VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY FEDERATION, AFT LOCAL 3180, AFL-CIO	)	
and	)	DOCKET NO. 98-67
VERMONT STATE COLLEGES (RE: PART-TIME FACULTY UNIT NEGOTIATIONS)	)	

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, AFT Local 3180, AFL-CIO ("Federation") and the Vermont State Colleges ("Colleges") with respect to a successor collective bargaining agreement between the parties, covering certain part-time faculty of the Colleges. Pursuant to an Order of Certification issued by the Board on June 4, 1991, the Federation is the collective bargaining representative of part-time faculty members at the campus-based institutions of the Colleges who meet the following requirements: 1) employed for at least three semesters, or who currently are in their third teaching semester, 2) teach at least six credit hours per academic year, 3) notwithstanding the first two requirements, adjuncts who have not taught during one academic year, past or present, are included in the bargaining unit provided they otherwise regularly teach at least six credit hours per academic year and have been employed for at least three semesters, or who currently are in their third teaching semester; and 4) are not otherwise employed by the Colleges in a full-time position as a manager or administrator. The expiration date of the last agreement between the parties was June 30, 1998.

The parties have proceeded through the statutory impasse resolution procedures of mediation and factfinding. At the conclusion of factfinding, the parties had not reached agreement on ten issues. The last best offers of the parties were filed with the Labor Relations Board on April 6, 1999. Both parties submitted last best offers on the ten issues in dispute at the conclusion of the fact-finding process. The parties' last best offers were identical on the following seven issues: agency fee, faculty evaluation, appointments and assignments, mileage reimbursement, professional development, facilities, and Federation officer rights. On each of these seven issues, the parties proposed that the factfinder's recommendations be accepted. As a result of the parties' agreement on these issues, they disagree only on the following three issues: 1) wages, 2) health insurance, and 3) retirement benefits.

Oral argument on the last best offers occurred on April 14, 1999, before Vermont Labor Relations Board Members Richard Park, Acting Chairperson; Leslie Seaver and Carroll Comstock in the Board hearing room in Montpelier. Attorney James Dunn presented for the Federation. Attorney Nicholas DiGiovanni, Jr., spoke for the Colleges.

Pursuant to the State Employees Labor Relations Act, 3 V.S.A. §901 et seq. ("SELRA"), the Board now is to select between the last best offers of the parties, considered in their entirety without amendment. 3 V.S.A. §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.

Wages

The parties are seeking a two year contract, covering the 1998-99 and 1999-2000 years. For the first year, factfinder Gary Altman recommended a 2% increase effective September 1998, and an additional 2% wage increase effective the beginning of the 1999 Spring Semester. For the second year, the factfinder recommended a 1.75% increase effective September 1, 1999, and an additional 1.75% increase effective the beginning of the Spring 2000 Semester. In addition, the factfinder recommended that faculty who do independent studies have their hourly rate increased from $16.50 to $17.00 in the first year of the contract, and from $17.00 to $17.50 in the contract's second year. The factfinder further recommended that faculty who hold a Ph.D be placed one pay grade higher, and that faculty with Ph.D's who are at the top of their pay grade should receive $50.00 more per credit.

As part of its last best offer, the Colleges adopt the factfinder's recommendation on wages. The Federation adopts the factfinder's recommendation with respect to the second year of the agreement, but for the first year of the contract the Federation proposes wage increases slightly less than the factfinder's recommendation - 1.75% effective September 1998, and an additional 1.75% increase effective the beginning of the Spring 1999 Semester. The Federation adopts the factfinder's recommendations on independent study rate and the treatment of faculty who have Ph.D's.

In 1997-98, the total salary costs for the part-time faculty unit were $1,295,226. This makes the value of every one percent increase in salary approximately $12,952. The Colleges' proposal of a 2% wage increase during the Fall 1998 Semester, and an additional 2% increase during the Spring 1999 semester, increases base rates by 4% for the 1998-99 year, resulting in a new base rate of 1,347,034 (1,295,226 x 1.04). However, the actual increase for the 1998-99 year would be 3% because the increase is split over the two semesters. The base would increase by approximately $51,808 (4 x $12,952), and the actual increase during the 1998-99 year would be $38,856 (3 x $12,952) over the previous year.

The Colleges' proposal of a 1.75% wage increase during the Fall 1999 semester, and an additional 1.75% increase during the Spring 2000 semester, increases base rates by 3.5%, or $47,145 ($13,470 x 3.5). The actual increase for 1999-2000 would be less because of the split increase. The actual increase during the year would be $35,359 ($13,470 x 2.625) over the previous year, and $87,167 ($51,808 base increase plus $35,359 actual increase) over the 1997-98 year. In sum, the Colleges' proposal would result in an approximate total salary increase of $126,023 during the two years of the contract over the wage costs during the 1997-98 school year.

