

RECEIVED

FEB 25 2008

TO: Broward Community College Board of Trustees
President David Armstrong
FROM: United Faculty of Florida/Broward
DATE: February 24, 2008
RE: Broward Community College Board of Trustees and
The United Faculty of Florida/Broward: Case No. SM-2007-038

PRESIDENT'S OFFICE

David Rieger, PhD

On February 14, 2008, the Broward Community College administration submitted to the Public Employee Relations Commission (PERC) a letter in which the BCC administration declared its rejection of three recommendations made by Special Magistrate Thomas Young III concerning Case No. SM-2007-038. Special Magistrate Young submitted his recommendations on February 1, 2008, following hearings on December 17 and 19, 2007, concerning Case No. SM-2007-038. On February 4, 2008, in a special meeting of the UFF/Broward Executive Council, the United Faculty of Florida/Broward voted unanimously to accept all the recommendations of the Special Magistrate including the three recommendations rejected by the BCC administration.

The United Faculty of Florida/Broward submits to the Broward Community College Board of Trustees and to President David Armstrong, pursuant to Florida Statute 447.403(4)(b), the following responses to the administration's letter to PERC and submits the following recommendations for resolving the impasse in labor negotiations.

ISSUE #3 – Health Care Benefits Task Force

The administration's letter to PERC claims that UFF/Broward's proposal concerning a health care benefits task force (SM Hearing UFF Exhibit #5) would

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“...make the task force an additional, mandatory part of the bargaining process” (BCC administration’s letter to PERC, p. 1). The administration never made this argument during negotiations, before the impartial Special Magistrate, or in its post-hearing brief. Not only is this a new argument, it is difficult to discern what the administration means by it. First, this argument might be understood to mean that UFF/Broward’s proposal would require the use of a health care benefits task force during negotiations. If this is the meaning of the argument, the argument is perplexing because during negotiations (September 17, 2007) the administration proposed that a health care benefits task force be made part of college policy and submitted language for such a policy to UFF/Broward’s negotiating team.

As part of college policy, a task force would be no less a mandatory part of the bargaining process than if UFF/Broward’s proposed language were to be incorporated into the Collective Bargaining Agreement (CBA) as recommended by the impartial Special Magistrate. In other words, whether or not UFF/Broward’s proposed language is incorporated into the CBA, as long as a task force is in college policy, a task force would be a mandatory part of the bargaining process.

Yet, in a certain respect, it is misleading for the administration to claim that a task force would be part of the bargaining process. Per labor law and the CBA (Article 1), the United Faculty of Florida is the exclusive negotiating agent for full-time faculty. Therefore, a task force would be and would remain *only* a recommending body even if UFF/Broward’s proposed contract language were to be incorporated into the CBA as the impartial Special Magistrate has

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recommended. UFF/Broward's proposed language concerning a health care benefits task force and the impartial Special Magistrate's recommendation do not and would not change the task force as a recommending body as alleged by the administration's letter to PERC.

Second, the administration's argument might be understood to mean that UFF/Broward's proposal concerning a health care benefits task force would require that the task force itself would be subject to negotiations. If this is the meaning of the administration's argument in its letter to PERC, then not only is the argument new, it is also duplicitous. As noted above, during the negotiating meeting of September 17, 2007, the administration submitted language concerning a health care benefits task force for inclusion in college policy. This proposal was presented to UFF/Broward as an alternative to UFF/Broward's proposal concerning a health care benefits task force presented at the bargaining meeting of September 5, 2007. According to UFF/Broward notes of the September 17 meeting, UFF/Broward asked the administration's chief negotiator whether the administration's proposal would be subject to CBA Article 3.60 ("Policy Changes"). Article 3.60 requires that certain changes to College policy must be bargained at the request of UFF/Broward prior to the implementation of those changes. The administration's chief negotiator unequivocally affirmed that the administration's proposal submitted on September 17, 2007, would be subject to CBA Article 3.60.

