VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY FEDERATION, UPV, AFT LOCAL 3180, AFL-CIO	))))	DOCKET NO. 04-7
and	))	
VERMONT STATE COLLEGES	)	

MEMORANDUM AND DECISION

At issue is selection by the Vermont Labor Relations Board between the last best offers of the Vermont State Colleges Faculty Federation, UPV, AFT Local 3180, AFL-CIO ("Federation") and the Vermont State Colleges ("Employer") with respect to a successor collective bargaining agreement between the parties covering full-time faculty and ranked librarians of the campus-based colleges of the Vermont State Colleges.

The parties have proceeded through the statutory impasse resolution procedures of mediation and fact-finding. The parties entered the fact-finding process with numerous issues in dispute, concurred with the fact-finder's recommendations on many of them, but still had unresolved issues at the conclusion of the process. On January 14, 2005, Fact-Finder Susan Brown certified the parties' last best offers to the Board. The last best offers indicate that the parties disagree on the following three issues: 1) credit for labs, 2) salary calculation formula, and 3) early retirement.

Oral argument on the last best offers occurred on February 4, 2005, in the Labor Relations Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Carroll Comstock, Richard Park and Joan Wilson. Attorney Thomas Somers presented for the Federation. Attorney Nicholas DiGiovanni, Jr., spoke for the Employer.

Pursuant to the State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.* ("SELRA"), the Board is to select between the last best offers of the parties, considered in their entirety without amendment. 3 V.S.A. Section 925 (i). We first will set forth the differences between the parties on the issues presented in their last best offers, and the costs of the last best offers.

1. Credit for Labs

Article 24 of the parties' expired contract provides: "Workload - The normal individual workload shall be 24 credit hours or its equivalent per year." There is no provision concerning how many credits are provided faculty for labs.

During the fact-finding process, the Employer proposed to add the following sentence to the Workload article: "A credit hour shall be defined as one hour of lecture or two hours of lab per week for a semester period, e.g., a three hour lecture with a three hour lab each week generates 4.5 credit hours." The Federation made the following proposal: "A credit hour shall be defined as one hour of lecture or lab per week for a semester period, e.g., a three hour lecture with a three hour lab each week generates 6 credit hours."

The factfinder's findings and recommendations contained the following discussion:

> Witnesses testified that the credit granted for labs varies from institution to institution and from academic discipline to discipline . . . The parties here agree that crediting for lab hours should be uniform but they disagree on the amount.
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> The Federation points out that in many institutions of higher learning where labs are afforded less credit than lectures, faculty have various types of assistants who set up the labs, prepare experiments, and clean up afterwards. Faculty at VSC have no assistants of this sort and therefore should have their lab hours given the same weight as lecture hours. The College did not rebut the Federation's characterization of the time and preparation required for labs at VSC.

In this light, it is reasonable that labs should be credited properly, with deference to the Employer's financial picture.

Recommendation: The parties should adopt language that gives each lab hour .67 of a credit hour in 2004-2005 and 2005-2006, and .75 of a credit hour in 2006-2007.

The Federation concurs with the recommendation of the fact-finder on this issue as part of its last best offer. The Employer proposes that there be no language inserted in the contract on this issue and that the status quo be preserved.

If the Board recommends the Employer's last best offer, there will be no increased costs for lab credits since the status quo would be preserved. If the Board recommends the Federation's last best offer, the cost of the increased lab credits for the current academic and fiscal year would be $143,422 for full-time faculty. The additional amount that part-time faculty would be entitled to for the current year, pursuant to a provision in the part-time contract extending any such change to them, is $51,226. Thus, the total additional expenditure for lab credits for the current year resulting from accepting the Federation's last best offer is $194,648. The value of this additional expenditure is equivalent to a 1.6% increase in salary.

The parties disagree on estimated costs of increased lab credits for the next two academic and fiscal years. The Employer contends that additional credits will most likely be covered by a mix of part-time faculty, voluntary overloads for full-time faculty, and hiring of new faculty. The Federation contends that the most reasonable estimate is that additional credits will be shared by full-time faculty and part-time faculty in the same percentage share as the current year. The Employer cost estimates are higher than those of the Federation.

Even if the Board uses the more conservative cost estimates proposed by the Federation, the increased cost of the lab credits for next academic year is $231,367 ($160,731 for full-time faculty and $70,636 for part-time faculty), and the estimated cost of increased lab credits for following academic year is $373,322 ($259,347 for full-time faculty and $113,975 for part-time faculty).