The Federation's proposal of a 1.75% wage increase during the Fall 1998 semester, and an additional 1.75% increase during the Spring 1999 semester, increases base rates by 3.5% during the 1998-99 year, resulting in a new base rate of 1,340,559 (1,295,226 x 1.035). However, the actual increase for the 1998-99 year would be 2.625% because the increase is split over the two semesters. The base would increase by approximately $45,332 (3.5 x $12,952), and the actual increase during the 1998-99 year would be approximately $33,999 (2.625 x $12,952) over the previous year.

The Federation's proposal of a 1.75% wage increase during the Fall 1999 semester, and an additional 1.75% increase during the Spring 2000 semester, increases base rates by 3.5%, or $46,921 ($13,406 x 3.5). The actual increase for 1999-2000 would be less because of the split increase. The actual increase during the year would be $35,191 ($13,406 x 2.625) over the previous year, and $80,523

($45,332 base increase plus $35,191 actual increase) over the 1997-98 year. In sum, the Federation's proposal would result in an approximate total salary increase of $114,522 during the two years of the contract over the wage costs during the 1997-98 school year. This is $11,501 less than the Colleges' proposal.

Health Insurance

There is no provision in the parties' expired contract for health insurance for bargaining unit members. Factfinder Altman recommended that there be no provision in this contract for health insurance. As part of its last best offer, the Colleges adopt the factfinder's recommendation.

The Federation proposes that the Colleges offer group health coverage up to the level of family coverage to eligible unit members as follows: 1) for faculty teaching 6-7 credits per year, faculty will pay 75% of costs and the Colleges will pay 25% of costs, 2) for faculty teaching 8-12 credits per year, faculty will pay 50% of costs and the Colleges will pay 50% of costs, and 3) for those faculty teaching 13-22 credits per year, faculty will pay 25% of costs and the Colleges will pay 75% of costs. The Federation proposal further provides that bargaining unit members who have comprehensive health insurance coverage available through another employer are not eligible to participate in the insurance program.

It is difficult to accurately predict actual costs of the health insurance benefit proposed by the Federation, given the provision prohibiting employees who have insurance through another employer from participating in the program and given the cost-sharing components of the proposal which would make health insurance coverage prohibitively high for some faculty. The parties agree that, if we assume the number of part-time faculty who taught during the Spring 1998 semester and if we assume that the average contribution of costs by participating faculty will be 50%, then the annual cost to the Colleges of providing coverage to part-time faculty would be $295,000 if all eligible part-time faculty were covered.

The parties disagree as to what percentage of eligible part-time faculty actually would participate in health insurance coverage. The only relevant evidence presented on a comparable situation involves the University of Maine, which provides eligible part-time faculty with health insurance coverage. A participating part-time faculty member must pay 50% of the premium cost of coverage, and faculty members who have health insurance coverage through another employer are not eligible to participate in the insurance program. Under the University of Maine program, 23.5% of eligible part-time faculty participate in the insurance program. If it is assumed that part-time faculty of the Colleges would have a participation rate consistent with the University of Maine experience, the estimated annual cost to the Colleges would be $69,325 ($295,000 x 23.5%). This would be equivalent to an average 5.4% wage increase given that the value of every one percent increase in salary is approximately $12,952.

Retirement Benefits

There is no provision in the parties' expired contract for retirement benefits for bargaining unit members. The factfinder recommended that there be no provision in this contract for retirement benefits. As part of its last best offer, the Colleges adopt the factfinder's recommendation.

The Federation proposes that part-time faculty who have accumulated at least 25 lifetime teaching credits at the Colleges, and otherwise qualify for membership in the bargaining unit, shall be eligible for membership in the Colleges' retirement programs with TIAA-CREF, with the Colleges contributing a sum equal to 10% of the employee's annual salary. In addition, the Federation proposal provides that an eligible employee shall have the right to make voluntary contributions through payroll deductions in accordance with law.

Evidence presented to the factfinder indicated that 146 of 191 bargaining unit members have accumulated at least 25 lifetime teaching credits at the Colleges (Colleges Factfinding Exhibits 2-5). This means that approximately 76% of employees in the bargaining unit would be eligible for the retirement benefit proposed by the Federation. Given the Federation's proposal that the Colleges contribute a sum equal to 10% of the employee's annual salary towards retirement benefits, and if the 1997-98 total salary costs for the part-time faculty unit of $1,295,226 is taken as the base (disregarding salary increases for 1998-1999 and 1999-2000), the estimated annual cost to the Colleges of the Federation's retirement benefit proposal would be $98,437 ($1,295,226 x 10% equals $129,523; $129,523 x 76% equals $98,437). This would be equivalent to an average 7.6% wage increase given that the value of every one percent increase in salary is approximately $12,952.

