In the Matter of Impasse Between:
THE UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,

and

UNITED FACULTY OF FLORIDA (UFF)

Before: USF Board of Trustees Labor Committee
Hearing Date: July 16, 2009

The USF Board of Trustees Labor Committee was convened at 9:05 a.m. by Chair Rhea Law, with Trustee John Ramil and Trustee Bob Soran in attendance. Having a quorum for a duly noticed hearing and with the parties in attendance the hearing commenced as follows:

APPEARANCES:

A. For UFF- Ed Mitchell, Executive Director, UFF

B. For the University- Gerald D. Solis, Esq., Sr. Associate General Counsel

1. REMARKS BY THE CHAIR:

Chair Law welcomed the parties to the hearing before the USF BOT Labor Committee, a neutral committee established in 2001 and duly authorized under Section 447.34 of the Florida Statutes and the July 13, 2009 USF BOT Resolution to take action to resolve the impasse arising under the Collective Bargaining Agreement (CBA) between USF and UFF. Each party was informed that they would be afforded a full and fair opportunity to be heard. The process includes a fifteen (15) minute period to present their case during which time Committee members may ask questions that would not count toward the representative’s time. Thereafter, committee members may ask either representative questions regarding the impasse and its prospective resolution. Upon conclusion of the hearing the Trustees will deliberate, openly in the "sunshine," with the public and parties observing. A decision would then be reached and announced to the parties and then memorialized in the official minutes of the hearing, a copy of which will be provided to each representative.
Each of the Trustees had a copy of the record before them including the PERC Special Magistrate’s Order entered by Dennis J. Campagna on March 24, 2009 (Attachment “A”), UFF’s objections of May 26, 2009 (Attachment “B”), and USF’s objections of June 10, 2009 (Attachment “C”).

2. PRESENTATION BY UFF:

Impasse was declared by UFF on October 24, 2008. Thus, the UFF representative was granted the opportunity to present its case first. Mr. Mitchell, UFF Executive Director was acknowledged by the Trustees and essentially stated that:

UFF represents more than twenty thousand university faculty and graduate assistants at Florida Universities. Mr. Mitchell is a graduate of University of South Florida.

USF doesn’t believe that Florida Board of Governors (BOG) can designate the University Board of Trustees as the legislative body for resolution of impasse. UFF participation in the impasse hearing does not waive the right to challenge the authority to resolve impasse. In response to Chair Law comment, Mr. Mitchell confirmed that this is not an issue presented before the Board of Trustees Labor Committee.

The main issue is one of fairness and equity as reflected by a handout distributed to the Trustees and attached (Attachment “D”). On or about July 17, 2007 Renu Khator, then Provost and Senior Vice President, addressed a memorandum to all “Colleagues” in which she directed that beginning with the Fall 2007 semester, that all academic departments review their course offerings and match enrollment levels in their classes to the number of seats physically available in their classrooms. The parties engaged in impact bargaining before reaching impasse. The PERC appointed a Special Magistrate, held a hearing and issued an order that both sides have contested.

UFF maintains that there is an additional impact of extra course load falling on the shoulders of faculty without additional compensation. The handout illustrates UFF’s position in this regard on page 3 and suggests using an overload rate of 8.33% of the faculty employee's 2007-08 nine month salary if an employee’s teaching assignment results in the employee teaching 75% or more combined student credit hours in courses taught by the employee in the Fall 2007 semester than the combined student credit hours in courses taught by the employee in the Fall 2006 semester.

UFF’s objections are similar to managements’ because the Special Magistrate did not rule in a clear concise manner to solve the problem. UFF rejects the Magistrate’s first recommendation for failing to define "mass lecture” and failing to determine how affected employees would be compensated for increased class size.

UFF rejects the Special Magistrate’s second recommendation and states that committee process described would be duplicative of the established bargaining process. Thus, both parties have rejected this recommendation. A committee is not likely to resolve differences from parties.

