

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

In the Matter of Impasse Between

TALLAHASSEE COMMUNITY COLLEGE BOARD OF TRUSTEES

and

UNITED FACULTY OF FLORIDA

Case No. SM-2017 -023

SPECIAL MAGISTRATE REPORT AND RECOMMENDATIONS

M. Scott Milinski
Special Magistrate

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PRELIMINARY MATTERS

The parties to this dispute are the Tallahassee Community College Board of Trustees ("TCC" or "College") and the United Faculty of Florida ("UFF" or "Union"), which represents TCC Faculty, Non-Teaching Faculty, Librarians and Counselors. The Community College serves approximately 13,000 students each semester enrolled in programs leading to a degree or workforce certification. The average age of a TCC student is 21; and about half of the students are the first in their families to attend college. Sixty percent of the first-time college students receive grants - which demonstrate that the students come from lower socioeconomic backgrounds. Four out of five students work while attending school. Over 70% of TCC's students transfer to a university after graduation.

The UFF bargaining unit was certified as a professional unit by PERC in August 2016. The bargaining unit of approximately 200 members is composed of Full-time Faculty, Counselors and Librarians. The parties began negotiations over an initial labor agreement in September 2016; and the College declared impasse in September 2017. The undersigned was appointed as Special Magistrate in this case and the Special Magistrate hearing was conducted at the Community College campus on February 28 and 29, 2018. Written briefs were received on July 2, 2018 and the hearing was closed on that date.

BACKGROUND

The Special Magistrate is charged with the responsibility to hold hearings to define the issues in dispute, the facts related to the dispute, and to render a recommended decision to resolve the impasse issues with the objective of a peaceful, prompt and just settlement of the dispute between the public employer and the employee organization [see Florida Statutes Sections 447.403 (3) and 447.405]. In doing so the Magistrate is directed by the Statute to give weight, among others, to the Five Factors, for brevity purposes summarized as: 1. Comparison of annual income for same or similar work in the local operating area; 2. Comparison of annual income for same or similar work in governmental bodies of comparable size within the state; 3. Interests and welfare of the public; 4. Comparison of peculiarities of employment in regard to other trades or professions; and 5. Availability of funds.

Florida Statute Section 447.405 establishes that in arriving at a recommendation on the issues in dispute, the Special Magistrate must give due consideration to the relevant factors listed above, including the elements of justice, equity and the interest and welfare of the public - all of which encompasses a highly judgmental balancing process. This dispute concerns a public educational institution involving the interests of the bargaining unit and the employer. However, the dispute also impacts the interests of a number of public stake holders – particularly the students and the community as a whole. Accordingly, this Magistrate has made a diligent effort to consider and analyze the issues in dispute on the basis of these standards.

This impasse dispute arises from the parties' effort to reach an agreement on an initial Collective Bargaining Agreement (CBA). Reaching an agreement on an initial CBA is never an easy task. The parties have reached a preliminary or tentative agreement on a number of proposals; however, a number of remaining issues are still in dispute. Many of the remaining issues are at impasse partly because of disputes concerning the scope of bargaining. The Union asserts that a number of the College's

proposals, if implemented, constitute a waiver of its members' right under the Florida collective bargaining law to grieve over terms and conditions of employment. Unless the parties an agreement on the issues concerning the bargaining unit's rights, it is likely that the parties will seek a resolution of these issues through the Public Employee Relations Commission (hereinafter "PERC") or court. That said, a Special Magistrate's responsibility is that of a fact finder who recommends a settlement for the parties at impasse. Thus, he is not in the role of a PERC Hearing Officer authorized to rule on matters such as what constitutes a mandatory or permissive subject of bargaining, or an unfair labor practice (ULP). Nonetheless, this Magistrate accepted testimony and evidence in support of each party's position regarding its bargaining rights.

ISSUES IN DISPUTE¹

- Article 4 – Management Rights
- Article 6 – Faculty Rights
- Article 8 – Grievance and Arbitration Procedure
- Article 11 – Appointment, Contracts and Termination
- Article 13 – Work Responsibilities
- Article 15 – Additional Professional Obligations
- Article 16 – Distant Education
- Article 21 – Faculty Evaluations
- Article 23 – Wages
- Article 24 – Insurance Benefits and Leave
- Article 27 – Discipline
- Article 28 – Reduction in Force
- Article 29 – Academic Calendar
- Article 31 – Duration

¹ Articles not listed as "Issues in Dispute" have been agreed to by the parties as part of each party's package proposal. For example, Article 1- Recognition and Article 2- Non-Discrimination were tentatively agreed to prior to the February/March, 2018 Special Magistrate hearing. Article 3- Civility and Professional Behavior was tentatively agreed to after the Special Magistrate hearing.

SPECIAL MAGISTRATE
CONCLUSIONS AND RECOMENDTIONS

With the objective of a peaceful, prompt and just settlement of the issues at impasse it is hereby recommended:

Article 4 – Management Rights

Special Magistrate's Recommendation:

College Proposal with the following additional language:

5. Nothing in this Article is intended as a waiver of the Union's rights under Chapter 447 to bargain over mandatory subjects of bargaining or the impact of changes brought about by the exercise of management rights.

Discussion

Each party is interested in protecting its interests under the collective bargaining agreement. Until 1960, managements rights clauses in labor agreements tended to be based on the “reserved rights doctrine”, which holds that all rights to manage the business are reserved to management except to the extent management has voluntarily agreed to limit or restrict such rights through language in the collective bargaining agreement. In the U.S. Supreme Court’s 1960 decision in *United Steelworkers v. Warrior and Golf Navigation Company*, the Court ruled that where there is no clear evidence of the parties’ intent to cover a specific subject under the labor agreement’s terms, the arbitrator could determine whether an issue was covered under the parties’ agreement, and any doubts about coverage should be resolved in favor of the grievance/arbitration process. In response to this decision, many employers sought to negotiate a more specific detailed list of the subjects over which management intended to reserve the unilateral right to control. Such contract language is typically referred to as a “long-form” management’s rights clause. The College’s Management Rights proposal is a long-form management rights clause.²

On the other hand, the Union’s proposal could be considered something like a “short – form” managements rights clause. The proposal recognizes Florida Statues Section 447.209, which establishes “*It is the right of the public employer to determine unilaterally the purpose of each of its constituent*

² The College’s proposal also makes reference to Florida Statute Section 447.209.

agencies, set standards of service to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.”