Discussion

We are required by the State Employees Labor Relations Act, 3 V.S.A. 901 *et seq.* ("SELRA"), to choose between the last best offers of the Federation and the Colleges, considered in their entirety without amendment. 3 V.S.A. §925(i). Upon consideration of all the circumstances, we conclude that the Colleges have the "best offer".

The parties' offers substantially differ with respect to two of the three issues in dispute. The offers do not substantially differ on wages. The Colleges propose a total 7.5% wage increase over the two years of the contract and the Federation proposes a total 7% increase, a difference of only ½ of 1%. The parties' offers diverge dramatically on the remaining two issues - health insurance coverage and retirement benefits.

There is no provision in the parties' expired contract for either health insurance or retirement benefits for bargaining unit members. The Colleges, in agreement with the factfinder's recommendations, propose that there be no provision in this contract for either health insurance or retirement benefits. The Federation, to the contrary, propose both health insurance coverage and retirement benefits for part-time faculty. The differences between the parties have significant cost implications, as the Federation's health insurance provision, by a conservative estimate, would be equivalent to an average 5.4% wage increase and the retirement provision would be equivalent to an average 7.6% wage increase.

The Federation notes that this is the fourth round of contract negotiations in which the Federation has proposed some type of health insurance coverage and retirement benefits for part-time faculty. The Federation contends that it is time to recognize the serious, sustained commitment part-time faculty make to the Colleges and provide them with basic employee benefits. The Federation maintains that a substantial inequity exists when internal and external comparisons are made of which employees are provided such benefits. Internally, the Federation points to provision of health insurance coverage and retirement benefits for other employees of the Colleges, both full-time and part-time. Externally, the Federation notes that certain part-time faculty at the University of Maine are provided with such benefits, as are certain part-time State employees and certain part-time teachers in Vermont's public and secondary schools.

We find the Federation's comparisons provide some weight to their position. However, the Federation's comparisons have glossed over those employees most comparable to the part-time faculty in this case - i.e., other part-time faculty. There is no trend to provide health insurance coverage and retirement benefits to such employees. No colleges or universities in Vermont provide such benefits to their part-time faculty, and the University of Maine evidently is the only institution in Northern New England which provides such benefits to part-time faculty. On balance, examination of comparable employees does not work in the Federation's favor.

Consideration of other factors in this case also work against the Federation's last best offer. We are reluctant, through the last best offer process, to disturb the status quo on such significant issues as health insurance coverage and retirement benefits. A change in the status quo on such issues is much better achieved through negotiations agreement by the parties, not by fiat of the Board. Vermont State Employees' Association and State of Vermont, 15 VLRB 107 (1992).

We appreciate the Federation's apparent frustration that there has been no headway on these issues despite four rounds of negotiations in which they have been discussed. It is understandable the Federation would be troubled that issues of such significance to part-time faculty have not resulted in some compromise and agreement by the parties in the negotiations process over several years. Nonetheless, the last best offer submitted by the Federation is not one which lends itself to acceptance through the last best offer process.

The last best offer statutory scheme is designed to encourage the parties to narrow their differences and make hard choices on their priorities. Vermont State Employees' Association and State of Vermont, 19 VLRB 114 (1996). By requesting that we impose health insurance coverage and retirement benefits, thereby resulting in the equivalent of an average annual wage increase in the range of 13% above the wage increases for the two years of the contract, the Federation has neglected to make hard choices on priorities. It is unreasonable to expect this Board to recommend such a dramatic addition in benefits, for a group which has not had such benefits, as part of the last best offer process. Certainly, a last best offer could have been fashioned by the Federation reflecting making hard choices and having less serious cost implications.

We further note that the providing of health insurance to part-time faculty presents some significant administrative challenges on issues such as shifting eligibility, COBRA protection, and the three-tiered cost-sharing mechanism. These are administrative issues which are best left to the parties to work out as part of reaching a comprehensive health insurance coverage agreement.

In considering the last best offers, we also give some weight, although not controlling, to the factfinder's recommendations and that the Colleges' last best offer is consistent with such recommendations. All of the dispute resolution procedures set forth in SELRA - i.e., mediation, factfinding, last best offer - are designed to encourage the parties to progressively narrow their differences and, hopefully, reach agreement. The fact that the Colleges modified proposals made at factfinding to accept the factfinder's recommendations served to narrow the parties' differences and promote the statutory scheme.

In sum, we select the last best offer submitted by the Colleges 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. §925(i). In addition to the Colleges' 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. §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 is the increased wage costs for 1998-1999 and 1999-2000 over the 1997-1998 year. The estimated increase during the 1998-99 year is $38,856, and $87,167 during 1999-2000. In sum, the cost of the package selected results in an estimated total salary increase of $126,023 during the two years of the contract over 1997-1998 wage costs. The Board requests that these amounts be appropriated to fund this recommendation.

Dated this 30th day of April, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park

Richard W. Park, Acting Chairperson

Leslie G. Seaver

Carroll P. Comstock