Since the declaration of impasse by the Board of Trustees left UFF/Broward's proposal un-resolved, UFF/Broward submitted its proposal to the

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impartial Special Magistrate. At the special magistrate hearing, UFF/Broward expressed concern that a Board of Trustees might change a college policy that reflected current practice concerning a health care benefits task force and would not consider the change subject to CBA Article 3.60. That is, UFF/Broward expressed concern that a Board of Trustees might not consider the following items of the administration's September 17 proposal as being subject to bargaining even though such items currently are: the composition of a task force, UFF/Broward's role in the selection of task force members, and the requirement that the task force's recommendations be submitted to UFF/Broward. The administration's letter to PERC only confirms UFF/Broward's concerns.

Regardless of how the administration's argument in its letter to PERC is to be understood, it should be noted that the language proposed by UFF/Broward, and recommended by the impartial Special Magistrate for incorporation into the CBA, is part of the language proposed by the administration's negotiating team during bargaining (September 17, 2007) for inclusion in college policy.

The administration's letter to PERC also claims, "...the existing provisions of the CBA already require significant and cumbersome procedures in benefit negotiations" (BCC administration's letter to PERC, p. 1). This is another argument that the administration never raised during negotiations, during the special magistrate hearings, and never presented in its post-hearing brief. Nevertheless, the CBA, Article 6.0 ("Benefits"), makes no mention of any significant and cumbersome procedures for negotiating benefits that are any

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more significant or cumbersome than are the procedures for negotiating any other article of the CBA.

Article 6.0 requires the Vice President of Human Resources to send annual recommendations concerning benefits to the UFF/Broward President. However, every item that the administration seeks to negotiate is presented, directly or indirectly, to the UFF/Broward President. Article 6.0 requires that the recommended benefits be negotiated with UFF/Broward before the College President presents such recommendations to the Board of Trustees. However, the same is true for every other item subject to bargaining. Article 6.0 recognizes that the Board of Trustees has the right to accept or reject any recommendation concerning benefits presented to it by the College President. Again, the same is true for every negotiated item.

UFF/Broward seeks inclusion in the CBA of its proposed language concerning a health care benefits task force because:

- The task force, as a recommending body, has played a valuable role to UFF/Broward's negotiating team as well as to the administration.
- The subject matter addressed by the task force and about which it makes recommendations is subject to bargaining.
- Even if UFF/Broward's proposed language were incorporated into the CBA, as recommended by the impartial Special Magistrate, the health care benefits task force would remain *only* a recommending body.
- UFF/Broward's proposed language is part of the language proposed by the administration for inclusion in college policy.

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-UFF/Broward's proposed language insures that certain changes to the administration's proposed college policy concerning a health care benefits task force will be subject to negotiations. As UFF/ Broward argued before the impartial Special Magistrate, future Boards of Trustees might not consider the language of college policy concerning a health care benefits task force as subject to CBA Article 3.60.

-The impartial Special Magistrate deemed as reasonable UFF/Broward's arguments for inclusion of its proposed language concerning a health care benefits task force.

Since a health care benefits task force has played a valuable role and since that role is beneficial to the College and its employees, the UFF/Broward recommends that its proposed language concerning this matter be included in the Collective Bargaining Agreement, as the impartial Special Magistrate has recommended.

ISSUE #4 – Seniority

In its letter to PERC, the administration claims that if UFF/Broward's proposed language concerning seniority (SM Hearing UFF Exhibit #8) were to be placed in the CBA, as recommended by the impartial Special Magistrate, such inclusion would "...adversely conflict with other sections of the agreement, including, but not limited to [Article] 2.5.0 and its provision pertaining to reduction in force" (BCC administration's letter to PERC, p. 2).

The administration's letter to PERC does not include arguments for just how the addition of UFF/Broward's proposed language to the CBA would

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adversely conflict with various articles of the Collective Bargaining Agreement including CBA Article 2.50. The impartial Special Magistrate obviously found any such arguments made during the special magistrate hearing wanting. In addition, the administration's letter to PERC overlooks and fails to note the fact that UFF/Broward's proposed language for a college-wide definition of seniority specifically states that the proposed definition for seniority does not apply to reduction in force (i.e., Article 2.50), though this is acknowledged in the administration's post-hearing brief ("It should be further noted that the proposed 'universal' definition of seniority would not be applied to BCC's method of determining lay-offs or compensation in any way," BCC administration's post-hearing brief to the Special Magistrate, p. 21). If UFF/Broward's proposed college-wide definition of seniority does not apply to Article 2.50, the proposed definition can hardly conflict with it.

