VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY FEDERATION, AFT LOCAL 3180, AFL-CIO	)))	
	)	DOCKET NO. 18-33
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, 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 one unresolved issue at the conclusion of the process concerning the amount of contributions by the Employer to retirement. The parties filed last best offers with the Labor Relations Board on this issue on September 26, 2019.

The parties filed various materials with the Labor Relations Board subsequent to submission of the last best offers and prior to the October 16, 2019, hearing before the Board. They were: 1) the memoranda submitted by the parties to the fact-finder subsequent to the fact-finding hearing; 2) the Report and Recommendations of Fact-Finder Gary Altman; 3) various exhibits related to the issue in dispute in the last best offer process; and 4) briefs filed by the parties prior to the October 16 Board hearing in support of their positions on the last best offers. We have considered all these materials in reaching a decision.

Presentations by the parties, and questions by the Labor Relations Board members, on the last best offers occurred on October 16, 2019, in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Chairperson; Robert Greemore, David Boulanger, Karen Saudek and Roger Donegan. Attorney Thomas Somers and former Federation President Lisa Cline presented for the Federation. Employer General Council Sophie Zdatny, Employer Chief Financial Officer Steven Wisloski, and Northern Vermont University Dean of Administration Sharron Stone presented 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 issue presented in their last best offers.

<u>Differences Between the Parties on Retirement Contribution</u>

Article 36, Section A, of the collective bargaining agreement between the parties with an expiration date of August 31, 2018, provides: "The College shall make TIAA-CREF contributions for every faculty member on active, full-time service in the amount of 12% effective for FY 06."

During the fact-finding process, the Employer proposed to lower the per employee contribution by the Employer from 12 percent of salary to 9 percent of salary beginning in the 2019-2020 academic year. The Federation took the position during fact-finding that the Employer contribution would not change.

Fact-Finder Gary Altman's Report and Recommendations contained the following discussion:

Article 28 – Salary and Wages

. . . The parties, for this successor Agreement, have . . agreed to apply a salary corridor for determining salary increases . . . (T)he parties have agreed that the minimum increases over the three year period will be 2%. They disagree over what should be the maximum rate over the three years; the Union proposes that the top rate should be 4% and the VSC proposes that the rate be 3.25%. I recommend that the maximum rate should be higher than the increase proposed by the VSC. . . It is true, as the VSC maintains, there are financial pressures and enrollment challenges facing the VSC in the short-term and the future. This being said, the record shows that over the last eight years the faculty have certainly not received higher increases than other VSC employees, and in fact, their increases have lagged what was provided to other VSC employees.

Moreover, one cannot consider salary increases without considering the other proposals made by the VSC. More specifically, the VSC proposes a significant reduction in the amount it contributes to bargaining unit members' TIAA accounts. Specifically, the VSC proposes that it reduce its contribution from 12% to 9%. . . . As discussed later in this report, I have recommended that there should be changes in the VSC's retirement contribution, which is an important factor in making the following salary increase recommendations.

. . . The parties should agree that the salary corridor should be as follows:

9/1/19 – 8/31/20
Salary Cap 3.5% - Salary Floor 2%

9/1/20 – 8/31/21
Salary Cap 3.75% - Salary Floor 2%

9/1/21 - 8/31/22
Salary Cap 4% - Salary Floor 2%

. . .

Article 36 – Retirement

. . . A review of employer contributions at other institutions of higher education in the region shows that at the present time the faculty at VSC receive a generous benefit compared to faculty at these other institutions. Specifically, none of the other institutions contribute as much as the VSC. Moreover, many of the other institutions require a waiting period before the employer makes its contributions, and the contributions are conditioned upon employees also making a contribution. At VSC there is no waiting period and employees do not have to make any contribution in order to receive the Employer's contribution.

Prior to the last Agreement the Employer contributed 12% for all VSC employees. In the most recent round of contract negotiations all the other unionized employees working at VSC agreed that the Employer could lower its retirement contribution from the 12% level to a rate of 10% for those who learn

> less than $40,000 and 8% for those who earn more than $40,000. It certainly appears that there has been a parity relationship for retirement contributions for all unionized employees working at the VSC and thus there is ample justification to have the VSC contribute less for faculty retirement contributions, as was recently agreed to by all other unionized employees.
> . . . I would . . recommend that the parties adopt a progressive structure that was agreed to for the other bargaining units . . Specifically, the parties should agree to an 8% and 10% contribution, as was the case with other VSC employees. The one difference is that I would recommend that the Employer contribute 10% for those bargaining unit members whose base salary is $60,000 or less and 8% of those whose base salary is more than $60,000.
> . . .

