the Employer's Pre Hearing Statement, page 3.

position among the other employees. Instead, this recommendation is aimed at maintaining either the current relative positions or perhaps making some modest improvement.

In his Report and Recommendation in 2004, Fact Finder Mitchell Goldberg recommended 3% in the first year, 3.25% in the second, and 3.5% in the third.

This Fact Finder ordinarily would not give much weight to the amount paid to contract employees as an indicator of the College's ability to pay, but the Blackwell Consulting Contract is unique in that the contract employees seem to fill roles very similar to College personnel.

The fact that the College has built 3.5% increases into that Agreement may provide some guidance regarding the proper number.

Both parties have proposed some form of a lump sum adjustment in the first year of the agreement. While I am sympathetic to this intention, neither party provided me with adequate data to make an informed recommendation regarding a lump sum adjustment. Thus, my recommendation has attempted to provide a method whereby the parties can agree upon the appropriate dollar amount.

Based upon the arguments offered and the data presented I recommend the following:

Effective September 4, 2007, all District 1199/SEIU bargaining unit members shall receive a lump sum increase to the base pay. The amount of that increase shall be arrived at by calculating the cost of a 3.5% increase for all

bargaining unit members and dividing that amount by the total number of bargaining unit members.²

Effective September 2, 2008, all District 1199/SEIU bargaining unit members shall receive a 3.5% increase in base pay.

Effective September 8, 2009, all District 1199/SEIU bargaining unit members shall receive a 3.5% increase in base pay.

ARTICLE 32 Longevity

POSITION OF THE UNION:

SEIU proposes to increase the current longevity program by adding two (2) additional steps. The first would provide a benefit of \$10 bi-weekly beginning after five (5) years of service. The seven (7) year step would increase to \$20, the ten (10) year step to \$40, the fifteen (15) year step to \$50, the twenty (20) year step to \$70 and an additional step at the twenty- five (25) year level would yield \$80.

The Union notes that the Operating Engineers – Public Safety Officers contract contains a twenty-five (25) year step.

POSITION OF THE COLLEGE:

The Employer proposes no change in the Longevity program. It notes that the Longevity program is the same in all other Cincinnati State collective bargaining agreements except one.

² If this report is accepted and if the parties are unable to agree upon the cost of the lump sum increase, then I recommend the first year increase revert to the traditional 3.5% increase.

Further, the College notes that the University of Cincinnati provides longevity benefits only to those SEIU employees who were hired prior to July 1, 1986.

DISCUSSION AND RECOMMENDATION:

Longevity benefits are popular with employees as a way to supplement and increase compensation for long term employees, but the current program of the College seems reasonable.

Based upon the fact that most other collective bargaining units on the campus are governed by the same policy and the fact I have recommended a significant wage increase package, I cannot justify increasing this benefit at this time.

I recommend no change in Article 32.

ARTICLE 44 Cafeteria Benefit Plan

This Article actually contains two (2) different issues. The first is the desire of the College to remove the employee contribution cap and increase the percent of health care costs paid by employees.

The second issue is proposed by the Union and would provide access to health care for Domestic Partners.

POSITION OF THE COLLEGE:

The College proposes that the current 5% employee contribution be increased to 8% and the current cap be removed.

The College notes that premiums have been increasing at a rapid rate in spite of the best efforts of the Administration to negotiate more favorable rate increases.

Data provided by the College indicates that premiums increased by 15% in 2000; 15.5% in 2001; 10.7% in 2002; 19.9% in 2003; 15.30% in 2004; 7% in 2005; 9% in 2006; and 9.9% in 2007.

The Employer also provided data that compares the monthly premiums of the community colleges in Ohio. Only three (3) schools provide a higher percentage payment than does Cincinnati State to this bargaining unit.

Fifteen (15) schools provide for much higher employee shares of premium.

The College notes that the benefit package available to employees is very good and argues that these comparables support the College's proposed changes.

UNION POSITION:

The Union noted that SEIU members commenced paying the 5% share before any of the other Cincinnati State bargaining units. Thus, the members of this bargaining unit have paid more money for health insurance than other Cincinnati State employees.

The Union proposes keeping the employee share at 5% but increase the cap modestly.

The Union notes that there is one pot of money available and employee wage increases can quickly be eaten up by increased health care costs.

DISCUSSION AND RECOMMENDATION:

Health care is the most challenging issue that faces negotiators in today's collective bargaining environment. Neither party has much control over the large increases that confront organizations and employees in this arena.

I am sympathetic to employees who feel that they receive a raise only to lose much of it to increased health insurance.

Finally, though, I must base my recommendation on the statutory criteria governing public employee bargaining.