The UFF proposal seeks additional compensation for employees who handled additional instruction. For instance, doubling a class load is unfair and additional compensation should be
Upon inquiry by the USF BOT Labor Committee, UFF essentially responded as follows:

While in the College of Business Administration student enrollment in some courses doubled that was not the case elsewhere so not all instructional loads were “maxed out.” The issues were handled differently in different departments. UFF will seek bargaining input on such issues.

Article 9.2 of the CBA is only used to resolve assignment disputes but has not yet been used to determine the value of course. That mechanism has never been used to assess the value of a course moving from .25 to .50 FTE. It may not be an effective way to resolve class size/value issues. The parties should bargain over these issues, although these issues have not been bargained into the CBA by the parties. UFF did seek impact bargaining in response to the University’s memo/change and the parties did engage in impact bargaining before impasse.

The increased enrollment in Dr. Robert Welker’s course (200 - 440 students) is on the extreme end. Neither the UFF nor USF administration captured data on average class increases across the university. In some classes increasing to capacity may only have added 5 students. The main issue is what is a “mass lecture” and that may vary from University to University. However, doubling student enrollment is significant.

When class size increased USF provided some additional Teaching Assistant/Graduate Assistant support in some cases but not all. The Magistrate’s report reflects Dr. Dorn’s testimony that adding conditional GAs and TAs to some courses (e.g. lab) had a low impact because in some cases having GAs/TAs does not necessary lower their workload because the faculty has to supervise the additional personnel. In the Business Law course taught by Dr. Welker there was no USF law school to use as a resource. However, USF did offer to hire a legally trained GA but that is not really a solution from UFF’s point of view. Dr. Welker receives calls from enrolled students. There is difference between 50 and 440 students in terms of impact on Dr. Welker. If every student wants to ask questions he would never be able to get to every student. No GA can really help with phone calls or e-mails, for instance, to Dr. Welker.

We should look to prior semesters to gauge an appropriate increase in compensation rather than looking forward in reaching a decision. The parties can handle the latter issue at the bargaining table.

Over 50% of USF courses are taught by GAs. However, GAs do not replace faculty members. USF is a very diverse university, thus one size does not fit all. GAs could probably take care of the problem more than half of the time. We are very dependent on GAs, which UFF also represents, at USF. At FSU approximately 70% of courses depend on GAs and at UF approximately 65%. So the SUS could not operate without GAs. The same is true, though to a lesser extent regarding adjunct faculty. We have to rely on them due to lack of appropriated resources and we need to look to alternatives to support academic instruction. But if work load is unilaterally increased then the compensation should be increased.
Apart from Dr. Welker’s classroom only about 3-4 rooms were built with mass lecture seating capacity. UFF asked the university and faculty for such data but received only very sporadic responses. (60-75) However, Dr. Welker is the Chief Negotiator and was available to confirm the situation regarding the auditoriums he uses to teach a Business Law course. UFF could not readily confirm data with other faculty or management.

The remedy sought by UFF is stated clearly on page 3 of the UFF handout (Attachment “D”) and should apply if an employee teaches 75 or more combined student credit hours. Certainly adding more students to courses may be more efficient, in the classroom itself, but it is after class where the additional work interacting students occurs. If GAs can be used to reduce additional workload from a doctoral program (which is majority of courses) then UFF is not seeking additional compensation in such instances. UFF is seeking compensation in areas where doctoral program GA support was not available. The CBA provides for additional compensation and the parties should follow that.

There is also an impact on academic freedom from USF’s action. Smaller courses (without 440 students) enable questions and interactions. The larger enrollments limit academic freedom and constrain faculty to a multiple choice format.

Faculty should be eligible for overload if they teach an extra course and should be paid at 8.33% under the CBA. USF just doubled the enrollment and paid the same rate. Impact bargaining is just bargaining over the impact of decision made by USF.

In using Fall 2006 as a base year we would look to the size of a faculty member’s course before and after the policy was changed. That cannot always be measured.

