

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING PROCEEDINGS

May 19 10 12 AM '97

Case No. 96-MED-12-116

DANIEL N. KOSANOVICH
Fact-Finder

IN THE MATTER OF:	:
	:
AMERICAN ASSOCIATION OF	:
UNIVERSITY PROFESSORS	:
	:
and	:
	:
CINCINNATI STATE TECHNICAL &	:
COMMUNITY COLLEGE	:

REPORT AND RECOMMENDATION OF THE FACT-FINDER

APPEARANCES

On Behalf of the Union:

Don Mooney, Counsel for AAUP
 John Battistone, Chief Negotiator for AAUP
 Diane Stump, Counselor/Witness
 Debbie Bogenschutz, AAUP Representative
 Marcha L. Hunley, Area Chair, AAUP
 David Kover, Witness

On Behalf of the Employer:

Brenda Thompson, Attorney
 Gregory Mason, Assistant Dean
 Bari Ewing, Coordinator, Jumpstart

William Russell, Dean of Enrollment and Student Services
Gene Breyer, Labor Relations Manager
Terry Glenn, Vice President, Alumni Services
Bill Deitzer, Vice President of Finance
Robert Buescher, Chief Negotiator for Cincinnati State Technical
and Community College

I. INTRODUCTION AND PRELIMINARY COMMENTS

For the bargaining unit in question (refer to herein as "AAUP II") on August 22, 1996, a secret ballot election was held and on September 12, 1996, the election results were certified. The Certification of the Election Results recognizes the American Association of University Professors as the exclusive bargaining representative for the employees in question.

The parties met a number of times in an effort to negotiate a collective bargaining agreement which would provide for wages, hours and other terms and conditions of employment for the bargaining unit (AAUP II.) On February 19, 1997, the Fact-Finder was appointed in accordance with Section 4117-9-05 of the Administrative Code. The original Fact-Finder's Report was due no later than March 5, 1997.

The parties agreed to extend the deadline for the Fact-Finder's Report and Recommendation while they continued to negotiate. A fact-finding hearing was scheduled to be conducted on April 8, 1997. The parties submitted Pre-Hearing Statements identifying the issues in dispute.

At the outset of the fact-finding hearing on April 8, 1997, the Fact-Finder offered to assist the parties by way of mediation in order to narrow the issues in dispute. At that point in time,

the AAUP identified twenty-one (21) open issues which were: recognition and bargaining unit description; relationship between the parties; faculty involvement in the governance of the college; compensation; workload; benefits; severance; tenure; professional enrichment programs; academic freedom; definitions; and duration and amendment. The College listed fourteen (14) open issues which included wages; benefits; workload; tenure; sabbatical/tuition reimbursement; paid time for union business; involvement in governance; filling vacancies; severance; and duration. With the assistance of the Fact-Finder, the parties engaged in mediation on April 8 and April 9, 1997. Following mediation, the parties continued negotiations and by letter dated April 17, 1997, agreed to extend the deadline for the Fact-Finder's Report until May 19, 1997. A fact-finding hearing was conducted on April 24, 1997. The parties submitted five (5) unresolved issues to the Fact-Finder. Those issues were: 1) relationship between the parties -- Section F only - Released Time for the Negotiating Team; 2) compensation, Section A only; 3) workload; 4) professional enrichment; and 5) duration.

II. HEARING

As noted above, the hearing was conducted on April 24, 1997, in Cincinnati, Ohio. Both parties attended the hearing and elaborated upon the positions regarding the five (5) remaining issues at impasse through their representatives.

III. CRITERIA

In compliance with Ohio Revised Code Section 4117.14(G)(7) and Ohio Administrative Code 4117-9-05(J), the Fact-Finder considered the following criteria in making the Findings and Recommendations contained in this Report:

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the affect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;

5. Stipulations of the parties; and
6. Such other factors not confined to those listed above which are normally or traditionally taken into consideration and the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

IV. ISSUES AND RECOMMENDATIONS

A. Article 3-F, Released Time for Negotiating Team, the Grievance Officer, the President, and the Faculty Senate President

1. The Union's Position.

The Union and the College have reached impasse over whether the phrase "for AAUP II" should be included in the first sentence of Article 3. It is the Union's position that the inclusion of such language will hamper the ability of AAUP II bargaining unit members to come to the negotiating table while AAUP I is negotiating. As a result, the experience, exposure and education that may be gained by AAUP II members participating in the AAUP I negotiations is eliminated. Moreover, the inclusion of this language, according to the Union, permits the College to interfere with the Union's selection of representatives.

