

**STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO**

In the matter of Fact Finding between:	)	10-MED-03-0186
	)	
EDISON STATE COMMUNITY COLLEGE)	)	Date of Report:
	)	January 17, 2011
Public Employer,	)	
	)	Hearing:
and	)	December 20, 2010
	)	at Piqua, Ohio
EDISON STATE EDUCATION	)	
EDUCATION ASSOCIATION, OEA/NEA,	)	
	)	
Employee Association.)	)	

**FACT FINDING REPORT**

Appearances:

Mitchell B. Goldberg,  
Earlene Baggett-Hayes,

Appointed Fact Finder  
Observer

For the College:

Reid T. Caryer,  
Peggy Corn,  
Linda M. Peltier,

Assistant Attorney General  
Assistant Attorney General  
Executive Director, President's Office  
and Strategic HR

Debbie Hirtzinger,  
Daniel Reke,  
Sharon Brown, MS,

Controller  
Vice President, Finance and Administration  
Vice President for Education

For the Association:

Larry J. Dragosavac,  
Pat Johnson, M.Ed.,  
Paul Heintz,  
Iden Smith,  
Brad Reed,

ESEA President, Professor of Accounting  
OEA Labor Relations Consultant  
ESEA Vice President, Professor  
Professor  
Professor

I. Introduction and Background.

The State Employment Relations Board ("SERB"), on August 11, 2010, appointed

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STATE EMPLOYMENT  
RELATIONS BOARD

the undersigned as the Fact Finder of this public employment labor dispute. The parties submitted timely pre-hearing position statements in accordance with SERB rules and guidelines. The matter was heard on December 20, 2010 at the Employer's facilities in Piqua, Ohio. The Employer operates an accredited community college in Piqua, Ohio, Darke County, with an enrollment of approximately 3,500 students. It serves the areas in southwestern and central Ohio and southeastern Indiana.

The Association is the exclusive representative for the bargaining unit that consists of approximately 55 full-time teachers. The parties began negotiations in March 2010 pursuant to Negotiation Ground Rules for a successor collective bargaining agreement ("CBA") that expired on midnight, August 8, 2010. They attempted to reach a resolution by the graduation date for the 2009-2010 school year. This did not occur. They engaged in mediation with a SERB appointed mediator, but the following three issues remained unresolved and proceeded to Fact Finding.

All unopened articles and all tentatively agreed upon articles, terms and language completed during negotiations or during mediation are hereby adopted and incorporated into this Report and made a part hereof. The unresolved issues are: (1) Article VIII, Salary; (2) Article XIV, Health Insurance; and an Association proposal to include a Fair Share provision in the CBA.

## II. Economic and Financial Evidence.

It is now well known that the State of Ohio, and other states, have serious financial

and budgetary problems. Because of the recession, the slow recovery and high unemployment, tax revenues have declined. The revenue shortfalls have been addressed by spending reductions, wage freezes and other budgetary measures. State funding for local governments is being substantially reduced. Up to now, the State's spending for higher education has not been materially affected. However, the next wave of spending reductions will severely impact the budgets of colleges, universities and community colleges.

The College operates on a fiscal year basis from July 1 through June 30. The Statement of Net Assets reflecting the College's financial condition as of July 1, 2010, the beginning month for the '10-'11 fiscal year was sound. Total net assets were \$21.2 million compared to \$18.6 million the prior year. Income for the month was approximately \$4.3 million and \$1.3 million over the monthly budgeted amount. Enrollment had increased; tuition revenue and student loan revenue was increasing. The State had allocated a substantial portion of the federal stimulus money to the higher education institutions. However, the State SSI calculation for FY 2011 has been revised downward. The total SSI funds for Edison State were revised from \$7.2 million to a new figure of \$6.77 million. The amount of SSI funded by the federal stimulus money is \$1.13 million. The Ohio Board of Regents Report dated November 2, 2010 states that the expected SSI reduction for community colleges will be approximately 6%.<sup>1</sup>

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<sup>1</sup> The Board revised its budget forecast in November to account for a lapsed SSI payment for July 2011, which must be included in FY'12. It cannot recognize the payment as revenue in FY'11. The State cannot make 12 SSI payments in FY'11 and it is unlikely that it will be able to make up this lapsed payment in FY'12 by making 13 payments.