This issue is important to each party. The Union asserts that the College’s Management Rights proposal is unlawful unless agreed to by the Union because it exceeds the confines of Florida Statute 447.209. However, this Special Magistrate is not empowered with the authority to determine whether a provision of a collective bargaining agreement is outside the bounds of Florida Statute 447.

This Special Magistrate recommends the adoption of the College’s proposal - with additional language. The majority of today’s labor agreements contain a “long-form” management’s rights clause. This Special Magistrate appreciates the Union’s legitimate concern regarding its bargaining rights. Thus, the addition of Section 5 is recommended. This language confirms the Union’s right to bargain over mandatory subjects, as well as its right to bargain the impact of changes brought about by the exercise of management rights. Simply, the language states that the Union is not giving up any of its bargaining rights under Chapter 447.³

Article 6 – Faculty Rights

Special Magistrate’s Recommendation:

Adoption of Section 6.06-Seniority

Discussion

This is the Union’s proposal. The College does not agree with this proposal and offers no alternative. Parts of the Union’s proposals are directly related to other Articles and are addressed in the applicable Article. For example, faculty work load proposals are also addressed in Article 13 – Work Responsibilities.

³ In asserting its position the College provided examples of the “long-form” management rights clause. One half of the College’s comparators incorporated language recognizing the Union’s right to impact bargain.

6.01- Continuation of Rights:

The Union's proposal provides assurance that faculty continues to enjoy the rights, privileges and benefits that existed before the existence of the Collective Bargaining agreement (commonly referred to as a maintenance of benefits clause). The College asserts that the Union should be required to negotiate what it wants within the four corners of the agreement - not rely on a broad statement concerning its existing rights, privileges, and benefits. This Special Magistrate agrees with the College's position. The proposal is problematic because the parties do not specifically know what they are agreeing to with such language.

6.02-Selection of Schedules by Faculty:

The Union proposes the use of seniority in making assignments. In support of this position the Union points out that many academic divisions use seniority to determine course assignment and other duties. Thus, full-time faculty members have the right of first refusal for overload/extra teaching assignments. Further, the faculty member will schedule the times and locations of office hours. The College asserts that scheduling issues should be based on stated criteria which include experience and work at the college to determine the best qualified for an assignment. This Special Magistrate addresses these issues in Article 13-Work Responsibilities.

6.03-Right to Privacy:

The Union proposes that the private or personal life of faculty members, including but not limited to lifestyle, religious activities, or political activities, is not of concern to the College. The College shall take no action against a faculty member for such activities unless the activities are detrimental to legitimate interests of the College. The College asserts that this language is not necessary in the Collective Bargaining agreement, because such privacy issues are covered in federal and state laws, and local ordinances. This Special Magistrate is persuaded by the College's argument on this issue. There are numerous protections available to faculty members on this issue; and the right to concerted union activity.

6.04-Surveillance Equipment:

The Union proposes that security cameras and other surveillance equipment shall not be used to record or monitor a faculty member's performance of his or her professional duties without the permission of the faculty member. During the hearing, the Union expressed concern about whether the College could take student calls to the help desk for quality control purposes. The College asserts that the proposal is unnecessary and PERC prohibits spying on humans. This Special Magistrate appreciates

the faculty members' concern on this issue. However, these issues are governed by laws. PERC has also ruled in this area. For example, use of body cameras in law enforcement is a management right. For these reasons, this Special Magistrate is persuaded with the College's position.

6.05-Legal Assistance:

The Union's proposal requires the College to provide legal assistance to faculty members in connection with their official duty (with certain restrictions). Florida Statutes 111.07 authorizes colleges to provide legal representation to employees named as defendants in legal actions against the employer. The statute also sets forth limitations to representation, ensuring the college has the ability to sever the representation if the employee's actions were outside the scope of their employment. The Union asserts that its proposal is balanced, considers the College's and the faculty's interests and serves the public's interest by following Florida law. The College asserts that the Union's proposal is not necessary because Florida Statute 1012.85 - Payment of cost of civil actions against officers, employees, or agents of Florida College System institution board of trustees, addresses the issue. This Special Magistrate agrees with the College's position that the proposed language is not necessary.

6.06-Seniority:

Seniority is a fundamental concept with a long history of collective bargaining. The Union's proposal includes a definition for the computation of seniority. This definition is comparable to most other contractual definitions of seniority. Seniority is based on years in rank at TCC as a full-time faculty member. It acknowledges that time outside of the bargaining unit and periods of unpaid leave and layoff are not counted in computing seniority. The College's proposals make no mention of seniority. However, the Provost, Dr. Davis, acknowledged that length of service is important. This Special Magistrate recommends that the parties adopt the Union's definition of seniority. It is worthwhile to incorporate a bargaining unit wide methodology for determining seniority as it will likely be a consideration with respect to certain terms and conditions of employment.

6.07-Use of Faculty to Fill Extra/Summer Assignments:

This issue is addressed in other Articles.

6.08- Personnel Files:

The Union proposes that there be one official personnel file for each faculty member and it shall be located in the Office of Human Resources. The Union's proposed language is consistent with Florida Statutes. This Special Magistrate appreciates the need for a bargaining unit member to have access to his/her official personnel file; and to respond to place comments in the official file in response to any

material. However, as stated earlier this language is not necessary as it is already covered in Florida Statute.

Article 8 – Grievance and Arbitration Procedure

Special Magistrate’s Recommendation:

The College’s proposal with the exception of Section 9.

Discussion

The Parties are in agreement on many provisions of this Article. Two issues remain: the ability to grieve a contract renewal or denial; and Section 9 in the College’s proposed language to prevent against an arbitrator awarding a remedy that is not a traditional arbitration remedy thereby subjecting TCC to some type of monetary award that is beyond anything contemplated through its budget process or the CBA.

A. The ability to grieve contract renewal or denial:

The College proposes that the grievance procedure cannot be used to dispute a decision by the College to renew an employee’s annual contract, or to dispute a decision by the College to not award a continuing contract. In support of its position the College relies upon Florida Statutes; and Florida Administrative Code 6A-14.0411(4)]. Rule 6A-14.041(3) which states, “*A contract shall not create the expectancy of employment beyond the term of the contract. Non-renewal of a contract shall not entitle a person to the reasons for non-renewal or to a hearing.*” Pursuant to the rules governing community colleges, a faculty member with an annual contract has no property interest in their position beyond the term of the contract. These standards are set by the statutes and rules; and the simply, the decision to renew or not renew is placed in the hands of the Board, not an arbitrator. Thus, the College is not at liberty to enter into a CBA that is contrary.

