

Bargaining Session 10 – 1:25 PM
5/26/09

Administration in Attendance: Cathy Cobb, Beverly Slaughter, Darla Ferguson (alternate), Marian Shelpman, Linda Miedema, Chief negotiator: Mark Levitt, Ona Kim

Faculty in attendance: Norma Rudmik, Holly Kahler, Laura Earle, Lynn Spencer, Chief Negotiator Michael Moats, Judi Schatte (alternate)

Article 16

Michael – kept things that mark had suggested in mind as rewrote the material. Tired to give a clearer more significant definition of class action grievance on A2. Individual grievances or each individual grievant would sign the same common complaint or class action which is a “class” of people where all were affected and the union would then represent them. On page 4 – Conflict management – there is a workshop/program on conflict management. Was confused. No apparent permanent policy. 3 step grievance process – step 1 informal process (email employee to immediate supervisor). Immediate supervisor would be campus provost/associate provost or Vice President.

Mark – dean or Provost for library.

Michael – we’ll discuss that. This process will give opportunity to resolve issue informally. At step 2 – formal grievance to campus provost or vice President with written documentation. Step 3 – goes to the President. If still no resolution goes to arbitration which is a split process expenses 50-50. Discipline is all brand new language – just cause, appropriate with actions under consideration, establishes a process for escalating discipline, suspension, dismissal, return to annual contract and the right of representation.

Mark – On 2 (class action). On 3b – problem with bringing attorneys into it at that level, will be adversarial. Don’t think we need b or c (designee) words aren’t necessary, don’t need them. B on page 2 – if it’s a union grievance, 1 and 2 are merged. Associate vice president of HR is not in that step, take it out. Don’t need to describe step 2, just state “start at step 2”. Group grievances – if several members have the same grievance, the parties MAY consolidate. Class action needs to be a broad group: could be different campuses or departments or very large groups. On F – can contain 2 or more names. Is 2 sufficient?

Michael – not everyone may be needed on the sheet, but at least 2 of the affected people would need to be on the paperwork. There may not be everyone affected that came forward initially, but more people could be affected than initially reported. May come up after investigation during the grievance process.

Mark – we talked about leaving section 4 in.

Michael – no.

Mark – we had talked about it because of the similar language...

Michael – if the grievance must take place during the work time, could be a problem if you are called to a meeting.

Mark – then why would I say “if reasonable” –

Michael – if the grievance chair needs something from HR, its senseless to go to their supervisor to get permission. No faculty member is going to leave their class to handle a grievance. With the current contract language the schedule has been set with every hour occupied. If supervisor says no, people with greivable issues need to be handled within the appropriate time frame and getting it stamped and received in the appropriate time frame may be in danger.

Mark – Union does not have the discretion to do what they want. They will notify the supervisor.

Michael – there’s a difference between asking permission and notification

Mark – this was covered in Article 5 already, so it doesn’t need to be in Article 4. In G – is same as in 1, so not necessary to repeat this. G1 - Step 1 – informal resolution – may or may not be Campus Provost – this is informal. Put a period after grievances. Vice President would never be the first step for library. Dean or campus provost would be first step for library

Michael – not the same level as the campus provost.

Mark – it’s the organizational structure.

Michael – Associate provosts are the Office of the Provost.

Mark – if the Associate is the designate then they handle it.

Michael – step 1 is probably the Associate Provost and is informal, step 2 is the Provost.

Mark – campus provost or designee is more appropriate.

Michael – have to think about that.

Mark – step 2 – is correct. “Document must be re-filed” (change to “filed”)

Michael – concern with “designee”, theoretically, the Provost could designate anybody, so it should really go to the Provost. The janitor should not be making that decision.

Mark – will probably not be the janitor. Its more important that the wording is correct. Someone can always designate someone.

Michael – a person has been empowered to act in their place. If the provost designates someone inappropriate, that is not the appropriate person to take care of this issue.

Mark – someone who wants the appropriate thing for the issue. Management has the right to designate anyone.

Michael – at the beginning of this exercise you said that you were happy with the current language. The current language is more restrictive and doesn't give the right to accept grievances to anyone other than the campus provost.

Mark – designate should always be there. We have proposals for the contract. If you want to make changes, we will respond. Designee has always been understood and individual always encompasses the designee. 2c – if the grievant requests a meeting do they get it?

Michael – they can request the meeting, but it may not occur.