2. Salary Calculation Formula

Article 27 of the parties' expired contract provides in pertinent part as follows:

> Salaries
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> C. For each year of the contract, all on-going bargaining unit members shall be credited with an appropriate number of points based on the salary schedule criteria in Article 28. The salaries of on-going unit members shall then be determined in the following manner:
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> 2. Beginning in the fiscal year 2001, and for the life of this Agreement, the Parties agree that the average VSC faculty member's total compensation in any given fiscal year shall be 100% of the national IIB public institution's average total compensation. To achieve this purpose, salaries shall be established using the following methodology:
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> a. For computation purposes, the national averages used shall be those reported for the current academic year in the March/April Academe for Category IIB public institutions and Category III public colleges. The national average for the IIB public institutions shall be adjusted for the fact that VTC is a Category III public institution. The adjustment shall first identify the difference in dollars between the Category IIB public average and the Category III public average. Then 20% of that difference shall be either added to or subtracted from the IIB public average, depending on whether the Category III public average is higher or lower than the Category IIB public average. The resulting number shall be increased by a COLA adjustment of 1% and the remaining figure will be the national comparison number.
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> b. Once the national comparison number is arrived at, that number will be multiplied by the number of VSC full-time faculty bargaining unit members.

The fact-finder's findings and recommendations contained the following discussion:

> During the early stages of negotiations for this contract, the Employer wanted to retain the salary formula and the Federation wished to abandon it. At factfinding, however, the Federation was agreeable to maintaining the formula but proposed to adjust the comparitor groups used for salary pool calculations and to modify some of the benefit deductions. . .
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> The only change for which there is documented evidence is the placing of Johnson State College into Category IIA (Master's). That *Academe* category definition requires the institution grant a minimum of thirty post-baccalaureate degrees annually *and* either grant degrees in three or more post-baccalaureate programs or offer a post-baccalaureate-level interdisciplinary program. The record is clear that Johnson meets both standards. . .
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> When VSC institutions change over time, the formula must change periodically with them. If a college retrenches, it should not be required, for purposes of salary calculations, to be categorized in perpetuity as if it were a more comprehensive institution. Conversely, if a college expands, it should be compared to its new counterparts for the purposes of computing faculty compensation. That is one of the beauties of the formula system if the parties are genuinely dedicated to keeping VSC close to the national average in total compensation. The Employer asserts that it is already having difficulty attracting new faculty at the current salary rates; depressing those rates by comparing VSC institutions of lesser stature would certainly worsen this problem.
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> Finally, since tuition waivers and remissions are included by *Academe* in the total compensation figure calculated for comparitor institutions, I find no reason to eliminate tuition waivers from the parties' salary formula. However, a close examination of the documents in evidence indicate that VSC may be calculating this benefit for formula purposes very differently than the manner in which *Academe* does, resulting in a far higher deduction than would be warranted under the formula. Tables 10A and 10B provide the average institutional cost of benefits per faculty member and the average for faculty members receiving specific benefits. Because many fewer employees avail themselves of the tuition benefit in comparison, say, to health insurance, the difference found in those tables between the average per faculty cost and the average actual benefit is much larger for tuition payments than for insurance and most other benefits. The publication is not clear, however, which figure it uses to calculate its total compensation statistics. The parties should investigate this matter and bring its own calculations in line with that of the *Academe* report.
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> <u>Recommendations: The parties should retain the current formula except that Johnson State should be reclassified as a IIA institution and the computation in Section C.2.a. should be adjusted accordingly. In addition, the parties should, if necessary, adjust the manner in which tuition is calculated as part of overall</u>

> compensation if the current method differs from the calculations in the *Academe* report. . .

Both parties agree with the fact-finder that Johnson State College should now be considered a Category IIA public institution under the parties' salary calculation formula. Johnson was considered a Category IIB institution under the expired contract's formula, along with Castleton State College and Lyndon State College. VTC was considered a Category III institution. Under the fact-finder's recommendation, Castleton and Lyndon would continue to be Category IIB institutions, Johnson would be a Category IIA and VTC would remain a Category III. The fact-finder did not make a recommendation on how the salary calculation formula was to be revised to account for the reclassification of Johnson. The Employer has made a proposal regarding weighting of the four institutions in the salary computation methodology as follows:

> a. For computation purposes . . . (t)he national averages shall be adjusted . . . The adjustments shall be calculated each year based upon the number of full-time faculty at each of the four institutions for each year as a percentage of the total number of full time faculty in the bargaining unit. For FY05, the percentages for the four institutions based upon the number of full time faculty at each college are as follows:

i.	VTC	Category III (public)	27.38%
ii.	JSC	Category IIA (public)	19.44%
iii.	LSC	Category IIB (public)	21.43%
iv.	CSC	Category IIB (public)	31.75%

> b. The percentages shall be applied to the national total compensation figure for each category and the resulting blended compensation number shall then be increased by the COLA adjustment of 1% with the remaining figure will be (sic) the national comparison number.