Conversely, the Union asserts that the College’s proposal, if imposed, constitutes a waiver of the Union’s right to grieve all terms and conditions of employment. Accordingly, Sections 2 and 18⁴ constitute “waivers” under Florida public sector law as interpreted by PERC. In short, these two Sections, as proposed by the College, are patently unlawful and simply cannot be taken to the impasse process, absent an agreement with the Union. The Union has not agreed to these two Sections, and the College is inviting litigation and a PERC – ordered reversal if it’s legislative body moves forward to implement the Colleges proposals on Sections 2 and 18.

⁴ This Special Magistrate notes that his proposals for Article 8 (College 5) do not include a Section 18. Most likely, the parties are referring to Section 17 which is the issue in dispute.

Both parties offer legal arguments with respect to their position on the ability to grieve contract renewal or denial. This Special Magistrate's role is to identify the issues in dispute and make a recommendation for a prompt peaceful and just settlement. Accordingly, this Special Magistrate recommends the College's proposal, with the full understanding that unless the parties reach agreement on this contentious issue is very likely that this issue will be litigated, and perhaps hold up implementation of an agreement for some time.

Nontraditional arbitration remedies:

The College's proposal for Section 9 language is to prevent against an arbitrator awarding a remedy that is not a traditional arbitration remedy thereby subjecting it to some type of monetary award that is beyond anything contemplated through its budget process or the CBA. The College asserts that the Union did not seem to have an issue with this concept, but did not think the language clearly conveyed this idea.

The Union asserts that this proposal infringes upon its statutory right to a grievance process that ends in final and binding arbitration. Accordingly, this section is unlawful. The Union asserts that this proposal constitutes a waiver of its statutory rights; and it is unlawful for the Legislative Body to impose any such language.

This Special Magistrate recommends Section 9 be not included in the CCBA. First, in large part the College is relying on Florida Statutes 447 and Administrative Code. In fact, its language quotes provisions of that Statute. When the Union's proposals included incorporation of statutory provisions, the College has taken the position that such language is unnecessary in the CBA. In those cases, this Special Magistrate has agreed with the College's position that such language is unnecessary. Secondly, portions of the language in this Section are overly broad in nature.

Article 11– Appointment, Contracts and Termination

Special Magistrate's Recommendation:

The College's proposal with the exception of Section 3 Annual Contracts for Librarians and Counselors.

Discussion

There are two issues remaining: the ability to grieve a decision by the College to not renew an annual contract or to not grant continuing contract; and whether Librarians and Counselors are to be eligible for a continuing contract.

Ability to grieve a decision to non-renew an annual contract or to not grant a continuing contract:

This issue is addressed in Article 8-Grievance and Arbitration procedure. With respect to this issue, this Special Magistrate recommends the College's position, with the understanding that each party asserts that their position on this issue is legal - and the other party's position is illegal. This issue is beyond the authority of a Special Magistrate and must be resolved by the parties through bargaining or litigation.

Librarians and Counselors:

The College proposes Librarian and Counselor positions are eligible only for annual contracts. However, any Librarian or Counselor who has been granted a continuing contract as of the date of ratification shall continue on such contract. The College points to the fact that Librarians are currently given 12 month contracts and the duties aligned more with professional staff. Further there is only one course taught each semester by Librarians. Librarians do not assess student learning, and they are not in the classroom except to collaborate with faculty. The College notes that there had been a number of recent bargaining units that have excluded the Librarian and Counselor positions from faculty bargaining units based on the recognition that the positions are more closely aligned with administrative and professional employees. The College's survey supports the conclusion that it is not an oddity to exclude Librarians and Counselors from the ranks of faculty. Finally, the College asserts that it is within its purview to assign its workforce as it sees fit and it does not consider Librarians and Counselors faculty.

The Union notes that many Librarians already employed at TCC hold continuing contracts; and it is common throughout the State University System for such employees to hold these contracts. Without continuing contracts as an incentive TCC will end up creating revolving door of Librarians and Counselors in constant departure mode. As discussed earlier, the College is proposing that the nonrenewal of an annual contract cannot be challenged through the grievance or termination procedures. The Union asserts that such language cannot be imposed.

The College notes that there have been a number of recent bargaining units that have excluded the positions of Library and Counselor from faculty bargaining units. That said, the evidentiary record shows that, among the State's 28 community colleges, twice as many colleges treat Librarians as faculty than non-faculty. When PERC certified the bargaining unit it included Librarians and Counselors in the rank of faculty. If the College believes that Librarians in Counselors should not be in the bargaining unit, the College can petition PERC for a re-clarification of the certified bargaining unit. This Special Magistrate recommends that Librarians and Counselors be treated as faculty and not be carved out as a

separate component in the bargaining unit. Therefore, Section 3 of Article 7 of the College's proposal should be deleted; and Librarian and Counselors be covered as faculty under the Section 4 of the proposal.

Article 13 – Work Responsibilities

Special Magistrate's Recommendation:

The College's proposal

Discussion

The College is proposing significant changes in Article 13. The Union states that the central issue in dispute between the parties, and the primary reason why the Faculty voted overwhelmingly to organize and bargain collectively, is the College's proposed a new teaching workload load system. Thus, the Union's proposal generally reflects the status quo - maintaining the current formula based system established in TCC Policy No. 05-09.

Florida Statutes §1012.82 provides that each full-time faculty member of the teaching faculty at any Florida College System shall teach a minimum of 15 classroom contact hours per week. This 15 contact hour requirement is referred to as the "teaching load". Colleges in the State system have adopted different methodologies for determining a 15 contact hour week. These methodologies are often based on a point system and/or a discipline-specific approach. Dr. Moore- Davis (hereinafter Dr. Davis), the College's Provost and Vice-President for Academic Affairs, testified that TCC is unique in that it is the only college in Florida to use a formula-based workload system. The current TCC methodology for determining teaching workload involves a formula based on: class size, number of preparations, and total student contact hours.⁵ The formula also establishes load ranges for total student contact hours based upon the number of course preparations. For example, the current teaching load formula provides for a student contact range of 375 - 450 total hours for a faculty member with two preparations. In the event that faculty member's total student contact hours exceeds the maximum 450

⁵ Dr. Davis testified that the current system is based on: Contact hours for each course taught times the number of students enrolled in assigned sections, scaled to account for the number of different preparations. A preparation is simply each different course a faculty member teaches. Thus, a Faculty member who teaches more than one classes of the same course (i.e. course # 1103) receives one preparation credit. Student contact hours are the contact hours times the student enrollment. Thus, a faculty member who teaches a 3 hour course with 35 students enrolled receives 105 student contact hours.

hours, the faculty member receives a 15% pay adjustment based on an overload rate.⁶ Dr. Davis testified that the College is especially interested in limiting the student overload situations because increases in student numbers negatively impacts student success rates.