Mr. Reke, the Vice President for Finance and Administration believes that the cuts will be higher based upon current and continuing financial information. He has revised his budget estimates for the year. The Board's approved budget on July 21, 2011 estimated a net income of \$696,228. He now predicts that FY '11 will end in a deficit due to the SSI reduction in the amount of \$135,000-\$140,000 range.<sup>2</sup> His budget accounts for a 1% wage increase, so any additional wage increase to this unit will increase the estimated deficit. He also accounted for the 3.5% tuition raise that was implemented by the Board, as well as accurate enrollment figures. The earlier July budget was based upon a 4% tuition increase, not the actual 3.5% increase.

III. Unresolved Issues.

Article VIII – Salary

The Association understands the uncertainty that lies ahead with respect to State funding reductions and the eventual loss of federal stimulus money. It has agreed to re-openers in years 2 and 3 of the new contract because of these concerns. Nevertheless, it proposed a one-year 3.5% increase on the base salary and in the overload rate because the Board's approved budget in July showed net income for FY '11 at \$696,228, an amount that was more than sufficient to cover its proposal. Even if the amount were reduced to a figure of \$125,000 net income, its wage proposal would be paid for without producing a deficit.<sup>3</sup> It believes that its proposal is justified because of higher wages being paid at

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<sup>2</sup> The budget revenue figures include a large foundation gift for restricted funds that may not be used for general spending revenue from which wages and benefits are paid.

<sup>3</sup> The Union's 3.5% proposal for wages and overload would amount to \$105,000.

other institutions for comparable work. Faculties at other community colleges of similar size are receiving wage increases of the type proposed by the Association for Edison State. Northwest received 4.5% for FY '09, 3.35% for FY'10 and 3% for FY '11. North Central received 3% for FY'10 and FY'11. Stark received 4% for FY'09, 3.5% for FY'10 and 3.5% for FY'11. North Central received 3% and 3% for overload rate increases in FY'10 and FY'11. Stark received overload increases of 4%, 3.5% and 3.5% for FY '09, '10 and '11. The median annual pay at Edison State for faculty in 2008 was \$47,478. This compared to Northwest at \$61,624, Stark at \$49,230, and North Central at \$49,058. The average for the listed 22 colleges was \$56,419.

The College points out that the bargaining unit has consistently received higher yearly wages than other Edison employees. Faculty received from '05 through '10 annual increases of 3.25%, 3.25%, 3%, 2%, 3.25% and 3.25%. Administrative staff received 3, 3, 3, 1, 3, and 0% over the same period. Classified received 3, 3, 3, 3, 3 and 0% over this period. Moreover, faculty members received bonuses that were not received by other employees. One must take into consideration that the somewhat higher wages at comparable colleges are paid based upon higher student to faculty ratios. For example, the North Central ratio is 17-1, compared to the Edison ration of 14-1.

The College has proposed a one-year wage increase of 1%, the same increase allocated to administrative and non-unit personnel, with re-openers in the final two years. This is based upon its projected deficit for FY'11 due to reduced state funding and other budgetary, financial and economic factors.

Recommendation: I recommend an across the board wage increase of 1% for the first year of a three-year contract, and a 1% increase in the overload rate. The parties shall re-open the contract for wage and overload negotiations in years two and three of the contract.

*Article XIV – Health Insurance*

The Association is very dissatisfied with the present state of high medical insurance costs for its members, particularly when comparisons are made with benefits paid to other faculty performing comparable work. Edison has the 16<sup>th</sup> lowest average medical and dental benefits per employee compared to 21 other colleges in the state. Edison benefits costs per employee are 11.4% lower than the average of 22 state colleges. It has the 18<sup>th</sup> lowest total average benefits per employee compared with the other 21 colleges. The total average benefits per employee are 20.8% lower than the average of 22 colleges.

Association members on the insurance committee have proposed joining the Southwest Ohio Educational Purchasing Council, a consortium that has a larger group and has produced lower insurance costs and increases for comparable coverage. The Board had the final decision in this area after receiving recommendations from the committee. The Board's rationale for not joining the consortium is that in past years when Edison usage was lower its rates were less than the consortium could obtain. Lately, however, usage has increased and rate increases have followed. The '11 rate increase was 8%.