Under UFF’s proposal no additional compensation would be due for adding 25 students to a course with 70 enrolled students. However, 25 students were added to a 3 credit course in which 75 students were already enrolled in a 3 credit course then UFF is asking for overload paid at a reduced rate 8.33% that is lower than the in-load rate. The in-load rate varies by individual faculty but could be half of salary (e.g. $45,000). The average faculty member salary is less than $80,000 at USF.

UFF has the right to challenge under Appendix F as well as Article 9.2 of the CBA and pursued both processes regarding Dr. Welker’s claim.

UFF maintains that Article 9.2 never contemplated addressing all assignment disputes but the parties are still wrestling with the issue of what is the value of the class? One size does not fit all. Math courses with labs taught by GAs are different than mass lectures where no GA help is available. We should compensate for that. It was done that way in the past although today the economic situation is a concern.

The costs should not all rest on the backs of faculty.

UFF ended its presentation at 9:46 a.m.
3. PRESENTATION BY UNIVERSITY:

Mr. Solis was acknowledged by the Trustees and essentially stated that:

USF agrees that one size does not fit all as admitted by UFF regarding the issue at impasse. However, it is USF’s position that the parties should follow the established processes provided in their CBA.

The negotiated CBA is not a perfect document but it does fairly balance rights of the parties. The decisions at issue should be made by the responsible Department Chair who is in the best decision to consult with faculty actually delivering the instruction.

The specific issue at impasse is whether or not faculty members should automatically receive additional compensation merely because they taught additional students in their course. The facts established at hearing before the Special Magistrate are instructive. Page 11 of the Magistrate’s recommended order confirms that the use of GAs has been the most effective tool in the past history of the parties. It also states that the use of adjunct professors will alleviate the problems associated with the issue presented.

There is too much variation across campus to speculate so the parties should stick to known facts. An increase in class size does increase instructional burden but that can be dealt with effectively through the use of appropriate GA support. The mission of the University cannot be met without the valuable contributions of GAs and also of adjunct professors. That’s why when the University was asked to resolve the issue presented, it was proposed getting an adjunct professor who was qualified to teach Business Law. The proposal was not accepted by UFF but is still available and remains part of the university recommendations, because it is part of the mechanism forwarded in the contract.

Dr. Welker’s class did increase in size. The Department Chair did meet with Dr. Welker and looked at various options to resolve the issue. One of the options was to obtain someone qualified to teach who had a law degree. In addition GAs and clerical support was offered for his course. All of these are options that have traditionally alleviated these problems and that the Special Magistrate noted would alleviate the concerns in this specific case.

There are a few details that may need to be worked out as to when the Adjunct Professor would be available to answer questions or e-mails. However the Adjunct Professor availability is an administrative issue not impasse and can be resolved departmentally.

Nationally it is the case that large introductory law classes are taught to 200-300 students by 1 professor. USF is willing to take an extra step and provide support that is past practice established between the parties.
Upon inquiry by the USF BOT Labor Committee, USF essentially responded as follows:

An overload compensation provision exists in the CBA for the parties to use when an additional class is added to a faculty member’s instructional workload. Again the specific facts at issue are instructive and there is an issue of “more course for the class”, meaning that a certain faculty member may be granted more FTE credit for a course than normal. In the case of Dr. Welker, he doesn’t have a research assignment and teaches a Business Law class that is a required course for students. Dr. Welker’s faculty assignment reflects a 98% teaching load. Typically such an instructor would maintain a 4:4 load. However, Dr. Welker teaches a 2:2 load. Thus, Dr. Welker is actually being compensated twice, once with a reduced load and a second time with the offered adjunct, versed in law, to support Dr. Welker’s course.

The GA support option is better than alternatives because it maximizes experience to GAs and it also provides income to GAs. No one is arguing that GAs are ineffective.

The best person to resolve these issues is the Chair within the actual academic department, not others at the bargaining table.