Dr. Davis testified that there are inequities under the current workload formula where a faculty member may meet the classroom student contact load requirements but teach less than the State mandated 15 hours. For example, a faculty member may be assigned to teach 4 three hour classes, totaling 12 contact hours, but meet their load requirements under the current workload formula due to the large student enrollment (class size). However, because the 12 contact hours is below the State minimum of 15 classroom contact hours, the College is required to assign the faculty member an additional 3 hours of non-classroom hours, in the form of a "reassignment". Further, subsequently the faculty member may volunteer for an overload class with extra pay.

Dr. Davis asserts that the current workload formula system is problematic in a number of areas. It favors the larger disciplines over the smaller disciplines. The formula has not been cost effective to the College, and creates an inequity among faculty members. The formula forces the College to give faculty reassignments whether they are needed or not. At present the College gives reassignments to 81% of the faculty - some of which are without need. The College would like to continue with reassignments, but based on accountability and need. Dr. Davis also explained that the current workload formula promotes larger class size. It also means that enrollment capacity is based upon faculty teaching load is not student centered. From an administrative standpoint is difficult as it creates a manual process in loading and calculating the faculty workload for each quarter of the academic term. Dr. Davis acknowledges that the College's proposal would result in a reduction of reassignments.

Dr. Davis asserts that the current workload formula drives up class size because the College first has to get the faculty within load. After the faculty chooses their classes, the College works around their workload to determine the number of classes and the number of students needed to reach the projected capacity for the discipline. Moreover, the current formula does not work very well for some of the disciplines, especially programs that require smaller class sizes – such as speech, journalism, math and English. Also, the formula does not acknowledge the complexity and recommended student - faculty ratio of programs such as the health program. Nor does the formula address student needs or instructional costs.

⁶ Dr. Davis testified that the overload rate starts at 15% for one to six students; and additional 15% increases for higher student numbers. Also, the term overload is synonymous with "extra teaching assignment".

Dr. Davis explained that the College's proposal is founded on Faculty accountability, student success and fiscal responsibility. The work load proposal is based on four components: instruction and office hours; professional development; college service; and faculty-student advising. The proposed standard teaching load is a minimum of 15 to 18 contract hours per week per semester (6 to 8 hours per week for summer session). She explained that the minimum of 18 hours is necessary in some disciplines. For example, some disciplines are 16 hours based on four 4 hour classes. Others have 18 hours based on three 6 contact hour classes as their normal level.

The Union proposes adopting the language in TCC Policy 05-09, Standard Load, instead of the College's proposal. The Union's proposal is straightforward, current language and practice; and faculty and staff are familiar with the policy. The Union asserts that its proposal reflects a common practice among Florida's state colleges. The College's proposal would require all faculty members to teach a five hour course, 15 student contact hour workload with no class restrictions and then perform other duties. The College points out that Santa Fe and Valencia colleges require faculty to teach 15 contract hours, however both colleges have much smaller class size than TCC. Florida law recognizes that faculty may have other duties and responsibilities that legitimately reduce the number of contact hours. Faculty members serve on various committees and perform other tasks that are necessary for the college to function. The College's proposal would force Faculty to teach 15 contact hours at a minimum, provide student counseling and advising, grade tests, develop courses and serve on committees while suffering a loss of income as result of the elimination of the current workload formula.

UFF-TCC President Robinson testified that the current workload formula takes into account the fact that she is teaching 40 to 60 students in a single class, resulting in her teaching fewer classes but still managing 150-student workload. Because Robinson teaches courses with large number of students, the current formula adjusts for the size of her classes. Faculty members who teach fewer courses also take on extra office hours to comply with Florida law that requires 15 student contact hours per week. The Union is open to discussion around the standard workload, but the College has refused to discuss capping class size. Robinson stated that the College's proposal would negatively impact her ability to provide quality instruction and student advising, particularly if she were to receive a five course 15-hour assignment.

English Professor Reid testified that in her opinion, the existing workload formula is efficient and effective and gives disciplines flexibility to take into account their interactions with students. Professor Reid noted that English faculty members typically teach four courses per semester with a cap

of 30 students per class. Faculty who choose to teach four classes work three hours per week in the Learning Commons, which is where English faculty assist students with writing essays, term papers and other written communications. Time spent in the Commons is contact time as defined by Florida statute. Both Robinson and Reid supported the current formula's flexibility and desirability over vague assurances from the administration that will treat faculty fairly.

Professor Lutz testified that as a science teacher, the College's workload proposal would have a definite impact on his ability to provide group and individual instruction to the increased number of students in his classes. He stated that science faculty members need time to develop innovative strategies, labs and hands-on experiences through group and individual instruction.

Assistant Professor McDermott serves as a Program Coordinator and Program Chair. These two programs account for 80% of his workload, he also teaches one course per semester. McDermott's assignment is an example of how well the current formula works. It is flexible enough to allow faculty to meet their workload requirements with alternative assignments.

With respect to work reassignments, the Union proposes the status quo. While both parties agree that reassignments are created and granted at the discretion of the College, the Union's proposal also establishes reassigned time for approximately 10 types of duty assignments. The College asserts that the Union's proposal is unclear and its list of assignments is unnecessary. Under the College's proposal for a new workload formula, it most likely there will be a reduction in the number.⁷

One of the more contentious issues between the parties concerns the methodology for making teacher assignments. This issue comes up in this Article concerning summer teaching assignments. The College's proposal provides that faculty summer teaching assignments shall be awarded to the best qualified candidate "based on several factors including credentials, academic experience, work experience, student success, retention and completion rates". The Union's proposal on this issue proposes such assignments will be awarded on the basis of seniority. Thus, a faculty member is given first choice in the selection of extra/summer assignments by seniority; and before they are assigned to employees outside the bargaining unit.

The methodology for making teacher assignments is directly related to the parties' dispute over the faculty teaching work load formula. Therefore, this Special Magistrate will address the methodology

⁷ Each party has other proposals in this Article that are not discussed herein because they are based on the issue of the work load systems.

for teacher assignments in this section of his report. Simply put, whether assignments should be made on the basis of seniority - or other factors, including "best qualified".