In terms of employee contributions, Edison is at the high end compared with faculty at the other colleges. The present 20% contribution level is one of the 4 highest in a group of 13 colleges. Comparing 14 colleges, Edison employees are 191% above the average for single plans and 188% higher than the average for family plans. The cost per employee for a single plan is \$423.22 above the average per year cost of \$860.30. The cost per employee for family plan coverage is \$410.61 above the average of \$2,401.95. The statewide average cost per employee at colleges and universities for single coverage is \$497 and \$1,220 for family coverage. Percentage contributions average 9.4% for single and 10.8% for family. This compares with Edison costs of \$1,283.52 for single and \$2,812.56 family. The 7.95% or 8% increase for FY'11 increased single cost by \$94.56 per year and by \$207.12 for family. Mr. Heintz testified that the 8% increase cost an additional \$102 per member for single coverage, and \$192 for family coverage.<sup>4</sup>

The College expects premium costs to rise by 1.8% due to the passage of the PPACA. This may further impact its budget deficit. The College is willing to keep the 80/20-contribution level for FY'11 notwithstanding this increase, but it proposes a re-opener for the second and third year to deal with these increases. The Union proposes to keep the 80/20-contribution level for the entire 3-year contract term.

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<sup>4</sup> Tr. 87.

Recommendation: I recommend that the health insurance contribution levels remain the same at 80%- employer, 20%-employee for the first two contract years. Negotiations shall re-open in year three for the remaining year of the CBA term.

*Association Fair Share Proposal*

The Association is proposing a fair share provision. It believes that it proposed a fair share provision at the very first contract negotiations, but accepted some consideration from the College for omitting it from the CBA. It has been proposed repeatedly in each of the following negotiations, but without success.

The College has opposed any fair share provision from the beginning. It is philosophically opposed to a system that requires any employee to contribute to a union against their will. Until recently, at the hearing, the Association declined to relinquish any of its demands or give up any benefit to obtain this provision, which all parties agree is a significant and material Association benefit. The College was reluctant to agree to this provision as a matter of negotiation fairness, without something in return.

The College believes that the provision is not necessary because most of the unit belongs to the Association. The Association collects dues from these members and there is no funding problem. The College further argues that there is a First Amendment issue when employees are required to contribute to a union against their will. Ohio law permits fair share provisions, but it is not mandatory. SERB does not provide for any employer



challenge to the amount of any fair share fee. Fact finders should not mandate the inclusion of such a provision; it should only develop through negotiations.

State and federal courts have repeatedly rejected the College's constitutional objections to a fair share fee, so long as a Hudson type fair share fee law is in place. Ohio has such a law. It establishes a system for non-members to pay a fair share for the union's services related to collective bargaining. Other union expenses not related to collective bargaining, such as contributions for political purposes, may not be collected from objecting non-union members. The basis for the law is one of fundamental fairness. The unions are required to represent every member of the bargaining unit, whether they choose to become a union member or not. If non-members are excused from contributing to union representation costs they become free riders who gain benefits obtained by the union through collective bargaining without any payment in return. The dues paying members should not be required to subsidize these individuals. The courts and legislatures have reached a fair compromise to the non-members' constitutional objections by permitting them not to join a union against their will, but they nevertheless should pay a fair share of the union's costs relative to collective bargaining, grievance administration, arbitrations and litigation matters affecting the entire unit.

Right to work groups, through litigation in federal and state courts, have fine-tuned the amounts required as fair share fee payments. The amounts must be calculated to exclude any union expenses or charges for activities that are unrelated to collective

bargaining.<sup>5</sup> Legal requirements also include professional audits of union expenditures to ensure that fair share fee calculations are accurate and not related to prohibited expenditures. Non-members who object to the amount of the fee may formally raise their objections and require the union to prove its calculations. Unresolved objections are resolved through binding arbitration. These legal requirements and procedures provide sufficient protections for non-members, but nevertheless insure that they are paying a fair amount for services that the union is required to provide to them.

In this case, the bargaining unit consists of approximately 38 persons, 32 of which are Association members. The remaining 6 individuals have received wage and benefit increases over the years that are the direct result of the Association's negotiating efforts. The Association has represented non-members in grievances, and in contract negotiations, including mediation and this fact-finding proceeding. There is no rational or logical reason for permitting these persons to receive the benefits of these services without paying a fair price represented by a fair share fee.