2. The College's Position.

The College's position is that the phrase "for AAUP II" should be included in the first sentence of Article 3, Section F, Subsection 1. The College points out that there are only eight (8) members in the AAUP II bargaining unit and that allowing AAUP II bargaining unit members to participate in negotiations for AAUP I's contract could have an adverse impact on the ability to service the students.

3. Findings and Recommendations.

While the Fact-Finder is sympathetic to the argument that there is real educational value to the AAUP II bargaining unit members serving on the bargaining unit team for AAUP I, this value must be balanced against the ability of the College to serve the students. In addition, the Fact-Finder is keenly aware of the need to avoid providing the College with a vehicle to control the selection of the Union's representatives. However, it is the recommendation of the Fact-Finder that the phrase "for AAUP II" should be included in Article 3, Section F, Subsection 1. On balance, the College's argument carries the day and warrants this recommendation.

B. Compensation (Section A Only)

1. The Union's Position.

It is the Union's position that effective with the beginning of the September, 1996 term, the base salary of all AAUP II bargaining unit members should be increased by four and one-half (4-1/2%) percent. In addition, the Union seeks an increase of four and one-half (4-1/2%) percent of the base salary beginning the September, 1997 term and beginning with the September, 1998 term. It is the Union's position that members of the AAUP II would have received the same percentage wage increase as members of AAUP I if AAUP II had not been certified into a bargaining unit. Moreover, the Union argues that it is seeking only to increase the wages in a manner that is consistent with the AAUP I counterparts. The Union notes that no other College employee received a raise in the 1996-97 salary which is as low as the one proposed by the College for the members of AAUP II.

2. The College's Position.

It is the College's position that effective beginning the September, 1996 term, the base salary of the bargaining unit members of the AAUP II bargaining unit should be increased by three (3%) percent. In addition, effective with the beginning of the September, 1997 term, the base salary of AAUP II bargaining unit members should increase an additional three (3%) percent. Finally, effective with the beginning of the September, 1998 term, the base

salary of all AAUP II bargaining unit members should be increased by three (3%) percent. The employer of the twenty-two (22) two (2) year colleges responding to the OACC survey taken in April, 1996, eight (8) had established wage increases for 1996. The wage increases established ranged from two (2%) percent to five (5%) percent with an average increase of 3.74%. In addition, the Employer points out that in 1995 the average public sector bargaining agreement contained wage settlements of 3.35% statewide in the first year of the contract.

3. Findings and Recommendations.

Based upon the testimony adduced at the hearing and the exhibits submitted to the Fact-Finder by the parties, it is clear that the wage increase shall go into effect beginning with the September, 1996 term. In considering the portion of this provision, which is in dispute, the Fact-Finder has taken a great deal of time to review the financial information presented by the parties including, but not limited to, a careful review of the testimony offered by Mr. Deitzer. It is significant to note that the forecast prepared by Mr. Deitzer takes into account full employment although admittedly there are some 26 vacancies not reflected in the forecasted budget. Moreover, the College is

forced to make certain assumptions about what the State will provide.

The Union makes a persuasive argument that the College not only has the ability to pay, but is very conservative in its forecasting as evidenced by Union Exhibit 31.

Based upon the evidence and information received at the hearing, including the report submitted by Richard E. Weber, Economic Consultant, concerning the financial analysis of the Cincinnati State Technical & Community College, the Fact-Finder is persuaded that the members of AAUP II should receive an increase of 4.5% of their base wages. Therefore, the Fact-Finder recommends that effective with the beginning of the September, 1996 term, the base salary of all bargaining unit members shall be increased by four and one-half (4-1/2%) percent. Further, the Fact-Finder recommends that effective with the beginning of the September, 1997 term, the base salary of all bargaining unit members shall be increased by 4.5% and, finally, effective with the beginning of the September, 1998 term, the base salary of all bargaining unit members shall be increased by 4.5%. In the third year of the contract, beginning with the September, 1999 term, the Fact-Finder recommends a wage reopener.