Given USFs goal to be eligible for AAU status USF is not unique with respect in providing GAs to support faculty instruction. In other AAU institutions academic Chairs determine assignments rather than those at the bargaining table.

Department Chairs at USF determines these issues through an interactive process that has historically worked with success at USF. This process includes meeting with the faculty member to discuss the course at issue and balancing decision making factors such as: how long has faculty taught this class?; is this a new course or a new format?; and does the course require new changes such as moving content to an on-line instruction?

Chairs have some options as well to meet student enrollment demands. They can juggle assignments; go to their Dean to obtain overload or compensation approval for a specific course; or provide a faculty member with a future research assignment to balance the overall assignment during the academic year.

The memorandum issued by then Provost Khator did not alter any provision in CBA. The intent of the memo was to provide access to students to courses that they needed to complete. The main issue is what class size is appropriate to meet student needs as determined by faculty. Once departmental faculty determine that a mass lecture course is appropriate then USF moves ahead to implement.

USF and UFF agree that instructional courses vary widely at USF. For instance, an English course varies from math instruction. So, the parties must look at dynamics of the class and the actual interaction with students etc.
Since Provost Khator issued the memo, Dr. Welker’s claim has been the only assignment dispute. The parties continue to bargain in good faith and may resolve future issues at the table.

USF ended its presentation at 10:05 a.m.

4. **DELIBERATION:**

At approximately 10:05 a.m. the Impasse Resolution Hearing was concluded and the Trustees commenced their deliberations in the sunshine as duly noticed. During deliberation the USF BOT Labor Committee:

a. considered the use of Graduate Assistants and Adjunct faculty to resolve issues disputed by UFF;

b. expressed concern that so much of UFF’s case focused on a single instance regarding Dr. Welker in which his lecture class enrollment increased from approximately 200-440 students;

c. discussed the utility of seeing a greater effort by the parties to constructively use Article 9.2 of the negotiated CBA to resolve some of these issues;

d. voiced agreement that USF Department Chairs are in the best position to determine appropriate deployment of resources including GAs, adjuncts and additional compensation;

e. agreed that issues appropriate for resolution at the bargaining table should be resolved directly at the table rather than at impasse;

f. complimented both parties for their evident mutual interest in serving student needs;

g. observed that current economic conditions necessitate doing more work with less resources;

h. were supportive of using existing processes to handle appropriate instructional course valuation. Specifically, the established process for overload could allow for compensation adjustments using the 8.33% calculation and appropriate departmental level review should be engaged;

i. agreed that one size doesn’t fit all and that specific needs should be reviewed at the local level by department heads and chairs;

j. agreed that neither party wants a joint committee as set forth in the Magistrate’s second recommendation;

k. expressed general agreement with the findings of fact entered by the Special Magistrate;

l. made, seconded and adopted a motion to modify the PERC Special Magistrate’s Recommended Order to delete a portion of the first paragraph in Recommendation No. 1 and entirely delete Recommendation No. 2.

5. **RESOLUTION:**

The Trustees concluded their deliberation whereupon they determined, via unanimous vote (3 affirmative & 0 negative), the following resolution of the impasse:
A. Recommendation No. 1 of the Special Magistrate’s Recommended Order is amended to read as follows:

1. Whereas there is no evidence in the record that demonstrates that Article 9 of the 2004-07 CBA, particularly Section 9.2 has not been an effective method of dealing with the majority of those cases involving employee assignments on an individual employee/Departmental level, it is recommended that this Section be carried forward. For all other cases, an instructor would retain the right to challenge his/her assignment through the procedures set forth in Appendix “F” as well as the right of the UFF to grieve and arbitrate those situations where it believed the University was not complying with its obligations under other provisions of the CBA including Section 9.2(D) as noted and discussed above.

B. Recommendation No. 2 of the Special Magistrate’s Recommended Order is rejected in its entirety.

The Labor Committee adjourned at 10:16 a.m.