Mark – also remove Asst VP for HR. Step 3 – appealing the decision, not re-filing the grievance. (Michael agrees). Should be the “grievant may appeal” instead of “re-filed” in 3a. 16.A.2 – the grieving party should strike first. Striking first is the disadvantage. 16.A.5 – I like it, but “bifurcation of the issues”...

Michael – might be the same arbitrator. If the situation is arbitrable, there may be the same arbitrator or another one.

Mark – we'd pick an arbitrator, but you would have the ability to say yea or nay. 16.A.6 don't need a letter. Take it out. Venue is fine but the “25 days” should be struck out (not enforceable). Say instead “the hearing shall be scheduled as soon as practicable”.

Michael – this is just to let the arbitrator know that time is limited to make a decision.

Mark – typo “its” not “it's”. 16.A.6c – OK, but may be too restrictive.

Michael – same as above reason.

Mark – 16.A.6d – confused by the second half of this. Cut the paragraph after “the arbitrator takes the appropriate action”. The arbitrator makes a decision that's it. Then you go to court if there is still a problem. Appropriate remedy would be back pay by the college. 16.A.6e – fees and expenses – we had decided that the loser pays all expenses at a previous meeting. The arbitration costs or the meeting room costs...

Michael – meeting room costs would be covered.

Mark – 16.A.6f – not necessary, but if you want it OK. H is ok. Would like disciplinary action to be its own article.

Michael – will make Discipline Article 17 and miscellaneous Article 18.

Mark – 16.3.A – not sure what you mean by the “appropriate administrator”. The college administers discipline, not the individual. If we say for “cause” is everything. So we don’t really need A at all.

Michael – have seen other institutions where discipline is not only enforced for contractual issues.

Mark – cause encompasses all work related stuff – if it affects the reputation of the college, it is cause. Would like to see in B – timely goes to cause, fairness is cause.

Judi – this is for the layman.

Mark – wants wording changed to “cause” not “just cause”

Judi – at previous negotiations, came up that “how do we know they are actually working at home? How do we discipline the faculty”, so we are trying to give the administration a way to discipline the faculty should a situation arise.

Mark – I understand, you are right about notice and procedures should be in place, but we want to clean up the language. Let’s fix some things, get some basic procedures and grow the language organically. Process should be clear, but not every situation needs to be in place in the contract. What we are looking for is progressive discipline. We just don’t like the way it is worded right now. Let’s talk about the steps: oral warning is not necessarily discipline, it’s counseling and is their job to do this.

Judi – is the step leading to discipline, so should be in the line.

Michael – verbal warning with a list of consequences is the oral warning. Not just telling someone that they violated a policy or process, includes possible disciplinary action.

Mark – if you are counseling someone that they are not following policy, do you need to send the possible consequences?

Judi – yes. Even though we are professionals people don’t always follow the rules.

Mark – OK – written warning only, no written reprimand. Not enough of a difference and may actually give too many steps along the way to suspension. Return to annual contract is something that we may or may not use. We are not obligated to do that. Less likely than just terminating someone.

Michael – go back to 16.3B – if the severity of the action so warrants, discipline may begin at the next or even higher step depending on the severity whether or not the next occurrence results in a written reprimand, it is up to the administrator to determine the severity of discipline. Return to annual contract may not be granted, you may go straight

to dismissal, but this gives them the option if necessary. We have been as proactive as the administration in disciplinary actions.

Mark – you are saying that incidents are unrelated should not be different procedures. If someone makes a lot of individual offenses, then they shouldn't have to go through all of the steps for each problem. This all goes to cause. Take out last sentence in 16.3B

Michael – we agree, but if you have someone who is late one time and then again in 8 months have an unrelated issue, then that shouldn't be grounds for discipline.

Mark – you are right, but you can't put everything in the contract.

Michael – two different arguments – there is a difference between 2 unrelated events and 2 related events for cause. If they are separate unrelated events, then the steps should be followed. I accept the fact that numerous different problems that are related to a specific incident, there is an underlying cause.

Mark – we need language that says “one's overall work performance will be considered”. Can you challenge an oral warning or a written reprimand?

Michael – misunderstandings may occur.

Mark – may not be OK. If the reprimand is basis for other discipline, than OK. Need to look at c. Not all discipline is subject to review and challenge. 4 – return to annual contract or dismissal – isn't that the same thing?

Michael – no, it is taking away the tenure

Mark – taking away tenure is the same as being fired.

Michael – statutory language is different.

