

BEFORE DIANE ZAAR COCHRAN, ESQ., FACT-FINDER

BOARD OF HIGHER EDUCATION
and
MASSACHUSETTS STATE COLLEGE
ASSOCIATION/MTA/NEA

PS – 089 - 2004
Fact-finding: Fiscal Year 2004

BRIEF OF THE UNION

Introduction

“Faculty at the Massachusetts state colleges receive 10% less than the average salary of their peers across all ranks. However, full professors, who have attained the highest academic ranking, fare even worse, earning 14% less than their peers. When the high cost of living in Massachusetts is factored in, state college faculty across all ranks earn 18% less than their peers, while full professors earn 22% less.” Joint Exhibit 30.

Summary

It is in the context cited above that the Massachusetts State College Association (the “MSCA” or “Union”), has refused to accept the zero percent pay raise offered by the Board of Higher Education (the “BHE” or “Employer”) for FY 2004.

The Union has proposed a 5% increase in salaries, chair stipends and part-time rates, and maintains that this is reasonable in light of comparisons with other groups and with wage and cost-of-living changes, and in light of the state revenue picture.

The comparisons show how MSCA unit members fare relative to the following:

- public colleges in industrial states
- peer institutions designated by the BHE
- masters institutions identified by the AAUP
- other higher education employees in Massachusetts
- state managers
- non-unit state college employees
- consumer price index
- wage earners in Massachusetts
- salary increases in Boston.

None of these comparisons justifies a zero percent salary offer.

The Employer presented no comparison that justifies a zero.

The Employer produced only one comparative salary study, which became part of the record as Joint Exhibit 27. It supports salary increases.

According to Joint Exhibit 28, the one-year cost of implementing a salary increase that would bring the state college faculty and librarians to the 50th percentile of peers, according to Joint Exhibit 27, is about \$10 million, and the one-year cost to bring the salaries to the 75th percentile is about \$19 million.

Based on Joint Exhibit 4, which shows the estimated cost of a 1% salary increase, the cost of the Union's request of 5% would be about \$4 million.

The Commonwealth ended FY 2004 with a surplus estimated at over \$720 million. State revenues began to come in ahead of projections during FY 2004 and have continued

to do so. Joint Exhibits 5, 11 and 22. As Governor Romney asserted on June 3, 2004, “[R]evenue collections are once again robust.” Union Exhibit 1.

Based on the overwhelming evidence, the Union asks that the Fact-finder’s recommendation support the Union’s salary proposal.

Background

The Union represents a bargaining unit of faculty and librarians employed at the nine state colleges. The Union is a party to a collective bargaining agreement with the Board of Higher Education covering the period of July 1, 2001 through June 30, 2003, Joint Exhibit 1 (the “Agreement”). The last general increase provided in the Agreement was September 29, 2002.

In May 2003 the Employer suggested that the parties agree to a one-year contract for FY 2004 with minimal changes in language, but no increase in compensation. The Union sought salary increases. The positions of the parties at the time mediation and fact-finding began are represented in Joint Exhibits 2 and 3.

BHE witness Peter Tsaffaras, the Employer’s principal negotiator, testified that the Employer sought only technical changes in the one-year contract. Record, Vol. I at 39-41. Brad Art, MSCA Bargaining Chair, testified that the Employer had proposed items that were more substantive than technical, such as change in personal days, the requirement for approval by the vice president for faculty personal days, and the implementation of a student evaluation system. Record, Vol. III at 198-200. Patricia Markunas, MSCA President, testified that the Union was reluctant to agree to any

standardized student evaluation process because of concerns about how such processes had been applied in the past. Record, Vol. IV at 22-23.

Student evaluations were included in a contract settlement in July of 2000. Joint Exhibit 25. The parties had been negotiating over a new student evaluation system since the previous one had been discontinued in 1999. The parties had no agreed-upon student evaluation process for the fall of 1999, the spring of 2000, and the fall of 2000. Record, Vol. IV at 20. During this period the parties were involved in negotiations for a successor to their 1995-1998 collective bargaining agreement. Before the current Agreement (Joint Exhibit 1) was negotiated, two interim agreements had been reached, each of which provided for salary increases for the bargaining unit. Joint Exhibits 24 and 25. The first interim raise went into effect July of 1998. The second went into effect in January of 2000. Record, Vol. IV at 14-15. Pursuant to the second interim agreement, Joint Exhibit 25, the new student evaluation instrument was to be used beginning in the spring of 2001.