During negotiations and the special magistrate hearing, the administration acknowledged that some academic departments have developed and utilized department-generated definitions of seniority. In its post-hearing brief, the administration acknowledges that academic departments are even at liberty to generate, for departmental use, definitions of seniority that reflect UFF/Broward's proposed college-wide definition for seniority ("Individual departments are certainly free to adopt UFF's proposed definition if they deem it appropriate...", BCC administration's post-hearing brief to the Special Magistrate, p. 21). Yet, the administration never argued that any definitions for seniority, including one that might reflect UFF/Broward's proposed college-wide definition, generated by

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the academic departments adversely conflicted with or conflict with various sections of the CBA. The impartial Special Magistrate perceived and concluded that UFF/Broward's proposed *college-wide* definition for seniority does not and would not conflict with various sections of the CBA either.

During the special magistrate hearing as well as during negotiations, the administration repeatedly confused definition with process (e.g., departmental governance – CBA Article 2.93.2.A) without demonstrating how a college-wide definition of seniority could conflict with process. The impartial Special Magistrate clearly perceived that UFF/Broward's proposed college-wide definition of seniority would *not* pose a conflict with processes specified in the CBA.

As UFF/Broward argued during negotiations, during the special magistrate hearing, and in its post-hearing brief, UFF/Broward seeks inclusion of a college-wide definition of seniority into the Collective Bargaining Agreement to insure that faculty members who transfer from one campus to another, within the same academic discipline, are not subject to potential arbitrary and capricious whims of the receiving academic department. Any departmental process that is utilized in such a way that a faculty member's teaching service is not fully recognized can hardly be regarded as a *favorable* use of that system. Since fair, impartial, and universal treatment of faculty employees of the College is beneficial to the faculty employees and to the College, UFF/Broward seeks inclusion, as recommended by the impartial Special Magistrate, of its proposed language into the CBA as Article 2.93.2.A.1, an appropriate section of the CBA for such proposed language.

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ISSUE #5 – Faculty Evaluation

It is disingenuous for the administration to claim that inclusion of UFF/Broward’s proposed modifications to CBA Article 7.50 (Faculty Evaluation; SM Hearing UFF Exhibit #6) would “...eliminate any indication in the Collective Bargaining Agreement that faculty evaluations may be used to ‘evaluate Faculty job performance’” (BCC administration’s letter to PERC, p. 2). The administration did not address this issue in its post-hearing brief to the Special Magistrate, but, more importantly, during the special magistrate hearing, the administration claimed that the difference between the administration’s position and UFF/Broward’s position concerning this matter is merely semantic. However, a semantic difference of the sort the administration claimed does not and cannot eliminate anything of substance. Such a semantic difference does not and cannot eliminate “[t]he ability to evaluate the overall performance of both instructional and non-instructional faculty members...” (BCC administration’s letter to PERC, p. 2). In fact, UFF/Broward’s proposal retains, as part of the faculty evaluation, the current contract language that includes “general knowledge of” the faculty member.

The forms, guidelines, and timelines for faculty evaluations submitted by UFF/Broward during negotiations include factors (e.g., service to the College, service to students, and progress towards professional development) beyond effectiveness in the classroom. Contrary to the administration’s letter to PERC, a mere semantic difference of the sort the administration claimed can hardly be thought to “...limit the ability of BCC to conduct full evaluations of Faculty

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performance for both teaching faculty and counselors and librarians....” (BCC administration’s letter to PERC, p. 2). To claim otherwise is a fallacy that would be unacceptable if a BCC student were to make it. In fact, point #(2) of CBA Article 7.50 states that one of the purposes of a faculty evaluation is “to encourage the highest quality performance by Faculty” (Collective Bargaining Agreement, Article 7.50).