The evidentiary record indicates that it has been the practice in the past that seniority has played a role in making teacher assignments. In some cases seniority is used to select the classes the faculty member would teach. In some divisions other factors are also used. Dr. Davis stated that the College would like to move to the best qualified person in assigning faculty to teaching loads. In addition to seniority, the College proposes taking into consideration what is best for the students, academic credentials and experience, work experience, student success, retention, and completion rates.⁸ Dr. Davis stated that, while practices vary by division, currently seniority is based on the number of years they have been with TCC. This is a disadvantage for faculty members hired with 10 years' experience at other institutions for which they are not getting credit. Further, the new hire may be an excellent faculty member, but has less seniority.

This Special Magistrate deliberated some time on work formula dispute. Both sides present convincing arguments. In the end, this Special Magistrate recommends the College's position - but with some reservation. The College's current work load formula is problematic. It creates inequities among faculty members. More importantly, the formula favors large class size- which is not in the student's best interest.⁹ The formula creates reassignments that are not needed. It is complex and administratively cumbersome. However, no one can accurately predict with certainty how the proposed work load formula will impact faculty members. Almost certainly, some will see significant reductions in annual compensation.

Traditionally, a major reason why individuals decide to elect the union as their representative is to insulate their job tenure from the adverse effects of preferential treatment, loss of income, reduction in work opportunities, and the unknown. The biggest concern among faculty members is the College's proposal granting full authority to the administration to assign workloads and classes based on somewhat subjective criteria. Simply, "trust me, this will work", is not necessarily reassuring to many. The College, especially Dr. Davis, bears a heavy burden in implementing any such formula. And the College will need its faculty member's support in its effort. In an ideal world, the parties may be able to negotiate a work formula change that addresses the short comings of the current system; and recognizes the dedication and service of long term faculty members. Unfortunately, that is not likely to happen.

⁸ Dr. Davis explained that the College uses non-subjective data to measure these factors. Student success is based on students who earn an A, B, or C in a class. Retention is based on the number of withdrawals at a particular class. Completion is based on those students who have completed the class with a, B, or C.

⁹ TCC has one of the State's largest average class size for community colleges.

Article 15 – Additional Professional Obligations

Special Magistrate’s Recommendation:

The College’s proposal

Discussion

The only issue in dispute concerns classroom observations. The College proposes classroom observation at any time. The Union’s proposal requires one week’s notice before any observation for the purposes of evaluating or accessing a Faculty member’s performance.

The College asserts that it is responsible for the services it provides. The ability to observe any class at any time is an obligation to management and students in the community. Dr. Davis explained that while faculty are professionals they are also employees. There have been some occasions where complaints have been received from students making it necessary to observe what is happening in the classroom.

The Union recognizes that administrators need to access classroom in online courses to observe faculty performance and to investigate student concerns. The Union’s proposed language addresses observation for evaluation purposes whether the courses taught in person or online. A notice period allows the faculty member to plan for the evaluator’s visit, so they can put forward their best efforts while being observed. The Union acknowledges that a situation involving employee conduct or behavior may warrant an unplanned classroom visit. The Union’s proposal reflects the subtle but important differences between observation for evaluator purposes (classroom skills) and observation for conduct or behavior purposes.

This Special Magistrate recommends the College’s proposal. Education has changed very much over the years. In the past it was commonly accepted that teachers deserve notice before being observed in the classroom. However, today it is in the public’s interest that the employers have the right to observe its employees performance as needed. Every educator and professional person would like to be evaluated only in situations where they are fully prepared. A reasonable manager understands when a faculty member or professional person is not having their best day so to speak.

Article 16 – Distant Education

Special Magistrate’s Recommendation:

The College’s proposal

Discussion

There are two issues in dispute with this Article – determining on-line class size; and the College's ability to monitor or enter on-line course shells.

Class Size:

The College proposes in Section 3 that the determination of class size for online courses is at the discretion of the College. The Union proposes that on-line or hybrid class size loads shall count in faculty loading in the same manner as face to face. The primary difference between these proposals is based on the work load formula. The College is proposing a new work load system to replace the current work formula. The Union's proposal adopts the current work load formula. For the reasons stated in Article 13 – Work Responsibilities, this Special Magistrate recommends the College's proposal.

The College's ability to monitor or enter on-line course shells:

Each party's position is discussed in Article 15 – Additional Professional Obligations. For the same reasons outlined in Article 15, this Special Magistrate recommends the College's proposal.

Article 21 – Faculty Evaluations

Special Magistrate's Recommendation:

The College's proposal

Discussion

The parties are in agreement with the language in this Article with the exception of Section 10 - Grievance of Evaluations.

The College proposes that a faculty member may file a grievance alleging contract violations over the evaluation process, but may not file agreements about the rating or content of the evaluation, with the exception of a false statement which may be grieved if not removed by the Vice President for Academic Affairs/Provost. It is a management right of the College to establish the level of service it provides to the public. Evaluations are one way an employer gauges the level of service being provided. Moreover, the evaluation process here does not result in any type of wage increase so it is arguable that the

impact of the evaluation does not even affect a term or condition of employment. In support of its position the College presented contract language from Florida colleges where the ability to grieve an evaluation was limited.

The Union's position is that Section 10 carves out an exception to the grievance procedure making specified portions of the Collective Bargaining Agreement not subject to grievance and arbitration. Based on case law, such language is unlawful and cannot be taken to impasse unless the Union agrees to it. The Special Magistrate and the College Legislative Body have no choice, they are bound by the law and cannot vote to adopt, or recommend the adoption of, illegal contract language.

A Special Magistrate is not empowered with the authority to determine whether a provision of a collective bargaining agreement is outside the bounds of Florida Statute 447. That said, based on the evidentiary record, and his years of experience, this Special Magistrate recommends the College's proposal. Arbitrations involving the issue of the rater's professional judgement would be very burdensome for both parties, as well as costly.

Article 23 – Wages

Special Magistrate's Recommendation:

The College's proposal

With the exception that Librarians are treated as faculty for extra teaching outside of their 40 hour workweek.

And, \$65,000 will be earmarked for implementation of a one time pay adjustment to address the pay inversion /compression issue for faculty members.

Discussion

The outstanding issues are the amount of money to be paid for extra teaching assignments; money to be paid to Librarians when they teach a class outside of their regular workweek; and pay inversion.

Dr. Wills, Vice President of Administrative Services and Chief Business Officer, provided an outline of the state funding scheme for Florida colleges. Overall, state funding comes from four (4) sources – general appropriations from the legislature, lottery money, a performance-based incentive program, and non-recurring funds. The performance-based funding program has two funding sources – institutional investment and state. Bottom line, less successful colleges get less money.