During the negotiations for the FY 2004 successor to the current Agreement, the Employer refused to offer anything better than a zero. This was the case even on November 14, 2003 when the Employer's chief negotiator suggested that the parties agree to "2% with a wink." Record, Vol. III at 190. The Employer, by this suggestion, wanted the Union to ratify a one-year contract for FY 2004 with the understanding that it would never be funded, although the Union would accept what it considered an undesirable student evaluation instrument by tricking its members into thinking that student evaluations would be accompanied by a pay raise. Record, Vol. III, 193-194 and Vol. IV at 26.

The Union is willing to accept student evaluations for two semesters after payment of raises. Joint Exhibit 3.

Art distinguished in his testimony circumstances that would be different from what occurred on November 14, 2003, when the BHE might make an offer greater than zero and then advocate for it to the governor. Record, Vol. III, 211-212, 220-221. Markunas also indicated that it would be appropriate if the parties honestly entered into an agreement that they believed to be fair. Record, Vol. IV at 28.

The Employer repeatedly refused to modify its zero-raise offer on the grounds that the governor, the Secretary of Administration and Finance, Eric Kriss, or other representatives of the administration did not approve any pay raises. Judith Gill, the Chancellor testified that she and Stephen Tocco, the BHE Chair, had had conversations with Kriss and others in Administration and Finance about making an offer above zero because they were concerned about improving state college faculty salaries. Record, Vol. III, 175, 183, 184. Gill testified that the BHE did not offer raises because to do so “places the Board of Higher Education and the campuses in a very difficult situation with the Executive Office. It is an adversarial one with the Governor’s office.” Record, Vol. III at 186.

The parties did reach agreement on a number of issues for FY 2004, but remained unable to agree on the question of salary increases.

The Union petitioned for mediation pursuant to Section 9 of M.G.L. c. 150E. The parties met three times with a mediator. When the Employer’s position remained unchanged the Union requested fact-finding. The parties began to negotiate over the

terms of a three-year contract for FY 2005, FY 2006 and FY 2007. Fact-finding hearings to address FY 2004 were held on August 30, 31, September 13, and October 4, 2004.

Regarding FY 2004, Gill testified that there would be no retroactivity and “we had gone beyond the July 1 date.” Record, Vol. III at 176. Tsaffaras’s testimony about FY 2004 was that the BHE was no longer “continuing to seek economic parameters for the fiscal year that had expired.” Record, Vol. I at 64. His opinion was that to negotiate over FY 2004 as well as the next three fiscal years would create an impermissible four-year contract. Record, Vol. I at 64.

Markunas and Art emphasized that the MSCA is not writing off FY 2004. Record, Vol. I, 93, Vol. III, 194-196. Markunas testified that the ability of the colleges to recruit faculty depends on salaries. Art explained that in FY 2004 members of the unit had lost ground because of increases in the cost of living generally and increases in the cost of health care and health insurance in particular. Art also explained that the reputations of the institutions are based in part on faculty salaries, that high salaries are viewed as indicators of high quality.

Comparison: Industrial States

Joint Exhibit 7 shows a comparison of Massachusetts state college faculty salaries to those at public four-year colleges other than universities in the industrial states. In FY 2003 (the year of the last MSCA raise) the average MSCA faculty salary was 82% of the average salary of comparable faculty in the other ten industrial states when cost of living was considered. The data were not available for FY 2004. *Based on FY 2003 data, a*

raise of nearly 22% would be required to bring MSCA salaries up to the average of the faculty salaries in the industrial states as adjusted for cost of living.

Comparison: Peer Institutions

Both the Union and the Employer provided evidence of a salary shortfall for Massachusetts state college faculty when compared with peer institutions selected by the BHE. Joint Exhibits 10 and 27. A comparison of Joint Exhibit 9 (FY 2003) and Joint Exhibit 10 (FY 2004), incidentally, does not reflect improvement is the MSCA’s relative position. Rather, it reflects the BHE’s alteration of the peer population for the state colleges, as set forth in Joint Exhibit 13 (“old peers”) and Joint Exhibit 14 (“new peers”).

Summary of Results	Union Study (FY 2004) Joint Exhibit 10	State College President- Trustee Study (FY 2004) Joint Exhibit 27
Average State College Salary	\$58,000	\$57, 551
Peer Salaries	\$62,000 unadjusted for cost of living \$66,800 adjusted for cost of living	\$62,296 at 50 th percentile, union + non-union \$64,460 at 50 th percentile, union only \$68,589 at 75 th percentile, union + non-union \$70,918 at 75 th percentile, union only

It should be noted that the state college presidents included peer salaries at the 75th percentile as a way to take into account the high cost of living in Massachusetts. Joint Exhibit 27, cover letter to Governor Romney and Joint Exhibit 30.