The Federation disagrees with this proposal, and instead proposes to give each of the four colleges equal 25% weight in the calculation formula. In addition to the parties' dispute over the weighting of the colleges, the parties also disagree as to how tuition waivers should be calculated in the formula. The Federation proposes that the calculation formula should be adjusted: 1) to reflect that the actual faculty and dependents use of the tuition provision was $68,412 less than the calculation used by the Employer in determining faculty salaries this year, and 2) to eliminate any figures on University of Vermont tuition remission in the calculations.

The Employer proposes to the contrary to maintain its current methodology on calculating the value of the tuition waiver benefit – i.e., 1) take the total value of the tuition benefit within the system; 2) calculate what percentage the faculty are of the total number of employees of the Employer; and 3) apply that percentage to the total cost. The Employer further would continue to take into account the cost of providing State Colleges tuition benefits to University of Vermont employees and dependents. This derives from the State Colleges and UVM having a reciprocal agreement on tuition providing that State Colleges and UVM employees and dependents are entitled to the same tuition waiver at UVM and the State Colleges. The Employer further proposes that the parties would study over the life of the contract how the Employer's approach to tuition benefits compares to other institutions reporting their tuition costs to *Academe*.

Full-time faculty and ranked librarians already have received a total of $278,578 in salary increases for the current academic and fiscal year based on the salary calculation formula of the expired contract. The Federation last best offer results in an additional total salary increase of $499,954 for the current academic year – i.e., the equal 25% weighting of the colleges in the salary calculation formula proposed by the Federation results in $279,654 additional costs, and the Federation's proposed tuition waiver change costs an additional $220,300. The total salary increases proposed by the Federation for the current year is $778,532 ($278,578 plus $499,954). This represents a 6.73% increase over fiscal year 2004 salaries.

The Employer's proposal for relative weighting of colleges in the salary calculation formula results in $199,586 additional costs to the $278,578 in salary increases already received by full-time faculty and ranked librarians for the current year. Since the Employer is proposing no change to tuition waiver calculations, there are no resulting increased costs on this issue. Thus, the total salary increases proposed by the Employer for the current year is $478,164 ($278,578 plus $199,586). This represents a 4.13% increase over fiscal year 2004 salaries.

3. Early Retirement

Articles 27, 28 and 35 of the parties' expired contract contain pertinent provisions on the parties' dispute concerning early retirement. In addition to the provisions of Article 27 of the parties' expired contract cited above in the Salary Calculation Formula section, Article 27, Section C(2) provides in pertinent part as follows:

> c. The figure arrived at in section (b) above will then be compared to the VSC total compensation figure for the current fiscal year for the full-time faculty bargaining unit. However, the VSC figure will be increased by a sum equal to 25% of the cost of early retirement pay-outs for the current fiscal year, including the cost of medical and retirement payments to early retirees. Except for this adjustment for early retirement costs, the term "compensation will be defined in the same manner as in the Academe figures.
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> d. If the national comparison number as calculated in (a) and (b) above is greater than the VSC total compensation figures as calculated in (c), the difference between the two shall then be divided by 1.2 to take into account the cost of FICA and TIAA-CREF contributions. The resulting amount shall be added to the salary pool for distribution through the salary point system in the succeeding year.
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> e. In the event that the national comparison number as calculated in (a) and (b) above is less than the VSC total compensation figures as

calculated in (c), individual faculty salaries for on-going faculty will be held at the current year level for the succeeding year, excepting that the faculty receiving new points for promotion and/or additional study and degrees as provided for in Article 28, will receive appropriate adjustments based on current year point values.

. . .