Among Florida's 28 community colleges, TCC ranks 13th in student completion and retention. Dr. Wills explained a few of the factors that TCC looks at in comparing itself to other Florida colleges. One factor is the cost of instruction as a percentage of the total operating budget. TCC ranked fourth among all Florida community and state colleges. It spent 48.2% of its operating budget on the cost of instruction. The first ranked college, Indian River Community College, spent 50.3% of its operating budget on the cost of instruction. Going back to 2011, TCC advertised 94 faculty positions for which it received 3,107 applications. Removing those who have retired in the same time period, TCC has a 98% retention rate. These numbers suggest that individuals want to work at TCC and, once hired, they stay at TCC.

State funding was drastically reduced in 2008-2009, but it has slowly stabilized since that time. Approximately 50% of TCC's funding comes from the state and the other 50% percent from enrollment. Over the last 6 years, TCC's enrollment has declined from 319,145 credit hours enrolled to 265,430 credit hours enrolled. The College is state-mandated to have a general reserve of 5% percent. Dr. Wills testified that this would keep TCC running for less than 30 days. TCC, at the time of the hearing, had about a 9% percent reserve. Thus, the College is not asserting inability to pay.

The College also has had some significant costs that it has absorbed – the rising costs of health insurance and the Florida Retirement System (“FRS”). The cost of FRS for the College has increased about \$1 million over the same period. Employees do not pay anything for employee-only health insurance. Currently, employees do contribute towards the monthly premium for health insurance for plans other than employee-only, such as coverage for a family plan. It has absorbed close to \$2 million in increased health insurance costs since 2012.

Dr. Wills explained that the parties have agreed on a 2% increase to base salary upon ratification of the agreement or July 1, 2018, whichever is latest. Considering this increase, TCC has the 7th highest paid Faculty of Florida's 28 community and state colleges. It has, by far, the highest base salary in its region – \$58,000 – with \$50,700 being the next highest. The parties also agreed to a regular and extended contract. There is a salary for a 9-month contract (i.e., 169 duty days) which is the Fall and Spring semesters. The Parties also agree to an optional extended contract – the two semesters plus a summer term – for a 20% percent increase over the 9-month salary.

Pay for extra teaching assignments:

Extra teaching assignments (overloads) are paid to faculty for teaching classes above their regular workload. The College's proposal is for the regular workload to go to 15 to 18 credit hours as

opposed to the current formula. There is a set amount that is paid per credit hour, per clock hour and per clinical hour depending on the type of class. Currently, for credit hours, the College has a rate for the Fall and Spring terms, and a separate rate for the Summer term. It does not have this for clock or clinical hours.

The College's proposal is to just have one rate that applies to credit hours. Because the parties have agreed on a 20% increase for an extended contract, there is no need to have a different rate for the summer term. Additionally, current pay for extra teaching assignments is by far the highest in the state college system; and The College proposes a slight reduction in these amounts. The College notes with its proposal, TCC will remain 7th highest paid Faculty in the state, they will remain the highest paid Faculty in the state for extra teaching assignments, and TCC increased a number of other pay supplements on assignments it felt was important.

The Union notes that an overload reduction would negatively impact faculty wages, especially in light of the paucity of raises in past eight years (7%) coupled with a 3% employee contribution toward the state pension plan. Instead of a lower rate for overload classes, the Union proposes a raise to \$400 for fall and spring overload classes. The College claims that many opportunities for overload classes will still exist under the new formula, if all full-time faculty taught 15 credits. However, this would only amount to 5,500 credits instead of the current 9,500 credits. But, adjunct instructors currently teach about one-half of the classes at TCC. Absent a contractual guarantee giving full-time faculty the right of first refusal, most or all of the remaining 4,000 credits will be offered to adjunct instructors. Therefore, it is logical to conclude that the College will reduce its costs by reducing or eliminating the ability of full-time faculty to teach extra assignments. The College asserts that retaining the current overload and summer rates to mitigate the loss of income to faculty is a reasonable resolution that best serves faculty, students and the public.

Pay Inversion/Salary compression:

The Union asserts there are presently about 60 faculty members who have the same degrees and years of service as other faculty, yet are not paid the same rate as required by the TTC salary schedule. The Union proposes to fix this longstanding problem by increasing the salaries of those faculty members who did not receive appropriate placement at the time of hire. Estimated cost is \$50,000.

As for the "pay inversion" issue, Dr. Wills explained that TCC does not have an inversion issue. This would suggest that those coming into TCC are being paid more than those that are currently there.

Instead, it is a salary compression issue, which is quite common in most industries. The Union had never presented any numbers at the table. The College is not in agreement with the Union's proposal.

Librarians:

The issue is the wage rate Librarians will receive for teaching outside of their 40 hour workweek. The Union proposes that they receive the rate of pay for an extra teaching assignment. The College proposes that they receive the same rate of pay as any other 40 hour employee whose regular job duties do not include teaching – the adjunct rate of pay. As with any college, there are administrators and employees other than regular full-time Faculty that teach classes. These individuals receive the adjunct rate of pay.

The parties' have tentatively agreed on a number of issues in the proposed salary Article. The most contentious issue remaining in Article 23 involves extra teaching assignment pay (also referred to as overload). This issue is closely tied to the parties' differences with respect to the workload formula. The College is proposing a significant change in the workload formula – especially the College's proposal for the regular workload of 15 to 18 credit hours. Many of the issues in dispute in this Article are addressed in Article 13 – Work Responsibilities.

That said, for the reasons described in the discussion and recommendations in Article 13-work responsibilities, this Special Magistrate recommends adoption of the College's proposal with additional language addressing the long-term inversion/compression issue, and treating Librarians as faculty for teaching outside of their 40 hour workweek. While the parties may disagree whether they have an inversion or a pay compression problem for faculty members, even the College admits that there is a pay compression problem.¹⁰ It is a good time to address this issue at this time, while many bargaining unit members believe that the new work formula system will negatively address their compensation. The estimated annual cost for addressing this long-term problem is \$65,000 (\$51,000 + 28% roll up). The parties should be able to reach a timely agreement on how to implement this one-time payadjustment, which affects a significant number of bargaining unit members.

¹⁰ Tr. Vol5, 471-472.

Article 24 – Insurance Benefits and Leave

Special Magistrate’s Recommendation

Delete Paragraph 1 - Participation in County-wide Committee

The Union’s proposal for Paragraph 2 – Insurance Benefits.