The impartial Special Magistrate clearly perceived and understood that UFF/Broward’s proposed modifications to CBA Article 7.50 seek to clarify the current contract language that members of the administration’s negotiating team misinterpreted during the course of bargaining. Since clear and unambiguous contract language is beneficial to both faculty employees and the administration, UFF/Broward recommends that the recommendation of the impartial Special Magistrate be followed.

Concluding Statement

During the course of negotiations, UFF/Broward believed that it provided well-conceived rationale for its proposals and proposed contract language. UFF/Broward subjected its arguments for its proposals and its proposed contract language to the examination of the impartial Special Magistrate both at the special magistrate hearing and in UFF/Broward’s post-hearing brief. That an *impartial* special magistrate’s recommendations are for the most part favorable to UFF/Broward is an acknowledgment of and confirmation of the sound reasoning reflected in the arguments made by UFF/Broward.

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UFF/Broward believes that following the recommendations of the Special Magistrate, who served as an *impartial* party, is the reasonable way to resolve the disputed impasse issues. Based upon the arguments advanced by UFF/Broward, the impartial Special Magistrate recognized that UFF/Broward's proposals and proposed contract language are beneficial to the faculty employees as well as to the College and pose no disadvantage to any employee or to the College. The impartial Special Magistrate's recommendations concerning the disputed impasse issues confirm UFF/Broward's arguments that UFF/Broward's proposals and proposed contract language promote the protection of the faculty as public employees, promote the fair treatment of those public employees, and clarify the contract language governing the work and service of the faculty as public employees.

The administration's arguments - never employed by the administration during negotiations, during the special magistrate hearing, or in the administration's post-hearing briefs, but for the first time introduced in the administration's letter to PERC - strike one as contrived and arguments of convenience rather than arguments of substance. The administration's arguments concerning the disputed impasse issues are contrived arguments of convenience because an *impartial* special magistrate will not hear and will not examine such arguments. The administration's new arguments - introduced for the first time after months of negotiations, after two days of an impartial special magistrate's hearings, and after the filing of a post-hearing brief - are no substitutes for arguments that have been tried and tested before an *impartial*

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magistrate and are no substitutes for arguments that the impartial Special Magistrate found to be of substance.

Further, the administration's letter to PERC does not identify a single flaw in the reasoning employed by the impartial Special Magistrate to arrive at his recommendations.

Unlike the arguments presented for the first time by the administration in its letter to PERC, UFF/Broward's arguments, particularly in the form of a post-hearing brief, for its positions concerning a health care benefits task force, seniority, and faculty evaluation have been tried and tested before the scrutiny of an *impartial* special magistrate. The impartial Special Magistrate found those arguments reasonable enough so that the proposals those arguments were constructed to support were recommended for inclusion in the Collective Bargaining Agreement.

The *reasonable* way, then, to resolve the disputed impasse issues is to follow the course of those arguments that have been tried and tested before an *impartial* party and, hence, to follow the recommendations of the impartial Special Magistrate, whose reasoning the administration failed to demonstrate as flawed in its letter to PERC. Very loosely paraphrasing a statement the ancient Greek philosopher, Socrates, makes to his faithful friend Crito: Let us forgo the contrived and the convenient; let us follow the course of reason, the course of tried and tested arguments; that is, let us follow the course the gods would choose, if there are any gods.

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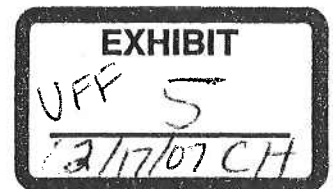
6.16 Health Benefits Task-Force

A. Of the thirteen task-force members, the UFF/Broward President shall appoint four Faculty members to the Health Benefits Task-Force (Broward Community College Policy xxxxx).

B. The Health Benefits Task Force shall submit a report of its recommendations to the UFF/Broward Executive Council (Broward Community College Policy xxxxx).

~~6.16~~ 6.17 Cafeteria Plan

~~6.17~~ 6.18 Qualified Retirement Plan



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Collective Bargaining Agreement

2007-2008

Appendix G

LETTER OF UNDERSTANDING

The purpose of this agreement is to incorporate a process for settling disputes between Faculty members and/or supervisors provide a definition of seniority. It shall be in effect through the Academic Year 2007-2008. It shall be revisited at the next bargaining period automatically (i.e., it shall not count as a bargaining opener).