The external comparables simply do not support retaining the 5% share and the cap.

It is unrealistic for bargaining unit members to believe that their share of premium will not increase or that an artificial cap can continue to be imposed on their percentage share.

Likewise, any increases must be modest and limited so as to not offset the wage increases recommended herein.

I recommend the cap be eliminated effective January 1, 2008 and the employee's share of health care be increased to 6% January 1, 2009.

The first part of Article 44, Section 1 should read:

"The College shall continue to provide an amount of dollars sufficient to cover 95% of the cost of Anthem Health Insurance Coverage (Anthem Blue Preferred HMO). The employees share shall remain at 5% except that there will be no maximum cap on the 5% amount effective January 1, 2008.

Effective January 1, 2009, the College shall provide an amount of dollars sufficient to cover 94% of the cost of the Anthem Health Insurance Coverage (Anthem Blue Preferred HMO).

Domestic Partner Benefits

POSITION OF THE COLLEGE:

The College notes that it has no philosophical issue with providing this benefit. Its concerns are based on unknown costs and lack of an agreed to definition of "domestic partner."

The College notes that if the addition of domestic partner was allowed to qualify a significant number of persons for family coverage for the purpose of increasing the cash value when insurance coverage is declined, then the costs for those persons electing to opt out of insurance would increase greatly.

The College notes that the Ohio colleges providing such benefits are either four (4) year institutions or private universities.

POSITION OF THE UNION:

The Union believes that the addition of this benefit is one of basic fairness for employees. It is willing to limit the provision only to provide the benefit of *covering a domestic partner for insurance purposes and not for qualifying a person to achieve family coverage status for increasing the cash value when insurance coverage is declined.*

The Union provided evidence that this is a benefit often provided by colleges and universities. As of October 30, 2007, 304 higher education institutions were cited by the Human Rights Campaign as providing domestic partner benefits.

DISCUSSION AND RECOMMENDATION:

This Fact Finder commends the parties for the enlightened way in which *this issue has been discussed during bargaining*. They apparently recognize that the addition of domestic partner benefits is one that aids in recruitment and retention of employees.

In addition to public sector higher education institutions, many private employers recognize the good business sense of such a benefit.

I am sympathetic to the position of the College that there are many unknown factors surrounding this proposal.

To that end, I make the following recommendation in the hope it will assist the parties.

To be added to Article 44:

“Within sixty (60) days of the effective date of this Agreement, the parties shall establish a joint committee composed of bargaining unit members and members of the Administration to formulate a program that will provide domestic partner insurance benefits under this Article.

It is agreed that the addition of domestic partner benefits shall be for the sole purpose of providing insurance coverage for the domestic partner and will, in no way, affect the status of the employee as it relates to single vs. family status

for the purpose of qualifying for a higher payout of dollars when the employee elects to waive any insurance coverage.

The committee will attempt to agree upon a definition of domestic partner. If it is unable to do so, then the definition shall be as follows: for the purposes of this Article a domestic partner shall be defined as, "an adult who stands in the place of a spouse, and who resides, and has resided, in the same home as the employee for at least the last six (6) months."

The College shall draft and the committee shall review procedures and rules for application as well as methods for verification of the domestic partner relationship.

The domestic partner benefit shall be available to bargaining unit employees no later than January 1, 2009, but may, by mutual agreement, be implemented sooner."

SUMMARY:

In this report I have attempted to consider and make recommendations regarding a number of complex issues. If errors are discovered or if any of the recommendations appear to the parties to be too onerous to implement, I urge them to *mutually agree* (emphasis added) to alternate language consistent with the spirit of these recommendations.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(J), the Fact Finder recommends the provisions as enumerated herein.

In addition, all Agreements previously reached by and between the parties and tentative agreed to, along with any sections of the current Agreement not negotiated and/or changed, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 26th day of November, 2007.


N. Eugene Brundige,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Fact Finder's Report** was served by electronic mail and regular U. S. Mail upon Michael J. Hunter, Counsel for SEIU District 1199, Hunter, Carnahan, Shoub, and Byard, 3360 Tremont Road, 2nd Floor, Columbus, Ohio 43221 (mhunter@hcnds.com) and Brian G. Dershaw, Special Counsel for Attorney General Marc Dann and Counsel for Cincinnati State Community and Technical College, The American Book Building, 300 Pike Street, Suite 400, Cincinnati, Ohio 45202 (bdershaw@beckman-weil.com) and by regular U.S. Mail upon Edward E. Taylor, Administrator of the Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th. Floor, Columbus, Ohio 43215-4213, this 26th day of November, 2007. In addition I have served by electronic mail, copies of the report to other representatives requested by the respective parties:

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