Discussion

There are two unresolved issues¹¹ in this Article 24 – paragraphs 1 and 2.

1. Participation on College-wide Committee:

The College wishes to place two individuals on any College-wide committee to review benefits. The College would select two names from a list of 15 individuals submitted by the Union. The College wants the committee meetings to be as collegial as possible and to be comprised of individuals who, in its judgment, will take their responsibilities seriously and not intentionally derail the committee process. In addition, the College considers its proposal to be a compromise because it does not have to allow any union representation on committees. The Union wishes to select the two names on any College wide committee to review benefits. The Union asserts that it will not agree to any proposal that allows College to determine who represents UFF.

This Special Magistrate recommends deletion of paragraph 1 for the following reasons: During his years of experience in collective bargaining, including health insurance plans, this Special Magistrate has learned that it is beneficial to everyone employees have a seat on health insurance committees. Their involvement: helps them understand the difficulties in providing health insurance benefits in today’s world; offers the committee insights into the needs and problems of that large group of healthcare users; and promotes support for necessary plan revisions.

The College’s faculty members are bargaining unit members represented by the Union. The College is concerned that the College-wide committee not become a bargaining platform for the Union; and it is not required to offer the Union a seat on any committee. However, it is the Union’s business to select representatives for its bargaining unit – not the College. It is apparent that both parties may not be ready to initiate a cooperative relationship in areas of mutual interest. It takes time to develop a working relationship and some level of trust between the parties. Furthermore, this contract provision probably is not necessary. The parties can explore this issue sometime after the contract is ratified.

¹¹ After a review of the briefs, it is this Special Magistrate’s understanding that subsequent to the Special Magistrate hearings the parties reached agreement on paragraph 10 - Annual Leave. Thus only paragraphs 1 and 2 are in dispute.

2. The College's contribution towards health insurance premium:

The College initially proposed that it would provide the same health insurance benefits, and pay the same amount for faculty premiums, as it paid for all other employees. This would have allowed the College to make changes to the plan design to keep costs down and also change the amounts the College contributed so it could be fiscally responsible. The College's proposal was flatly rejected by the Union. The College's current proposal is to contribute \$606.50¹² per month towards the monthly premium for the health insurance plan selected by the employee.¹³ Thus, the faculty member would be responsible for any premium costs above \$606.50 amount; and for spouse and dependent coverage. Under the Union's proposal the College is automatically on the hook for the premium regardless of the amount of the increase. The reality is that health insurance premiums frequently go up; they seldom go down.

The Union is opposed to a fixed dollar amount for its contribution towards employee health insurance costs. The Union proposes that the College pay 100% of the monthly premium for the employee's single HMO health insurance plan. The employee is responsible for any amounts for premiums associated with the plan selected by the employee that is more than the HMO plan. The Union opposed the College's initial offer because it contained a waiver of the right to bargain health insurance.

Bargaining over health insurance benefits is not easy. This Special Magistrate understands that it is most advantageous for all the College's employees be included in a single health plan because a larger pool of healthcare recipients is generally more cost-effective than a smaller pool.

This Special Magistrate has recommended the College's proposal for a new work load formula and extra assignment provisions. No one really can predict how the work load and extra assignment changes will impact the bargaining unit member's compensation. Based on the testimony provided, it is likely that the result will mean lower annual compensation for some (perhaps for many) bargaining unit members. Further, the College's health insurance proposal to contribute \$606.50 per month/employee is based on the current year; and likely will be inadequate next year. Adopting both the College's proposal for new work formula and its new health insurance proposal at the same time could have the unintended consequences of significantly smaller take home pay for many faculty members. Simply,

¹² The current monthly premium for a single HMO is \$606.50.

¹³ The evidentiary record does not include survey data regarding comparable employer's health insurance contribution amounts.

implementation of the new work load formula and a fixed health insurance contribution base on the current year is too much in one year.

Article 27 – Discipline

Special Magistrate’s Recommendation

1. The College’s proposal (standards of conduct).

And:

2. A written oral warning and written reprimand may be appealed in writing to the Vice President for Academic Affairs/Provost or his/her designee whose decision shall be final. The employee may submit a written rebuttal to the College’s final decision. Such rebuttal shall be part of the employee’s personnel file.

3. A suspension or dismissal may be appealed through the grievance/arbitration process under Article 8.

4. Revise Policy 05-16 Suspension, Dismissal or Non-Renewal of Contracts, to incorporate provisions concerning bargaining unit employees.

Discussion

The College’s proposal establishes a list of “reasonable standards of conduct”. It asserts that it is not attempting to deny faculty members due process as Policy 05-16 Suspension, Dismissal or Non-Renewal of Contracts, provides more than adequate procedural due process prior to disciplinary action being taken. This policy is the status quo. Further, Article 11 includes a just cause provision.

The Union proposes a comprehensive discipline article that defines discipline, specifies the discipline procedure, subjects all discipline to the just cause standard, and gives faculty the right to grieve any disciplinary action. The Union asserts that its proposal is based on Florida State Board of Education Rules. The Union proposal provides for a hearing before the Board of Trustees under the Model Rules of Procedure, under Florida Administrative Code. All disciplinary action is subject to the grievance procedure. The proposal affirms that the bargaining unit member has the option to decide between filing a grievance under the Collective Bargaining Agreement or hearing with the Board of Trustees. Finally, the proposal gives the employee 24 hours advance notice before any investigatory interview and the right to be accompanied by a Union representative.

The College's proposal constitutes a list of reasonable standards of conduct. It makes no reference to the disciplinary process. During the hearing the College noted that Policy 05-16 outlines the College's disciplinary procedure which involves the right to request a hearing and ultimately a final resolution by the Board. Further, Policy 05-16 only deals with suspension, dismissal, or nonrenewal of contracts. For example, the Policy makes no reference to written reprimands, which are often utilized in the first step of a disciplinary process. Further, the Policy needs revision as it makes no reference to bargaining unit employees and the Collective Bargaining Agreement. Finally, under Article 8 - Grievance and Arbitration Procedure, the parties agree that a grievance constitutes differences involving the application or interpretation of the Collective Bargaining Agreement. Thus, the parties intend some type of grievance process for disciplinary actions.