Finally, during this proceeding, the Association offered compromises to its economic proposals by agreeing to accept the College's wage proposal and re-openers and by accepting the 80/20 health insurance contribution levels. They have made compromises sufficient enough to bring about the inclusion of a fair share provision in the CBA. Moreover, one must observe that substantial economic sacrifices are looming

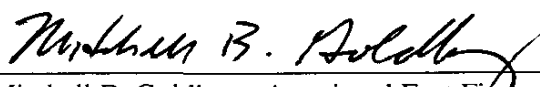
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<sup>5</sup> Collective bargaining covers the subjects of grievances and arbitrations. Those matters are considered extensions of the collective bargaining process because they are negotiated as alternatives to the right to strike.

in the future that may require further concessions. The fair share fee involves no economic cost to the College. It is a concession that causes no impact upon its budget and operations. Accordingly, the College's objection is disproportionate to the Association's concessions from its original economic proposals, and from possible added concessions that may occur in the remaining years of this contract. This will undoubtedly be the case if the College's economic predictions come to pass. Moreover, 9 community colleges have fair share fee provisions in their contracts, including those who both parties agree are comparable to Edison.

Recommendation: I recommend the inclusion of fair share provisions similar to provisions contained in the Northwest State Community College contract, attached hereto and made apart hereof, and identified as Exhibit A.

Date of Report: January 17, 2011

  
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Mitchell B. Goldberg, Appointed Fact Finder

#### CERTIFICATE OF SERVICE

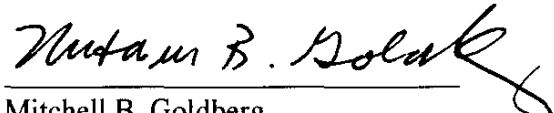
The following persons were served with the above Fact Finding Report on January 17, 2011, by U.S. Mail, First Class:

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\_\_\_\_\_  
Mitchell B. Goldberg

## **EXHIBIT "A"**

### **B. Fair Share Fee**

#### **1. Payroll Deduction of Fair Share Fee**

The Employer shall deduct from the pay of employees who elect not to become or to remain members of the Northwest State Community College Education Association, a fair share fee for the Association's representation of such non-members during the term of this contract. No non-member filing a timely demand shall be required to subsidize partisan political or ideological causes not germane to the Association's work in the realm of collective bargaining.

#### **2. Notification of the Amount of Fair Share Fee**

Notice of the amount of the annual fair share fee, which shall not be more than one hundred percent (100%) of the unified dues of the Association, shall be transmitted by the Association to the Employer on or about October 1 of each year during the term of this contract for the purpose of determining amounts to be payroll-deducted, and the Employer agrees to promptly transmit all amounts deducted to the Association monthly.

#### **3. Schedule of Fair Share Fee Deductions**

##### **a. All Fair Share Fee Payors**

Payroll deduction of such fair share fees shall begin at the second payroll period in January except that no fair share fee deductions shall be made for employees employed after December 31 until the second paycheck, which period shall be the required fair share fee probationary period of new employees.

**b. Upon Termination of Membership During the Membership Year**

The Employer shall, upon notification from the Association that a member has terminated membership, commence the deduction of the fair share fee with respect to the former member, and the amount of the fee yet to be deducted shall be the annual fair share fee less the amount previously paid through payroll deduction.

**4. Transmittal of Deductions**

The Employer further agrees to accompany each such transmittal with a list of the names of the employees for whom all such fair share fee deductions were made, the period covered, and the amounts deducted for each.

**5. Procedure for Rebate**

The Association represents to the Employer that an internal rebate procedure has been established in accordance with Section 4117.0 of the Revised Code and that a procedure for challenging the amount of the representation fee has been established and will be given to each employee who does not join the Association and that such procedure and notice shall be in compliance with all applicable state and federal laws and the Constitutions of the United States and the State of Ohio.

**6. Entitlement to Rebate**

Upon timely demand, non-members may apply to the Association for an advance reduction/rebate of the fair share fee pursuant to the internal procedure adopted by the Association.

**7. Indemnification of Employer**

The Association agrees to indemnify the Employer for any cost or liability incurred as a result of the implementation and enforcement of this provision provided that:

- a. The Employer shall give a ten (10) day written notice of any claim made or action filed against the employer by a non-member for which indemnification may be claimed;
- b. The Association shall reserve the right to designate counsel to represent and defend the employer;
- c. The Employer agrees to (a) give full and complete cooperation and assistance to the Association and its counsel at all levels of the proceeding, (b) permit the Association to intervene as a party if it so desires, and/or (c) to not oppose the Association or its affiliates' application file briefs amicus curiae in the action;

- d. The Employer acted in good faith compliance with the fair share fee provision of this Agreement; however, there shall be no indemnification of the Employer if the Employer intentionally or willfully fails to apply (except due to court order) or misapplies such fair share fee provisions herein.
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