C. Workload

1. The Union's Position.

The AAUP proposes that the members of AAUP II work a 180 day annual schedule consistent with the members of the AAUP I bargaining unit. The AAUP notes in its proposal that there is no need to accumulate vacation. However, those members of the unit who have accumulated vacation leave would be required to cash in their vacation leave.

2. The College's Position.

It is the position of the College that the bargaining unit members in AAUP II continue to maintain their current schedule which provides for ten (10) sick days, three (3) personal days, twenty (20) vacation days, and ten (10) scheduled College holidays. In addition, the Board of Trustees, in the past, has granted approximately five (5) more days off when the College is shutdown between Christmas and New Years' Day. As the College views the schedule, the personnel in question work at most 212 days per year. It is the College's contention that if the Union proposal were adopted and the ten (10) sick days and three (3) personal days were included, the bargaining unit members of AAUP II would only be required to work 167 days per year. Further, the College notes that the employees within this bargaining unit are "soft money"

employees, i.e., some portion, if not all, of their salary is paid pursuant to the Perkins' Grant and Jumpstart Programs. This Grant and this Program do not contemplate 180 days of service, but, rather, contemplate year-round service. The College points to Exhibit 20, which contains a letter dated March 13, 1997 from Catherine M. Hill, Job Prep Administrator, to Ms. Bari Ewing, Coordinator, Jumpstart Program, Cincinnati State Technical & Community College, which contains the following language:

After reviewing your Jumpstart budget may I caution you that the hiring of additional employees to fill extended absences could create a hardship on the operation and performance of your Program. Additional funding for personnel needs will not be forthcoming from the Job Prep Program to cover extended absences.

In addition, the letter from Ms. Hill to Ms. Ewing states that "allocation of Program funds are determined upon previous year's program performance, appropriate and efficient use of funds and ability to serve the needs of the local County Department of Human Services." Ms. Ewing testified that a 180-day schedule would reduce the ability of the school to serve the students and thereby affect the funding.

3. Findings and Recommendations.

At the outset, the Fact-Finder recognizes that there have been several attempts to include the members of AAUP II in the AAUP I bargaining unit. Those attempts have been both mutual and unilateral on the part of the Union. In fact, Union Exhibit 2 contains a Consent Election Agreement which describes the bargaining unit as "all instructional personnel, counselors and admission personnel listed under the degree based faculty salary schedule." The parties enter into a stipulation for limitation of bargaining obligation concerning certain specially funded employees and this particular stipulation was rejected by SERB. Therefore, the members of AAUP II could not be included within the unit known as AAUP I. As Union Exhibit 3 demonstrates, the Union attempted to accrete members of the AAUP II unit into the AAUP I unit and this attempt was rejected by SERB. These attempts highlight the similarities between the job duties and functions of the counselors and pre-tech advisors in AAUP I and AAUP II.

Further illustrating the similarities, on April 23, 1997, the College and the Union entered into two (2) Stipulations. The first Stipulation reads:

The parties stipulate that the job duties of Pre-Tech Advisors in the bargaining unit AAUP II (incumbents are TaFrinda Bates, Richard

Daniels, Bessie Pitts) are essentially the same as the job duties of Pre-Tech Advisors in bargaining unit AAUP I (incumbents Susan Marcotte and Atealia Bell).

The second Stipulation reads:

The parties stipulate that the job duties of the Counselor position in AAUP II (currently vacant as a result of Sharon Davis' promotion to Assistant Dean) are essentially the same as the job duties of the Counselor position in AAUP I (incumbents Diane Stump and Linda Meador).

Thus the parties have stipulated to at least four (4) of the eight (8) positions -- the jobs are "essentially the same". In addition, Mr. Kover, the Special Needs Counselor, testified that he works in the same office as Diane Stump, who is an AAUP I Counselor. Further, Mr. Kover testified that students are assigned to seek counselors on a first-come/first-serve basis unless specific requests are made. Mr. Kover testified that he counsels a substantial percentage of students who are not special needs students.

The Fact-Finder is satisfied that a majority of the work performed by the members of the AAUP II bargaining unit are essentially the same as, or very similarly to, the duties performed by the Pre-Tech Advisors and Counselors in the AAUP I unit.

Further, the Fact-Finder notes that the members of AAUP II work in close proximity with their counterparts in AAUP I.