The Union's proposal does not include standards of conduct. Its proposal that discipline shall be based only on a faculty member's work related performance, conduct or duties is problematic. It is axiomatic that, where there is a nexus to employment, the employee's off-duty conduct may constitute grounds for disciplinary action. Similarly, the Union's proposal that a faculty member be given 24 hours advance notice of any meeting at which possible disciplinary action will be discussed the member is also problematic. This rule could be construed to mean that if a supervisor wishes to talk to a faculty member about a late project, the supervisor must give 24 hour notice. The Union asserts that the basis of its proposal can be found in Florida Statute and Administrative Code, as well as Board of Education rules dealing with disciplinary matters. This Special Magistrate admits that he is not fully knowledgeable with respect to those sources.

This Special Magistrate addresses the above concerns in his recommendations. The College's proposed standards of conduct constitute reasonable and comprehensive standards. This Special Magistrate recommends that written oral warnings in written reprimands not be processed through the grievance/arbitration process. It is generally accepted among labor arbitrators that oral warnings and written reprimands do not carry great evidentiary weight because they are corrective notices to the employee. Also, as a practical matter, arbitration of a written warning and reprimand would backlog the process, causing problems for both parties.

Article 28 – Reduction in Force

Special Magistrate’s Recommendation

College’s proposal with the following revisions in Paragraph 1:

1. Reduction in Force Criteria. The following criteria will be utilized in the event that it becomes necessary to reduce personnel:

A. The needs of the College community;

B. Employee’s faculty rank, years in rank, and years at the College as a full-time faculty with in the bargaining unit, and the highest in-filed degree/credential;

C. Employee performance as determined by existing evaluations.*

D. Educational qualifications and/or expertise in assigned position(s); and

E. Relevant work experience.

The College will establish the layoff unit, including but not limited to department, program, campuses, disciplines, and sub-disciplines. The employee with the lowest rank in the specified work unit or program would be laid off, unless the College can demonstrate that the other Reduction in Force Criteria outweigh rank.

*Incorporated with the above criteria for criteria for reduction are the working definitions of the evaluative criteria as stated in the Florida Board of Education Rules.

Discussion

The College proposes that the following criteria will be used if it is necessary to reduce personnel: the needs of the College community, employee performance as determined by existing evaluations, educational qualifications and/or expertise, and relevant work experience. The College does not want seniority to ever be the sole criteria in its decision-making. Dr. Moore-Davis testified that the goal of every institution is to retain its best faculty, regardless of status. There simply is no correlation that the person with the longest teaching experience at any institution is the best qualified. Using criteria to determine who is the best qualified is what is best for the students and the College’s future as an institution. The College also disagrees with the Union’s proposal that a person whose position is eliminated may be offered placement into a vacancy for which they are equally qualified in another department or program. Further, the College proposes that the reduction in force policy applies to any consolidation, reduction or elimination of a program and that application of that process can be grieved

pursuant to the grievance and arbitration procedure. Finally, the Union's proposal seems to add requirements that go beyond impact bargaining.

The Union proposes the elimination of all annual contract faculty first; and then layoff in order of: faculty rank, years in rank, years at the College as a full-time faculty with in the bargaining unit, and the highest in-filed degree/credential. The Union asserts a major difference between the parties proposals is that the College wants to have the ability to select those who remain, ostensibly because they are the "best faculty." However, "best" is a subjective standard which is prone to cronyism, favoritism, political or personal beliefs and connections and all manner of gaming the system.

Both parties have worthy interests with respect to a reduction in force. The bargaining unit employees strive for some sort of security, fairness and objectivity and the exercise of management rights. The Employer is concerned about a burdensome seniority system. This Special Magistrate recommends the College's proposal with the following revisions:

1. Reduction in Force Criteria. The following criteria will be utilized in the event that it becomes necessary to reduce personnel:

- A. The needs of the College community;
- B. Employee's faculty rank, years in rank, and years at the College as a full-time faculty with in the bargaining unit, and the highest in-field degree/credential;
- C. Employee performance as determined by existing evaluations.*
- D. Educational qualifications and/or expertise in assigned position(s); and
- E. Relevant work experience.

The College will establish the layoff unit, including but not limited to department, program, campuses, disciplines, and sub-disciplines. The employee with the lowest rank in the specified work unit or program would be laid off, unless the College can demonstrate that the other Reduction in Force Criteria outweigh rank.

*Incorporated with the above criteria for criteria for reduction are the working definitions of the evaluative criteria as stated in the Florida Board of Education Rules.

What the Special Magistrate is trying to say is that an employee's rank/seniority should be a consideration in implementing a reduction in force. It is not in the public's interest to base a reduction in force solely rank and/or seniority. However, it provides an objective measure among the other criteria

which can be very difficult to define. This Special Magistrate's extensive experience in labor relations, including reductions in force, has taught that there is no perfect layoff system. Most often, the application of layoff provisions results in grievances – which is problematic for each party. It is obvious that the solution to their dispute on this complicated issue cannot be resolved by to this Special Magistrate. The parties are urged to return to the bargaining table a work out some sort of compromise on this issue.

Article 29 – Academic Calendar

Special Magistrate's Recommendation

Delete this Article

Discussion

The parties cannot agree on the appointment of bargaining unit representatives on the Academic Planning Committee.

This Special Magistrate recommends deletion of this Article for the same reasons discussed in his recommendations in Article 24 – Insurance Benefits and Leave.

Article 31 – Duration

Special Magistrate's Recommendation

College's proposal.

Discussion

The College proposes a one-year contract to be effective from ratification until June 30, 2019. The College's position is that reopener provisions, meant to restrict the scope of negotiations, more often than not morph into full-fledged negotiations, become just as complicated as so-called full negotiations, and accordingly take just as long.

The Union proposes a multiyear agreement effective upon ratification until June 30, 2020, with limited reopener provisions in July 2018 and 2019. The Union asserts that the multiple year agreement allows the parties time to implement the new terms and conditions of employment; and contribute to labor peace.

This Special Magistrate is not inclined to recommend a multiple year agreement unless both parties agree to do so.

CONCLUSION

The parties have been in very difficult negotiations for an initial labor agreement. While this is not an easy task, tentative agreement has been reached on many issues. Each party is to be commended on its professional presentation during the February Special Magistrate hearing. Important differences were discussed at that hearing. However, throughout the hearing each party exhibited courtesy and professionalism towards its counterparts.

It is the Special Magistrate's hope that the parties will consider his recommendations with the understanding that his primary intention was to offer a peaceful, prompt and just settlement of the issues at impasse while taking into consideration the factors listed in Florida Statutes Section 447.405.

Further, it must be emphasized that the absence of any treatment or discussion related to any matters or arguments presented must not be construed to be a lack of attention thereto, since all matters were considered.

Respectfully Submitted,



M. Scott Milinski

Special Magistrate

July 23, 2018