In the Matter of Impasse Between:
THE UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES,
-and-
COUNCIL 79, AFSCME, AFL-CIO

PERC Case No. SM-2009-032

Before: USF Board of Trustees Labor Committee

Hearing Date: March 29, 2010

The hearing was convened at 11:00 a.m. by Chair Law with Trustees Ramil and Mullis in attendance. Having a convened a quorum for a duly noticed hearing and with the parties in attendance the hearing by the USF BOT Labor Committee (Committee) commenced as follows:

APPEARANCES:

A. For AFSCME

Mark Sugarman, Esq., AFSCME Florida Council 79

B. For the University

John Dickinson, Esq., USF Chief Negotiator

1. REMARKS BY THE CHAIR:

Chair Law welcomed the parties and noted that today's hearing was before the Committee, a neutral committee established in 2001 and duly authorized under BOG Resolution and Regulation, Florida Statutes and USF BOT Resolution to take action to resolve the impasse arising under the Collective Bargaining Agreement between USF and UFF. Chair Law explained the ground rules in effect for the resolution hearing including that each party would be afforded a full and fair opportunity to be heard including a twenty (20) minute period to present their case during which time Trustees may ask questions that would not count toward the advocate's time.
Thereafter, a question and answer period may ensue during which the Trustees may ask either representative questions regarding the impasse and its prospective resolution. Then the Trustees would deliberate, in the "sunshine," with the public observing but not permitted to interfere with or disrupt the deliberations. 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. Neither representative had any questions about the process as described to them.

2. **PRESENTATION BY AFSCME:**

Impasse was first declared by AFSCME on July 15, 2009, consequently it presented its case first. With the consent of the Chair the AFSCME representative yielded time to the following three (3) AFSCME presenters: 1) Mr. Bill McClelland, President AFSCME Local 203; 2) Ms. Susie Shannon; and 3) Mr. Michael Williams. AFSCME presented its case in twenty (20) minutes with each of the three (3) presenters speaking for approximately five (5) minutes and concluding remarks made by Mr. Sugarman.

AFSCME also submitted a written statement of its position and copies of same were received by the Labor Committee on March 5, 2010 and reviewed by all Committee members. In sum, AFSCME sought substantial acceptance of the Special Magistrate’s Report and Recommendations entered on January 22, 2010. AFSCME’s essential position was that:

1. **Article 15.2B – Overtime**

We accepted the Special Magistrate’s recommendation that "the language changes proposed by USF be adopted."

2. **Article 17.1 – Leaves**

AFSCME accepted the Special Magistrate’s recommendation to leave the current language unchanged.

3. **Article 17.2 – Leave to Supplement to Workers’ Compensation Coverage**

Special Magistrate’s recommendation is that the current language in Section 17.2 remain unchanged.

4. **Recommendation – Article 15.3D – Shift Change**

It is recommended that the AFSCME proposed language in Article 15.3D be changed and adopted as follows:
15.3 D - Shift change assignment shall first be offered to qualified employees in order of seniority. If no employee elects to accept the shift change assignment, it shall be assigned on a mandatory basis to qualified employees in reverse order of seniority. USF reserves the right to determine which employees are qualified to perform the work to be assigned as the result of the shift change.

5. **Recommendation – Wage Increase**

It is recommended that the distribution proposed by AFSCME be used, and that AFSCME’s proposal be modified and adopted as follows:

21.1 Lump Sum Bonuses

   B. The bonus payment will be in accordance with the following schedule:

   1. Employees whose annual base salary is $45,000 or less shall receive a lump sum payment equivalent to $1,000 (less applicable taxes).

   2. Employees whose annual base salary is greater than $45,000 shall receive a lump sum payment equivalent to $750 (less applicable taxes).

In all other respects, it is recommended that the AFSCME wage proposal, Section 21.1, be adopted as it was last proposed, there being no substantive differences with those sections proposed by USF.

3. **PRESENTATION BY UNIVERSITY:**

Mr. Dickinson was acknowledged by the Chair and presented the case for the University in twenty (20) minutes. The University also submitted a written statement of its position and copies of same were received by the Labor Committee on March 5, 2010 and reviewed by all Committee members. In sum, the University sought substantial rejection of the Special Magistrate’s Report and Recommendations entered on January 22, 2010. The University’s essential position was that:

1. It is recommended that the UBOT Labor Committee adopt the University’s bargaining proposals to remove references to outdated SUS Rules in Article 17, Sections 17.1 and 17.2 and to replace them with references to current, applicable USF Regulations.

2. It is recommended that the Committee reject the recommendation to add a new section to Article 15, which would limit the University’s ability to make shift change assignments in a manner that best suits its needs.

3. It is recommended that the Committee adopt the University’s February 11, 2010, Article 21 wage proposal, which provides that employees will receive bonuses of $1,500.00, $1,000.00, and $750.00, depending upon their performance rating (“exceeds,” “commendable,” and “achieves” respectively).
4. **QUESTIONS & DELIBERATION**

The Committee, having reviewed all of the written materials submitted by the parties and the Special Magistrate’s report, asked questions of both side’s representatives. The question period concluded at 11:58 a.m. and the hearing was then officially closed by the Chair. The Committee immediately began their deliberations in open meeting during which time Committee members noted that they support pay for performance at the University. It was also a point of agreement that while any performance evaluation process may be improved over time the Committee supported the use of the University’s established performance evaluation process. The distribution of evaluation results across the different performance categories of “exemplary,” “exceeds” and “achieves” was referenced positively. The Committee unanimously supported the use of accurate citation to existing USF Regulations, such as USF Regulation 10.203, rather than obsolete Board of Regents rules. The committee dispelled the concern that management would use changes to the collective bargaining agreement to act arbitrarily and capriciously noting that there was no evidence of such and further observing that neither party submitted evidence of any relevant grievance(s) filed under USF Regulation 10.203 since it took effect in 2003. The Committee concurred that the University should retain its ability to determine shift changes and assignments without mandating seniority as a requirement for same. The Chair suggested that the appropriate place to address continuing concerns such as shift changes is at the bargaining table rather than at hearing.

5. **RESOLUTION OF IMPASSE**

After due deliberation and upon unanimous vote (3 Affirmative – 0 Negative) the Committee resolved the impasse as follows:

1. Reject the recommendation to add a new section to Article 15, which would limit the University’s ability to make shift change assignments in a manner that best suits its needs.

2. Adopt the University’s bargaining proposals to remove references to outdated SUS Rules in Article 17, Sections 17.1 and 17.2 and to replace them with references to current, applicable USF Regulations such as USF Regulation 10.203.

3. Adopt the University’s February 11, 2010, Article 21 wage proposal, which provides that employees will receive on-time bonuses of $1,500.00, $1,000.00, and $750.00, depending upon their performance rating (“exceeds,” “commendable,” and “achieves” respectively).

THE IMPASSE HAS BEEN SO RESOLVED.