In this report, the Fact-Finder also finds that the Pre-Tech Advisors are funded in part by the Perkins' Grant; the Special Needs Counselor position is funded in part by the Perkins' Grant; the other counselling position is funded in part by the Perkins' Grant; the Health Care Opportunities Program Coordinator is funded in part by the Perkins' Grant; the Management Computer Software Industrial Trainer is funded by the proceeds of classes taught; and the two (2) Program Advisors are funded by the Jumpstart Program. Five (5) of the positions in the unit are only partially funded by grant money and the other monies come from the General Fund of the College. The Industrial Trainer position is solely dependent upon performance and the proceeds generated by the classes taught. Only two (2) of the positions in the unit in question are fully funded by an agency. Under these circumstances, only 25% of the unit receive complete funding from an outside agency to support the positions.

The Fact-Finder is persuaded that service can be provided to the students based on a reduced work load. However, the College will need time to adjust to this base year. Therefore, based upon the information discussed herein and consideration of all the

testimony and exhibits submitted by the parties, the Fact-Finder recommends that the base contract year for the members of AAUP II for the first year of this contract be 200 days. Further, the Fact-Finder recommends that in the second year of the contract, this bargaining unit base work year be converted to 180 days. In the final year of the agreement, the Fact-Finder recommends a base year of 180 days.

D. Professional Enrichment Programs

1. The Union's Position.

It is the Union's position that the College should establish, on an annual contract-year basis, a pool of \$5,000.00 from which tuition reimbursement should be paid at a rate of 75% of the tuition paid to a maximum of fifteen (15) credit hours per individual. Further, the Union proposes that any unused portion of the pool should be carried over from year-to-year and added to the \$5,000.00 annual pool. If a faculty member is denied reimbursement, according to the Union, in any year because the pool has been exceeded, he/she shall be allowed to apply for reimbursement of those non-reimbursed hours in the next contract year and shall be awarded such reimbursement prior to any other individual being made for tuition paid in the new year.

2. The College's Position.

The College asserts that it established a pool of \$20,000.00 from which tuition reimbursement was paid for members of the AAUP I bargaining unit. There are approximately 162 members in that unit. Therefore, the College contends that in fairness a proportionate amount should be established for professional enrichment programs for the AAUP II unit. The Employer is willing to establish a fund of \$1,000.00 per year for the members of the unit.

3. Findings and Recommendations.

The evidence adduced at the hearing suggests that there has been very little usage of professional enrichment reimbursement by the members of AAUP II. Further, it does not appear, based upon the evidence submitted, that the members of that unit will have significant further need for such reimbursement.

Thus, on balance, it is the recommendation of the Fact-Finder that the Employer's position with regard to professional enrichment programs be adopted and that a fund of \$1,000.00 be created each year for the tuition reimbursement program with no carry over provision.

E. Duration

1. The Union's Position.

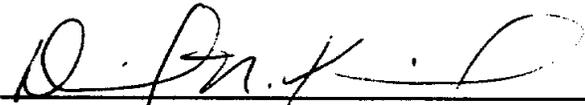
It is the Union's position that the agreement in question should go into effect the date of signing and continue in full force and effect from the date of its execution until and including midnight of the day before the beginning of the September, 1999 term. Mr. Battistone testified at the hearing that the expiration of this agreement corresponding to midnight of the day before the beginning of the 1999 term would be the same as the expiration of the AAUP I contract. Therefore, the AAUP could negotiate for both bargaining units at the same time and eliminate waste.

2. The College's Position.

It is the College's position that the duration of the agreement should be effective as of the date of the signing and continue in full force and effect for a full three (3) years from the date of its execution. The College quickly pointed out in the hearing that to allow both collective bargaining agreements to expire simultaneously would, in effect, allow the Union to accomplish the accretion of the AAUP II unit into the AAUP I unit, Further, the College indicated that such bargaining is a burden because it is complex and strengthens the hand of the Union without corresponding benefit to the College.

3. Findings and Recommendations.

Based upon the evidence submitted, it is the recommendation of the Fact-Finder that the College's position in this regard be adopted and the contract become effective the date of signing and continue in full force and effect for three (3) years from the date of its execution.



Daniel M. Kosanovich
Fact-Finder

Dated: May 17, 1997