

October 20, 2010

Richard Walsh, Chair of the University of Central Florida Board of Trustees
c/o W. Scott Cole, Counsel to the Board of Trustees
4000 Central Florida Blvd.
Orlando, FL 32816

Dear Mr. Walsh,

Attached are UFF's proposals for resolution of the impasse between the University of Central Florida (UCF) and the United Faculty of Florida (UFF). I appreciate the opportunity to provide these proposals to the UCF Board of Trustees for consideration as the legislative body in this impasse proceeding.

However, I find that I must take issue with the "guidelines" that state UFF must present a written statement at least two business days before the hearing which translates to Tuesday, October 19.

While the University's Chief Executive Officer is mandated to provide their recommendations within ten (10) days after rejection of a recommendation of the special magistrate, there is no such statutory requirement for the employee organization. The relevant authority is found in Florida Statutes §447.403(4)(b) below.

- (4) If either the public employer or the employee organization does not accept, in whole or in part, the recommended decision of the special magistrate:
 - (a) The chief executive officer of the governmental entity involved shall, within 10 days after rejection of a recommendation of the special magistrate, submit to the legislative body of the governmental entity involved a copy of the findings of fact and recommended decision of the special magistrate, together with the chief executive officer's recommendations for settling the disputed impasse issues. The chief executive officer shall also transmit his or her recommendations to the employee organization;
 - (b) The employee organization shall submit its recommendations for settling the disputed impasse issues to such legislative body and to the chief executive officer;
 - (c) The legislative body or a duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the rejected recommendations of the special magistrate;
 - (d) Thereafter, the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues;

This is especially troublesome when the University submits this notice to the Union via a letter to Tallahassee on Tuesday, October 12, with US Postal Service deliver after 4:30 p.m. on Friday, October 15. Clearly, this fails to provide adequate preparation time for a deadline the following Tuesday.

Regardless of the timing of the “deadline” the law establishes an insulation period during which we are not supposed to communicate with the legislative body prior to the legislative body hearing. I have attached the UFF response and proposal so it may be made available to the legislative body at the hearing.

Thank you for your understanding and attention to this in the future.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Moats". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Michael L. Moats
Service Unit Director
United Faculty of Florida

Enc: Statement of UFF's Position Regarding Issues at Impasse

cc: Michael Mattimore
Ed Mitchell
Jim Gilkeson

UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES

IN THE MATTER OF IMPASSE BETWEEN:

**UNITED FACULTY OF FLORIDA,
Union**

AND

Case No. SM-2010-032

**UNIVERSITY OF CENTRAL FLORIDA
BOARD OF TRUSTEES,
Employer**

_____ /

To: Richard Walsh, Chair of the University of Central Florida Board of Trustees
c/o W. Scott Cole, Counsel to the Board of Trustees
4000 Central Florida Blvd.
Orlando, FL 32816

**STATEMENT OF UNITED FACULTY OF FLORIDA'S POSITION
REGARDING ISSUES AT IMPASSE**

The United Faculty of Florida (UFF) presents the following recommendations for resolving the disputed impasse issues in this matter pursuant to Florida Statutes §447.403(4)(b). A copy of the Special Magistrate Kenneth Starr's Report and Recommendations was provided to the Board by the UCF administration with their statement.

Although UFF accepts the majority of the Special Magistrate's recommendations, UFF rejects the following pursuant to Florida Statutes §447.403(3).

Section 23.4 (a) – One-Time Bonuses. The Union believes that fairness and equity to all employees in the bargaining unit is best achieved when negotiated salary payments are provided to contract and grant (C&G) employees in the same manner and amounts as for

educational and general (E&G) employees. Grants and contracts should provide for such payments, and if they are not funded by the grant or contract, the University should fund such salary payments through other available sources. To permit the University to determine if, and when, such payments or bonuses may be permitted constitutes a waiver of UFF's right to negotiate salary as a mandatory subject of bargaining and contradicts Florida Statutes.

Section 23.8 – Salary Increases for C&G Employees. UFF rejects both language that permits the BOT to not provide such pay raises, and language that permits the BOT to exceed the salary increases negotiated for other employees. This constitutes a waiver of UFF's right to negotiate salary as a mandatory subject of bargaining and contradicts Florida Statutes.