Article 28 of the expired contract provides in pertinent part as follows:

<u>Salary Schedule Criteria</u>

A. The following criteria shall be used to award points to faculty members in accordance with the procedures for compensation delineated in Article 27 (C):

				Points
I.	Qualifications			
	A.	Degrees		
		Bachelor's Degree/License		0
		Master's Degree		3
		VSC Required Minimum Degree other than Doctorate (See Appendix A)		5
		Doctorate		6
		Additional Master's		3
		Additional Doctorate		6
		Approved Substitute for a Required Minimum Degree		2
	B.	Additional Graduate Work		
		1.	18-36 graduate credits beyond highest degree earned	1
			OR	
		2.	37 or more graduate credits beyond highest degree earned	2
			OR	
		3.	Ph.D candidate (ABD)	3
II.	Rank			
	Instructor			0

Assistant Professor	3
Associate Professor	7
Professor	13

III. Experience (4)

A. VSC Service (5)

1. Full-time faculty, Administrative, staff — 1 point per year

B. Non-VSC collegiate teaching, Business or other applicable Experience (6) — (limit 9 points)

Full-Time Experience — 1 point per year

C. The Review Committee may award points for part-time VSC service using as a guideline 1/24 point per credit hour, 1/12 point per month for full-time service, or 1/24 point per month for half-time service. The Committee may also consider non-VSC, part-time experience, within the 9 point limit in B. above.

. . .

Article 35 of the expired contract provides in pertinent part as follows:

<u>Retirement</u>

A. The College shall make TIAA-CREF contributions for every faculty member on active, full-time service according to the following formula: 10% of the first $18,900.00 of annual salary and 15% of the remainder of annual salary earned.

B. At the age of sixty-five (65) or thereafter, a faculty member may retire with the retirement benefits described in (G.) below.

C. Those faculty who complete at least twenty-five (25) years of VSC service (faculty, administrative, or staff) and those faculty who are at least fifty-five (55) with fifteen (15) years of VSC service (faculty, administrative, or staff) completed may elect to retire with an annual retirement payment equal to the sum of (1) one-half of the base annual salary of the last year of full-time service and (2) one-half of a TIAA-CREF contribution on that amount as computed according to the formula in (A) above. Such payment shall continue until the age of 65.

D. Those faculty who are at least the age of fifty-five (55) with ten (10) years of VSC service (faculty, administrative or staff) completed may elect to retire with an annual retirement payment equal to the sum of (1) two-fifths of the base annual salary of the last year of full-time service and (2) two-fifths of a TIAA-CREF contribution on that amount as computed according to the formula in (B.) above. Such payment shall continue until the age of sixty-five (65).

E. A faculty member who chooses to elect early retirement must notify the College no later than October 1 for any retirement commencing at the conclusion of the upcoming academic year. Said notice is non-rescindable.

F. 1. Early Retirement Additions

a. If a faculty member wants to elect early retirement at age 55 and receive payments until age 66 or 67, he or she may spread out ten years of payment over 11 or 12 years, as appropriate.

b. A faculty member, who early retires after age 55, may also receive early retirement payments until age 66 or 67. However, the total amount of payments to such faculty member shall not exceed the amount that (s)he would be eligible to receive under the VSC Early Retirement Plan up to age 65. Payments to the faculty member shall be determined by calculating the maximum amount the faculty member would be eligible to receive from the date of early retirement to age 65 and then pro-rating that amount over the extended period of age 66 or 67.

. . .

During the fact-finding process, the Employer proposed that the early retirement provisions remain in effect only until June 30, 2007 so that the last date for a faculty member to elect early retirement would be October 1, 2006, for retirement effective June 30, 2007. The Federation proposed to maintain the current contract language.

The fact-finder’s findings and recommendations contained the following discussion:

This is an extremely touchy issue for both parties. On the one hand, the Federation argues that early retirement was instituted at a time when salaries were extremely low and was held out as a form of deferred compensation. As such, according to the Federation, many teachers took the offers at a low salary because they had this benefit to look forward to. It should be noted that although a faculty member testified in this regard about tuition waivers, there was no such testimony regarding early retirement. We do know, however, that a tentative agreement for the 1988 collective bargaining agreement was turned down by the bargaining unit in large part because it eliminated the early retirement provision. There is disputed testimony that the subsequent ratified contract contained a reduced salary increase tied specifically to the retention of the early retirement benefit.