Subsequent to issuing his fact-finding report, Altman clarified in an email exchange the specific recommendation he was making with respect to the 8% contribution, stating: "My intention was that the faculty would have the same retirement contribution process used by other VSC employees, except that the 8% contribution would kick in at the higher rate of $60,001." This meant that he recommended the Employer make TIAA contributions for full-time faculty in the amount of 10% of salary on the first $60,000 of salary and 8% of any additional salary above $60,000. This differed from other employees represented by unions. There, the Employer makes retirement contributions in the amount of 10% of wages on the first $40,000 of wages and 8% of any additional wages above $40,000.

In addition to the issues of wages and retirement contributions, the parties entered the fact-finding process disagreeing on issues of health insurance, academic calendar, Federation officer rights, and professional expense funds. Fact-Finder Altman made recommendations on each of these issues. Subsequent to issuance of the fact-finding report, the parties agreed to adopt each of the fact-finder's recommendations on issues in dispute except on the issue of employer retirement contributions.

In its last best offer, the Federation proposes that the Employer retirement contribution is identical to what was recommended by the fact-finder – i.e., the amount of 10% of salary on the first $60,000 of salary and 8% of any additional salary above $60,000. The Employer proposes that the Employer make retirement contributions in the amount of 10% of salary on the first $40,000 of salary and 8% of any additional salary above $40,000.

The parties agree that the annual cost difference between their respective last best offers is approximately $68,000. The parties also concur that the change in the Employer retirement contribution determined in this last best offer process shall be effective no later than the second pay period after issuance of this decision.

Discussion

Under the State Employees Labor Relations Act, the dispute resolution procedures, which can be invoked upon declaration of impasse by either party, are successively: mediation, factfinding, and selection of one of the parties' last best offers by the Board. If parties submit last best offers, “the Board shall select between the last best offers of the parties, considered in their entirety without amendment.” 3 V.S.A. §925(i).The Board selection of a last best offer in disputes arising from the Vermont State Colleges is final. 3 V.S.A. §925(k). In applying these provisions, the Board has stated:

> This statutory scheme is designed to encourage the parties to narrow their differences and make hard choices on their priorities so that, hopefully, agreement can be achieved. If agreement is not achieved, the desired outcome is that the last best offers submitted to the Board bring the parties closer together. VSEA and State, 15 VLRB 107, 122 (1992).

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. VSEA and State of Vermont, 15 VLRB at 111-12. 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). Vermont State Colleges Faculty Federation, UPV, AFT Local 3180, AFL-

CIO and Vermont State Colleges, 28 VLRB 28, 43 (2005). VSEA and State of Vermont, 33 VLRB 357, 364 (2016).

The parties have resolved all issues in dispute except for the amount of the Employer retirement contribution. Their differences are relatively narrow on this issue; the annual cost difference between the Federation's last best offer and the Employer's last best offer amounts to approximately $68,000.

In deciding which offer is more reasonable and in the public interest, we weigh various factors. Among the factors to be considered in evaluating proposals are the comparability of affected employees' wages and benefits with that of other employees. VSEA and State, 15 VLRB at 113. VSEA and State of Vermont, 19 VLRB 114, 123 (1996). VSEA and State, 33 VLRB at 365. The Board looks to whether comparability will be significantly altered by a last best offer determination. VSEA and State, 15 VLRB at 113. VSEA and State, 33 VLRB at 365. Here, this involves examining the comparability of retirement contributions for full-time faculty to both other employees in the State Colleges system and employees at other colleges and universities.

Another significant factor, given the design of dispute resolution procedures promoting parties narrowing their differences, is an examination of the progression of negotiations to determine which party's last best offer has brought the parties closer together. In this regard, the Board has indicated that, in considering last best offers, the Board gives some weight, although not controlling, to the factfinder's recommendations and that one of the parties has submitted a last best offer consistent with such recommendations. VSCFF and Vermont State Colleges (Re: Part-Time Faculty Unit Negotiations), 22 VLRB at 98. VSEA and State of Vermont, 33 VLRB at 368.