Section 23.12 – Administrative Salary Stipends. UFF rejects language that permits the University to unilaterally determine salary stipends, to pay such stipends without notification to UFF, or to sustain such stipends after the end of such administrative duties. This constitutes a waiver of UFF's right to negotiate salary as a mandatory subject of bargaining and contradicts Florida Statutes.

The University rejects several of the Special Magistrate's recommendations for which UFF will also provide recommendations, specifically the following.

Section 23.2 – Starting Salaries. The concept of a *minimum* starting salary was supported and recommended by the Special Magistrate. During bargaining UFF proposed language that provided a starting salary for all employees based on the mean

salary in the most current CUPA-HR Salary Survey. However, UFF accepts the Special Magistrate's recommendation for a minimum starting salary.

Section 23.5 – Merit/Across the Board Salary Increases. UFF accepts the Special Magistrate's recommendation for

“an across-the-board increase in the agreed-upon amount, effectively retroactively to the latest date upon which increases were provided to other University employees, for all bargaining unit members who received at least a *Satisfactory* evaluation.”

Since neither the University nor UFF filed exceptions to the recommendations of the Special Magistrate on the following, they are not before the legislative body for consideration.

Incentive Award Programs

Awards of Distinction

Grievability

Administrative Discretionary Increases

UFF's position throughout bargaining and the impasse process is that, while it previously waived its right to bargain certain mandatory subjects of bargaining, it has now withdrawn those waivers and it is impermissible for the University to insist the following subjects to impasse:

Salary Increases and One-Time Bonuses for C&G Employees, Administrative Salary Stipends, Grievability, and Administrative Discretionary Increases.

The Special Magistrate recognized UFF's position as supported by both Florida Statutes and substantial case law:

“It is clear that a party may not insist to impasse on a permissive subject of bargaining. See *City of Casselberry v. Orange County PBA*, 482 So. 2d 336 (Fla. 1986); *United Faculty of Palm Beach Junior College v. Palm Beach Junior College Board of Trustees*,

7 FPER ¶ 12300 (1981), aff'd, 425 So. 2d 133 (Fla. 1st DCA 1982), aff'd in pertinent part, 475 So. 2d 1221 (Fla. 1985); *Hollywood Firefighters, Local 1375 v. City of Hollywood*, 11 FPER ¶ 16001 (1984), aff'd in pertinent part, 476 So. 2d 1340 (Fla. 1st DCA 1985).

“The issues in this matter appear to be identical to those presented in *United Faculty of Florida v. Florida Board of Education*, 28 FPER P 33232, CA-2002-020 (July 2002). As the Special Master stated prior to the filing of the ULP claim in that case, “A salary proposal is normally a mandatory subject of bargaining. However, I agree with the UFF that the FBOE's Article 23 salary proposal was transformed into a permissive subject of bargaining because it contained waivers of the UFF's right to bargain over the mandatory subjects of salaries and the scope of the grievance arbitration provision.”

Section 23.2 – Starting Salaries

The University stated in the Special Magistrate hearing that UFF’s proposal on starting salaries is an “infringement of its management right.” However, Florida Statutes §447.309 states the parties “...shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.” Since starting salaries are clearly wages, it must be concluded that the parties shall bargain starting salaries. Salaries have never been a management right and to state so clearly misrepresents the circumstances.

UFF’s waiver of its right to bargain starting salaries of new employees in prior collective bargaining agreements at UCF does not prevent UFF from exercising their right to bargain this mandatory subject at this time. UFF notified UCF of their intent to remove said waiver and to bargain starting salaries. The University refused to bargain this issue.

UFF determined that starting salaries at UCF fail to keep pace with economic considerations and starting salaries at other state universities and surrounding colleges. These conditions have resulted in starting salaries for many faculty members at UCF remaining stagnant or perhaps dropping as budget situations and the need to maintain salaries for other

faculty have limited the funds available. The result is that while a handful of outstanding new faculty at UCF may command a highly competitive starting salary, and salaries of higher ranking faculty have kept average salaries high, many rank-and-file faculty in areas such as English and the humanities start at salaries significantly lower than at other universities and nearby colleges.