From the Employer's perspective, this extremely unusual and generous benefit results in an enormous drain of resources on an already tenuous budget. VSC paid out $1,298,937 annual salary and benefits to 41 employees as of June 2004. It argues that benefits in a workplace are always subject to change and that this system cannot be kept in place forever when it has become detrimental to the entire institution. In calculating the costs of maintaining the program for just three more years, assuming that all the eligible employees opted for early retirement, that wages increase by 3% a year and that medical benefit costs increase by 12% a year, the Employer indicates that early retirement salary costs would range from $2,259,714 in FY2005 to $1,715,646 in FY2010 while medical costs for those participating would range from $865,851 in FY05 to $1,014,629 in FY10.

Here again we face a dilemma between a promise of many years ago balanced against current needs. If this benefit was in fact created to counterbalance low salaries, and I have no doubt it was, current salary must become more in line with today's standard of living and expectations before the benefit can be eliminated without severe detriment to those who saw it as part of their careers at VSC. The Employer has made several proposals designed to increase salaries but without a direct infusion of cash, these are slow at best and merely a trade-off for other benefits at worst. Moreover, the Employer's costing forecast assumed that everyone who is eligible would use the benefit in the next three years, an unlikely assumption. First, no new retirees for FY06 could be added since the notification date has already passed. And the participation rate is historically small; it's not everyone who can survive on a 50 or 60% pay cut during what many consider prime earning years. So although the College may have to plan as if everyone will participate, the situation is not quite as dire as has been suggested.

I agree that in the current economic environment, this particular early retirement benefit must be phased out, but I conclude that three years is too short a time to accomplish such a major transition. The decision to make such a drastic life change is an important one, usually taken over a longer period. Up to now, faculty who may have been thinking about it could frame their decisions in the fullness of time, knowing they could give their notice at any point. With the end in sight, however, they must speed up their calculations and adjust their lifestyles in a much compressed time frame. The Employer's schedule leaves less than two years to figure out whether taking early retirement is financially doable.

> Finally, although the Employer's goal is to raise salary levels to enhance recruitment, salaries are currently diminished by the deduction of 25% of early retirement costs from the moneys calculated for the salary pool by the formula. That means new employees would relinquish some portion of current and future raises for a benefit unavailable to them, hardly a selling point for recruitment. Moreover, current employees should not continue to have their salaries diminished at the same rate as fewer and fewer employees qualify for the benefit. I will therefore recommend that the deduction diminish as the benefit phases out. This will also serve to enhance employee salaries, thereby beginning to abate some recruiting concerns.
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> Recommendations: The parties should adopt the Employer's proposal except that the end date should be 2010, with final notice given by 1 October 2009. The parties should also add the following language either here or in Article 27: "Deductions for early retirement under the salary calculation formula shall be reduced by 5% per year, i.e., to 20% of costs in FY06, 15% in FY07, 10% in FY08, 5% in FY09 and 0 in FY10.

In its last best offer, the Employer accepts the fact-finder's recommendations with respect to the phaseouts of the early retirement provisions and the deductions for early retirement under the salary calculation formula. In addition, the Employer proposes that any faculty member who is tenured as of January 7, 2005, and who would not qualify for the existing early retirement plan options by June 30, 2010, would be credited with 1.5 salary points under the Salary Schedule Criteria article for FY06 salary calculations. These 1.5 salary points would be permanently retained by the faculty member in any future salary calculations as long as the point system remains in effect.

125 out of 252 of the full-time faculty and ranked librarians in the bargaining unit would be removed from eligibility for the early retirement benefit if the Employer's last best offer is selected. 52 out of these 125 are tenured and would receive 1.5 salary points under the Employer's proposal. 1.5 salary points represent roughly a $1,000 salary increase.

The Federation proposes in its last best offer to eliminate all early retirement options for newly hired faculty. The Federation accepts the fact-finder's recommendation of October 1, 2009 as the deadline for a faculty member to give final notice to take any early retirement option, except that the Federation proposes to retain the fifteen year/age fifty-five option for current faculty members. The Federation also proposes to retain the current 25% deduction for retirement in the salary computation formula in Article 27 rather than phasing out the deduction.

The Federation proposal on early retirement has no cost implications during the current academic or fiscal year or the next two years. The Employer's proposal has mixed effects on costs. The Employer's 1.5 points offer will have the effect of increasing the number of points for faculty and thus lessening the value of a point. This results in an average salary reduction of approximately $200 per faculty member. This is offset by the 25% early retirement credit being reduced by 5% each year. This results in an estimated annual lost value of $65,000 to the Employer in the salary calculation formula, an effective addition of this amount to faculty members' salaries, and an average salary increase of approximately $300 per faculty member each year.