Caucus 3:12 PM Resume meeting 4:15 PM

Michael – there are instances where a faculty member may not be a union member so they might need an attorney because they would not have union representation in this case. UFF will not have an attorney represent them unless there is a termination or suspension leading to a termination.

Mark –2b – union as grievant – this is not on behalf of an individual, the union should file on behalf of the grievant. What issue can this be for?

Michael – union may defend the contract and grieve it as the grievant.

Mark – if the employee does not want to file...

Michael – we can do that and it is a state ruling.

Mark – that does away with the whole contract.

Michael – the chapter/local always has the right to file a chapter grievance (PERC July 1st, 2003 newsletter, Duvall teachers vs. School Board 1981). PERC says we have that right. The language has been there all along.

Mark – took out contract rights to UFF

Michael – we aren't giving you the waiver anymore.

Mark – I'll look at the cases. I've had this before when the employee doesn't care, but the union does

Michael – yeah, then you end up with “past practice” and a union right dies because no one pursued the case. PERC 2003 newsletter says: union has a right to initiate and process arbitration and grievances to which it is a party (CWA vs. School Board of St. Lucie) Can't go to impasse over something that they can't negotiate. It's an inherent right.

Mark – parties may agree to consolidate instead of may consolidate. Class wide grievance is not 2-3 people, it's many more people. Want people to be responsible for their own individual grievance, don't want to tell the administration that they have to process things at the whim of the union.

Michael – I'll think about it. Thought it would save time and effort to not have to process 70 individual grievances...

Mark – 16.2A2 – who strikes first? A6 – don't need joint letter.

Michael – you keep in the group filing and we'll take out the A6 first line

Mark – if the letter isn't signed then what?

Michael – prevents you from arbitrarily stating who the arbitrator is or something that we are not willing to agree to. We need to make sure the arbitrator is communicated with both at the same time. May be done via email.

Mark – FMCS appoints the arbitrator and then all parties are notified and scheduling happens. Not a big issue to have 6, but if you want to keep it in, fine. 6a: should be “Hearing shall be scheduled as soon as practicable”. 6d OK. 6e would prefer loser pays.

Michael – the state decides whether we arbitrate, not the chapter.

Mark – issues remain: loser pays, 16.2A2 flipping a coin, 16.1c group arbitration and right of the union to file a grievance. Typo 16.1a1 – should be the college, not the Board.

Michael – pg 3 section F – “Board” should be “College’s failure to answer grievance”.

Mark – on Disciplinary Action - Article 17 – 16.3B – timely, fair, cause and just cause. Written warning and written reprimand are the same, severity of the action, discipline may proceed to higher level rec add “after consideration of all the circumstances”. We have evaluated unrelated actions and recommend removal of the language. Unnecessarily confusing. Relationship to other discipline, timing and severity of the disciplinary action must all be taken into account. “Disciplinary action shall include...” should be “may include”. Should arbitration be considered after a verbal warning? Recommend only suspensions or higher should go to arbitration. Obviously F Disciplinary action would have to be rewritten. Return to annual contract F should go to F1 for Discipline shall begin...Thinks suspension, dismissal and return to annual contract should be the same procedure for filing. Discipline is no longer covered by statute and is at the discretion of the college (should be the seven deadly sins plus other at the college’s discretion).

Michael – that says that anything the college determines is cause

Mark – you could argue anything is not the proper cause. If you choose to go to arbitration, you don’t go through the State process. You choose one or the other. State goes through the Board, the arbitration stays here and goes no further than arbitration. Would like to pick up the language from HCC on that.

Michael – no problem with that.

Mark – the President gives them notice of the reasons, the Board makes the decision to terminate, then the faculty has to make the decision to either go through arbitration or go to the State.

Darla – Board would probably be responsible for tenure loss.

Michael – Board doesn’t want to be involved in granting tenure.

Mark – when the statute was written it didn’t contemplate arbitration

Michael – I don’t agree with that.

Mark – the Board may suspend without pay without dismissing them. If they go through arbitration, the Board would not be involved.

Michael – they make the decision whether to go through one or the other

Mark – they can't make that decision until the discipline has been issued. By the next time, we need to look at the rest of the issues to see what's left on the agenda to get it wrapped up to present to the Board at the June meeting (6/29)

Michael – we have evaluation, professional development, leave, defining faculty work, economics, possibly management rights. We can have evaluation, professional development, leave and benefits by June 1st. Most of the other things may remain pretty close to what we already have in place.

Next meeting: June 4th, June 8th, June 10th, June 15th at 1:00 PM – 6:00 PM lunch at 12:30 PM