The financial situation of the State Colleges also is a factor that weighs in our determination. Retirement contributions are one of the two most expensive employee benefits, along with health insurance. Examination of the fiscal health and financial prospects of the Colleges is significant to judge the sustainability of the respective proposals.

In weighing these factors, we are left with a difficult decision. An examination of comparability of retirement contributions for full-time of faculty of the State Colleges with both full-time faculty elsewhere and other State Colleges employees presents a strong case for a change in the status quo. Employer contributions at other colleges and universities in the region indicate that State Colleges full-time faculty receive a more generous benefit compared to the other faculty. The State Colleges contribute more than the other institutions, and do not require employee contributions and a waiting period as do many of the other institutions.

The internal comparison with other State Colleges employees also indicates that full-time State Colleges employees receive a more generous retirement contribution than other State Colleges employees. This results from the most recent negotiations with other State Colleges employees represented by unions. Prior to these negotiations, the Employer contributed retirement contributions constituting 12 percent of wages for all State Colleges employees. This changed when agreements were reached in the most recent round of negotiations covering all the other employees represented by unions for the Employer to make retirement contributions in the amount of 10% of wages on the first $40,000 of wages and 8% of any additional wages above $40,000.

Thus, the factor of comparability weighs in favor of a significant change in the status quo that would decrease the Employer retirement contributions for full-time faculty. A significant change in the status quo is what would result if either the Federation’s or the Employer’s last best offer is selected. The difference between the two offers simply is one of degree. The Employer's last best offer would result in a larger decrease in the Employer retirement contribution to make it identical with other State Colleges employees. The Federation's offer also would result in a significant, but lesser, decrease in requiring the Employer to make retirement contributions in the amount of 10% of salary on the first $60,000 of salary and 8% of any additional salary above $60,000.

We balance the comparability analysis with the examination of the progression of negotiations to ascertain which party's last best offer has brought the parties closer together. In accepting the fact-finder's recommendation on Employer retirement contributions, the Federation has presented a last best offer that has brought the parties much closer together than that submitted by the Employer. The Federation has moved much further from their position at fact-finding on this issue than has the Employer.

Employer retirement contributions are a major benefit for employees on which they depend and are central to their retirement planning. In accepting the fact-finder's recommendation on this issue, the Federation has made a major concession on a significant benefit. Reducing the Employer contribution from 12 percent to 10 percent of salary on the first $60,000 of salary, and even further to 8 percent of any additional salary above $60,000, has a significant financial impact on employees. We conclude that it would be imprudent, absent agreement by the parties, to order a more substantial decrease to this major benefit. If we were to impose further concessions on a union after it has given significantly, it may have a chilling effect on other unions agreeing to significant concessions before they are imposed. We are not inclined to set into motion such a possible adverse impact on productive collective bargaining negotiations.

Selection of the Federation's last best offer will result in a retirement contribution by the Employer for full-time faculty that approaches, but is different from, that experienced by other State Colleges employees. This difference is not fatal to the Federation's last best offer. The obligation of parties to bargain in good faith necessarily implies that there may be differences in negotiated wages and benefits across bargaining units depending on unique community of interests and other circumstances. Although comparability is important and consistency in benefits is desirable in many cases, walking in lockstep is not an automatic feature of a good faith collective bargaining system. We note that the Employer cannot persuasively claim the need for absolute consistency in benefits since its position at fact-finding on retirement contributions for full-time faculty differed from that negotiated for other bargaining units. Further, the opportunity exists in future negotiations covering full-time faculty to possibly eliminate or narrow the difference in retirement contributions between full-time faculty and other employees.

The financial condition of the State Colleges does not change our conclusion. We are mindful of the difficult financial climate in which the State Colleges system is operating, resulting from factors such as relatively low State support, demographics, and fierce price competition from other colleges and universities based on factors largely outside control of the State Colleges. Nonetheless, the last best offer of the Federation reflects a recognition of this financial climate in agreeing to a substantial benefit decrease. Moreover, the relatively modest cost difference between the parties' last best offers does not lead the Federation's last best offer to fail on sustainability grounds.

In sum, we select the last best offer submitted by the Federation as more reasonable and in the public interest. The terms of the Federation's last best offer shall be included with all other tentative agreements reached by the parties during negotiations on issues which were not part of the last best offer process.

Dated this 24th day of October, 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Robert Greemore

Robert Greemore

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek

/s/ Roger P. Donegan

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