Section 23.4 (a) – One-Time Bonuses

At the impasse hearing, the parties appeared to agree almost all terms for payment of bonuses. Both UCF and UFF proposed a one-time payment of \$1,500 to each educational and general fund (E&G) employee who was employed as of July 1, 2009 and whose 2008 evaluation was *Satisfactory* or higher. Those employed on or after December 1, 2008 would be assigned a *Satisfactory* rating for the purposes of this payment. The parties are in agreement on these issues.

The parties disagree with respect to how the one-time payment will apply to Contracts & Grants (C&G) funded employee. Both parties agree with the initial language that “Contract and Grant (C&G) and auxiliary funded employees are also eligible”. However, UFF disagrees with language that permits the University unilateral discretion, “but any bonuses provided in such cases shall be paid from the appropriate contract, grant, or auxiliary revenues, *if such increases are provided by the granting agency*”. The emphasized phrase permits the University to withhold such bonuses from certain C&G employees.

In discussions with the University, it appears that such payments are permitted in C&G funding.

As stated in previous references to C&G employees, UFF believes that the University has an obligation to equity for these employees and fund any bonuses negotiated by the parties.

Section 23.5 – Merit/Across the Board Salary Increases

UFF agrees with the recommendation of the Special Magistrate for “an across-the-board increase in the agreed-upon amount, effectively (sic) retroactively to the latest date upon which increases were provided to other University employees, for all bargaining unit members who received at least a *Satisfactory* evaluation.”

Interestingly, the UCF administration has repeatedly sent email notices to employees offering a 1% raise pool and an email in September declaring that "The University agrees 100 percent with the magistrate’s recommendation that faculty members receive the compensation package UCF has offered. Getting faculty members that money has been our goal from Day 1."

Now the same administration is recommending no salary increase at all in retaliation for UFF refusing to reinstate the same Administrative Discretion Increase (ADI) ruled inappropriate for impasse in last year’s negotiations.

Section 23.8 – Salary Increases for C&G Employees

The Union proposes simple language that would require employees funded through C&G to receive salary increases equivalent to those employees funded through E&G funding.

Previous language, while similar, provided that such increases were subject to the conditions of the C&G funding, and if not funded, the President or representative would seek approval from C&G sources to permit the salary increases.

UFF sought documentation of the results of any such activities throughout bargaining. However, the University refused to provide such information. It was not until the Special Magistrate hearing that the University testified that apparently no C&G employee had been

denied such an increase in the past. Therefore, UFF contends that the University should have no problem continuing to provide such increases for C&G employees.

Section 23.12 – Administrative Salary Stipends

This is another area in which UFF has previously waived its right to bargain a mandatory subject of bargaining but has now decided to retract that waiver as a result of perceived abuse or failure of the University to fulfill its contractual obligations.

The previous language provided the University with the ability to provide a temporary salary increase “to an employee as compensation for performing a specific, titled administrative function”. The University was also required to report all such stipends to the Union, but was permitted to leave the stipend in place beyond the completion of the temporary duties and consider it an Administrative Discretion Increase (ADI).

Unfortunately, the University has failed to consistently notify UFF and to justify the raises. Therefore, UFF has withdrawn its waiver to bargaining this mandatory subject.

Recommendation for Board Action

UFF recommends that the Board of Trustees accept the Union’s position on these items as presented above.

Respectfully submitted,



Michael L. Moats
Service Unit Director
United Faculty of Florida
306 East Park Avenue
Tallahassee, Florida 32301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by email this 21st day of October, 2010, upon:

Michael Mattimore, Esquire
Allen, Norton & Blue
906 North Monroe Street
Tallahassee, Florida 32303

Richard Walsh, Chair of the University of Central Florida Board of Trustees
c/o W. Scott Cole, Counsel to the Board of Trustees
4000 Central Florida Blvd.
Orlando, FL 32816



Michael Moats
Service Unit Director
United Faculty of Florida
306 East Park Avenue
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