If seniority is adopted per Article 2.93.2.A or utilized for any other purpose (e.g., office assignments) in addition to assigning schedules, seniority shall be defined as a Faculty member's length of continuous, full-time bargaining unit service in a Faculty position (instructional, librarian, and counseling) at the College.

~~If, in the assignment of class and/or work schedules, a conflict arises between two or more full-time Faculty members, and all other factors are deemed equal by the appropriate immediate supervisor or other administrator, seniority may be used to determine who will be allowed to choose among available options.~~

~~In determining seniority for this purpose, yYears of full-time Faculty experience at BCC shall be the sole determinant in this definition of seniority. All years of full-time Faculty experience shall be counted, even if there is a break in service for any reason.~~

It is expressly recognized that this is the sole agreed upon use definition of seniority. Years of service to BCC will still prevail in Reduction in Force situations (Article 2.50) and salary calculations.

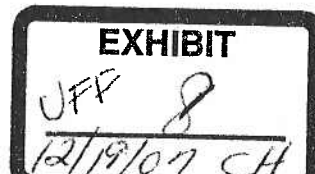
President
United Faculty of Florida
Broward Community College

President
Broward Community College

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7.50 Annual Faculty Evaluation

Faculty shall be evaluated ~~at least once annually~~ and they shall be advised of the academic semester during which such annual evaluation will be made.

The purposes of evaluation are to:

- (1) ~~To~~ promote the highest quality instruction (teaching/learning).
- (2) ~~To~~ encourage the highest quality performance by Faculty.
- (3) ~~To~~ encourage professional growth and development of Faculty.
- (4) ~~To evaluate Faculty job performance.~~ review the effectiveness of instruction and service to students and to use the results to improve instruction and service to students.

The ~~Professional Development Evaluation~~ Faculty Evaluation shall be based upon data obtained from the Faculty member's self-evaluation, student evaluations opinion surveys, classroom visitation which is required annually of non-tenured Faculty, and shall be made of tenured Faculty once every three years by the immediate supervisor, and general knowledge of the instructor.

The procedures, forms, and timelines to be used for the Faculty Evaluations are located in the BCC Faculty Handbook.

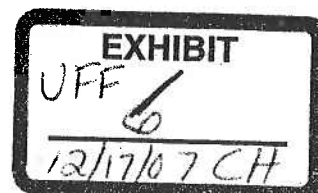
Classroom visitations by the ~~immediate supervisor~~ may be made ~~as part of the annual evaluation process~~ or may be made at other times of the academic year when determined necessary by the ~~immediate supervisor~~. Such observation or visitation shall occur when the Faculty member is performing regular teaching duties. The ~~immediate supervisor~~ initiates the classroom observation by scheduling a mutually agreeable date and time and explaining the purpose for the visit. If such an agreement cannot be reached, the immediate supervisor shall set the time and date of the classroom observation with at least one week's notice. When the visitation is requested by the Faculty member, the Faculty member and immediate supervisor shall determine a mutually agreed upon date. In either case, results of the observation shall be shared with the Faculty member.

The evaluation shall be in writing and the Faculty member shall be provided the opportunity to discuss the evaluation with the evaluator prior to its being forwarded through administrative channels to the confidential portion of the Faculty member's personnel file.

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The evaluation shall be signed by the person performing the evaluation and by the person being evaluated, who may attach a concise comment to the evaluation. A copy of the evaluation shall be given to the Faculty member.

The person responsible for supervising and evaluating a Faculty member shall assist the Faculty member in correcting any performance deficiencies reflected in the Faculty members annual evaluation by prescribing a developmental plan.

A Faculty member who receives an unsatisfactory evaluation may seek review of that evaluation pursuant to College Policy 6Hx2-4.15. The decision of the reviewing authority shall not be subject to challenge under the grievance procedure of this Collective Bargaining Agreement.

Nothing herein shall be construed to prevent an employee from challenging an evaluation in a disciplinary proceeding if such evaluation is used to support disciplinary action.

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