Discussion

The Federation and the Employer have successfully negotiated numerous collective bargaining contracts under the State Employees Labor Relations Act without need to resort to intervention by the Labor Relations Board. It has been 24 years since the Board has been called on to resolve a negotiations dispute by selecting between the last best offers of the Federation and the Employer. In the interim, the design of the State Employees Act to promote a jointly determined collective bargaining agreement has been fulfilled. In this round of negotiations, the process failed to produce an agreement or a tempered difference in last best offers.

The Board is presented with having to select between two widely divergent last best offers. The parties entered the fact-finding process with what the fact-finder termed “an unusually large number of open issues”, “many of which address fundamental changes in their relationship”. The parties “had reached tentative agreements on only a small number of minor matters during the entire course of negotiations”. The fact-finder thus was required to make recommendations on numerous significant issues. The parties ultimately concurred with the fact-finder’s recommendations on many issues in dispute, but entered the last best offer stage of the dispute resolution process with substantial disagreements on significant issues. The wage offers submitted by the parties reflect more than a four percent effective difference on wage increases alone as well as diametrically opposed positions on a significant early retirement benefit.

The dispute resolution scheme of the State Employees Act is designed to encourage the parties to narrow their differences and make hard choices on their priorities so that, hopefully, agreement can be achieved. Vermont State Employees’ Association and State of Vermont, 19 VLRB 114, 122 (1996). If agreement is not achieved, the intent of the process is that the last best offers submitted to the Board bring the parties closer together. Id. The closer the last best offers, the more palatable is the ultimate last best offer selection by the Board. In this case, the gap between the parties’ last best offers is a chasm ensuring that each party would find the other party’s offer unpalatable. This is disappointing, considering that there are an almost infinite number of reasonable compromise solutions available on all major issues in dispute.

In selecting between the parties' last best offers "considered in their entirety without amendment", we determine which offer is more reasonable and in the public interest. Vermont State Employees' Association and State of Vermont, 15 VLRB 107, 111 (1992). Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB 89, 99 (1999).

The parties' offers substantially differ with respect to: 1) wage increases under the salary calculation formula, 2) lab credits, and 3) early retirement provisions. The Employer proposes a 4.13% increase in wages in fiscal year 2005 over fiscal year 2004 salaries. The Federation proposes a 6.73% increase. The difference results from the parties' respective methods of weighting the four colleges in the salary calculation formula and tuition waiver calculations.

In reviewing the parties' proposals for wage increases under the salary calculation formula, we conclude that the Employer has the more reasonable offer. The Employer proposes to revise the salary classification formula, to account for the agreed-upon reclassification of Johnson State College, by weighting the four colleges in the formula based on the number of full-time faculty at each college. This is more appropriate than the Federation's proposal for equal weighting of the colleges.

The four colleges are now placed in three different hierarchical categories for salary computation purposes depending on the comprehensiveness of their offerings and degrees. Given this distinction made under the formula, it is consistent that the four colleges likewise be weighted based on the number of faculty at each institution for computation purposes. This approach more closely provides national comparisons of comparable faculty than one that provides equal weighting of disparate institutions with differing numbers of faculty.

Further, an examination of the parties' respective proposals concerning tuition waiver calculations does not benefit the Federation. The Federation proposes to change the method of factoring tuition benefits into the salary calculation formula without demonstrating that its proposed method is a better and more accepted method for making such calculations. The change proposed by the Federation would result in an increase to the salary pool that would be the equivalent of almost 2 percent in additional salary. A proposal that provides such an increase without supporting evidence is flawed.

Given the inherent problems with the Federation's proposal in this regard, the Employer's proposal to maintain the method of performing the tuition benefit calculation for the life of the contract, and study it as a prelude to the next round of negotiations, is a more reasonable approach. This will allow any revisions to the tuition benefit calculation to have the benefit of evidence to support it.

Further, the Employer's 4.13% wage increase under the salary calculation formula is more reasonable than the Federation's 6.73% increase when we consider the comparability of faculty wages with the wages of other employees. The parties have had a compensation formula in place since 1999 which provides total compensation (i.e., wages plus benefits) for State Colleges faculty that is on par with national averages for similar institutions. Thus, support does not exist for a conclusion that higher wage increases are warranted for State Colleges faculty because they are playing "catch-up" with their national counterparts.

Support also does not exist for a conclusion that State Colleges faculty are lagging behind other Vermont higher education institutions. Most Vermont institutions are further behind their comparable national institutions in total faculty compensation than are the State Colleges. Even if just salaries are examined, State Colleges full-time faculty average salaries are generally in line with how other Vermont institutions compare with their comparable national institutions. State Colleges faculty salaries also are not out of line with Vermont per capita income in general compared to national income figures.

Also, in terms of actual salary increases, the Employer's proposed 4.13% increase better reflects recent trends than does the Federation's proposed 6.73% increase. Salary increases for continuing State Colleges Faculty have averaged 4.3% annually over the past four years for those continuously employed over that period, compared to a 4.7% annual average for continuing faculty on a national basis. Wage increases for collective bargaining contracts nationwide for the first half of 2004 averaged 3.4%. The Federation has not presented evidence on comparable wage increases near its 6.73% proposal, and it is apparent that the pertinent wage data supports a 4.13% wage increase much more than a 6.73% increase.

The more reasonable nature of the Employer's wage proposal compared to that of the Federation is again evident once the Federation's additional proposal concerning lab credits is considered. Recommendation of the Federation's last best offer would mean adopting a new lab hours to credit hours formula that would cost the equivalent of an additional 1.6% in salary increases during the present fiscal year. The cost would further increase next year, and in the third year would be almost double the cost of this year. Although this enhancement in compensation for labs was recommended by the fact-finder, we do not give this great weight because there is no indication in the fact-finder's report that she made an assessment of its cost.

In viewing the Federation's lab credit proposal in combination with its proposal on wage increases under the salary calculation formula, we conclude that the resulting effective increase of 8.3% in wage costs is substantially higher than what would be a reasonable proposal. The Employer's proposed 4.13% increase, which includes no change in existing practices concerning lab credits, is more reasonable.

The remaining issue in dispute between the parties concerns early retirement provisions. In its last best offer, the Employer accepts the fact-finder's recommendations with respect to phaseouts of the early retirement provisions and the deductions for early retirement under the salary calculation formula. In addition, the Employer proposes that any faculty member who is tenured, and who would not qualify for the existing early retirement plan options, would be credited with 1.5 salary points under the Salary Schedule Criteria article for salary calculations beginning next fiscal year.

The Federation proposes in its last best offer to eliminate all early retirement options for newly hired faculty, and to eliminate other early retirement options consistent with the fact-finder's recommendation except that the Federation would retain the fifteen year/age fifty-five option for current faculty members. The Federation also proposes to retain the current 25% deduction for retirement in the salary computation formula rather than phasing out the deduction.

This is a significant benefit of importance to many faculty members. However, upon consideration of the parties' respective last best offers in their entirety, we conclude that the importance of maintaining this benefit does not override the overall superiority of the Employer's last best offer. As indicated above, the last best offer process is designed to encourage the parties to narrow their differences and make hard choices on their priorities. By making an excessive wage proposal as part of its last best offer, the Federation has failed to make hard choices on priorities and placed the preservation of the early retirement benefit in jeopardy.

The excessiveness of the Federation's wage proposal, taken together with the Employer's last best offer adopting the fact-finder's recommendation that the early retirement eligibility period will not expire for more than five years, lead us to conclude that the Employer's last best offer is more reasonable and in the public interest. The early retirement option is a costly benefit that last year provided a payment to retirees that was 11 percent of salaries, 63 percent of the cost of medical insurance premiums, and 87 percent of the pension contributions for all faculty members. Even under the Employer's last best offer, the benefit will result in substantial continuing costs to the Employer through 2020.

There is no evidence that a similar benefit is offered at other colleges. Although the benefit apparently was instituted many years ago to counterbalance low salaries, this justification has diminished over time as State Colleges faculty total compensation has approached parity with national averages for similar institutions. Also, the eventual elimination of the early retirement option is paired with a salary enhancement for faculty that is effective well before the early retirement eligibility period expires. The phasing out of the credit given the Employer in the salary calculation formula for the cost of the early retirement benefit increases the faculty salary pool by larger amounts each year beginning next fiscal year. This translates into an additional average salary increase of approximately $300 per faculty member for each year going forward. Given these circumstances as well as other components of the parties' last best offers, the 2010 deadline for taking the early retirement benefit and the phased elimination of the early retirement credit given the Employer in the salary calculation formula offer better results than acceptance of the Federation's last best offer.

We note that the parties have agreed to continue the existing defined contribution retirement plan, with the Employer making retirement contributions equivalent to 12 percent of salaries. The Employer's last best offer does not affect the ability of faculty members to retire as early as age 55 and receive retirement benefits under the existing plan.

We reject the Federation's contention made in its brief and at the oral argument that the early retirement benefit constitutes a deferred compensation program. A deferred compensation program contemplates that participants will actually receive compensation. As the Federation recognizes, many faculty never exercise the option to receive the early retirement benefit because they do not retire early or they leave employment with the State Colleges prior to their eligibility for early retirement. The fact that many faculty never receive the benefit indicates that it is not a deferred compensation program.

The Federation requests that we take heed of earlier Board decisions in last best offer cases indicating a reluctance to disturb status quo language on significant issues; reasoning that a change in status quo language is better achieved through negotiations agreement by the parties than by fiat of the Board. VSEA and State of Vermont, 15 VLRB at 111-112. VSCFF and VSC, 22 VLRB at 97. We adhere to our precedents in this regard, but under the circumstances of this case this does not result in acceptance of the Federation's last best offer.

The Federation's citation to our precedents ignores that, if we accept the Federation's last best offer, there also will be a change to the status quo on significant issues. The new lab hours to credit hours formula, and the change in the method for performing the tuition benefit calculation, proposed by the Federation both constitute changes to the status quo that have a substantial impact on the significant issue of faculty compensation.

Further, our precedents do not constitute a definitive statement that the Board will never disturb the status quo as part of a last best offer recommendation. We continue to be reluctant to disturb status quo language on significant issues, and continue to believe that a change in the status quo is better achieved through negotiations agreement by the parties than by fiat of the Board. Nonetheless, this reluctance and belief do not close the door to our disturbing the status quo where appropriate, such as in this case when both of the last best offers submitted by the parties involve changing the status quo.

Also, our willingness to recommend a last best offer that includes the elimination of the early retirement benefit is significantly strengthened by the fact that the collective bargaining agreement now at issue will expire in 2007. The parties thus will be engaging in another round of negotiations well before the early retirement benefit is eliminated. This will allow the Federation and the Employer to continue to negotiate concerning the elimination of this benefit and its impact on affected faculty.

In sum, we select the last best offer submitted by the Employer as more reasonable and in the public interest. SELRA provides that, in selecting between the last best offers, “the board shall recommend its choice to the general assembly as the bargaining agreement which shall become effective subject to appropriations by the general assembly.” 3 V.S.A. Section 925(i). In addition to the Employer’s last best offer, the collective bargaining agreement which we recommend to the Vermont General Assembly incorporates by reference all tentative agreements reached by the parties during negotiations on issues which were not part of the last best offer process.

3 V.S.A. Section 925(i) also provides that the Board “shall determine the cost of the package selected and request the appropriation necessary to fund the recommendation.” The cost of the package selected for this year is the increased wage costs for 2004-2005 over the 2003-2004 year plus agreed-upon increases in faculty development funds, professional expenses and overload compensation. The total increases from last year total $552,034. The summary of the cost of the package is attached to this recommendation. The Board requests that amounts be appropriated to fund this recommendation.

We cannot determine the entire cost of the package for 2005-2006 and 2006-2007. This is because the bulk of the increases are salary increases which will not be determined under the collective bargaining contract’s salary calculation formula until a later time. The remaining costs can be determined. The additional costs in faculty development funds, professional expenses and overload compensation for 2005-2006 and 2006-2007 over preceding fiscal years are estimated to be the same amounts as they are in 2004-2005 over 2003-2004, except that faculty development funds will increase $5,000 in 2005-2006 rather than $6,000.

Dated this 10th day of February, 2005, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Edward R. Zuccaro, Chairperson

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Carroll P. Comstock

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Richard W. Park

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Joan B.Wilson

ATTACHMENT TO MEMORANDUM AND DECISION IN DOCKET NO. 04-7

Increased Costs in FY 2005 from FY 2004 of Employer's Last Best Offer

Salaries	
Increase Previously Provided to Faculty in FY 2005	$278,578
Increase in Salaries Due to JSC as Category IIA	199,586
Total Increase in Salaries	$478,164
Percentage Increase over FY 2004 Salaries	4.13%
Faculty Development	
Increase in Faculty Development Pool	$ 6,000
Professional Expenses	
$50 Increase per Faculty Member	13,600
Overload	
$50 Increase Per Overload Credit	54,270
TOTAL INCREASES OVER FY 2004	$552,034