The college presidents used the results of the FY 2004 study to highlight the importance of competitive salaries. The press release issued on September 28, 2004 (Joint Exhibit 30) notes that “as many as one-third of recent faculty searches have failed due to low salary and the high cost of living in Massachusetts.”

To bring MSCA salaries up to the peer average in the Union study, including a cost-of-living adjustment, would require a 15% increase. To bring MSCA salaries up to the 75th percentile of all peers in the President-Trustee study would require a 19% increase. To reach the 75th percentile among unionized peers, a 23% increase would be needed.

Comparison: Masters Institutions

The Union also produced reports comparing the salary average from its study to salary averages at comparably ranked institutions in the AAUP’s *Academe*. Union Exhibits 13, 14 and 15. Those comparisons also showed that Massachusetts state college faculty are underpaid relative to comparable institutions. For example, nationally, the average salary for MSCA professors is at the 40th percentile nationally for IIA institutions, without adjusting for the cost of living in Massachusetts.

Comparison: State Managers

Employer witness John Jesensky acknowledged that he is a non-unit state manager and that he received a raise during FY 2004. Record, Vol. II, 134-135. His

memory about the precise amount failed him on the witness stand, but the parties were able to fill in any gaps with Joint Exhibit 26, which indicated that “the governor granted a 2 percent across-the-board pay raise to managers,” which was retroactive to the beginning of July 2003 and which was “on top of 2.7 percent cost-of-living increases that managers received July 1 [2003].”

Comparison: Other Massachusetts Public Higher Education Faculty

Faculty and librarians employed by the University of Massachusetts received pay raises in the aggregate of 15% under legislation enacted and signed by the governor in 2003. Joint Exhibit 20. This amount represented implementation of the latter half of the third year of collective bargaining agreements covering FY 2002, FY 2003 and FY 2004. Joint Exhibit 15. The annual aggregate amount of raises in the agreements was 5%.

The faculty and professional staff employed by the community colleges did not enter into negotiations for FY 2004. Record, Vol. I at 58-59. The raises in their collective bargaining agreement for FY 2003 were not funded. Governor Romney refused to file the request for an appropriation under Section 7 of M.G.L. Chapter 150E, even though the BHE had settled the FY 2003 financial package within the “parameters” acceptable to Governor Swift. Record, Vol. I, 58 and Joint Exhibit 18.

Comparison: Consumer Price Index

Joint Exhibit 6 shows data from the Bureau of Labor Statistics on changes in the Consumer Price Index. The change from FY 2003 to FY 2004 was 3.5%.

The change from September 2002 (the month of the last MSCA raise) to June 2004 was 4.7%.

Miscellaneous Comparisons

The overall increase in wages in Massachusetts in both the public and the private sectors from FY 2003 to FY 2004 was 4.8%. Joint Exhibit 12, Union Exhibits 7 and 8.

According to a national study, Boston salaries increased by 3.4% in 2004 as of September of 2004. Joint Exhibit 23.

Other Issues

The Commonwealth's contribution to health insurance in FY 2003 was 85%. Record, Vol. II, 166-167. The employee share of health insurance premiums increased in FY 2004. Joint Exhibit 21. Deductibles and co-payments increased in FY 2004. Joint Exhibits 8A and 8B.

The MSCA provided examples of prior rounds of bargaining in which BHE predecessors had entered into agreements with the Union incorporating salary increases that had been pre-approved by the governor, which the governor then refused to submit to the legislature for funding. According to MSCA Vice President Frank Minasian, this happened in 1980, in 1990 and in 1995. Record, Vol. III at 230-232. Minasian also reviewed the bargaining from 1977, where all increases had been pre-approved by the governor, but were all retroactive through the 1986-1989 contract. No zero years occurred until FY 1990.

Argument

Illustration of Fact-finding Model

The Union has presented nearly every imaginable comparison that might be used in fact-finding. To illustrate the model used by the Union, a copy of a fact-finding report by Fact-finder Tim Bornstein for the Higher Education Coordinating Council (“HECC,” the BHE’s most recent predecessor) and the Massachusetts Community College Council is appended to this brief. It is Case Number PS 100-1990 (“Bornstein”).

Fact-finder Bornstein notes that the “familiar standards” in fact-finding are comparisons to other Massachusetts higher education units, comparisons to national and regional institutions of the same kind, and comparisons to private sector wage increases in Massachusetts. Bornstein at 30. He also notes loss of real wages and purchasing power. Bornstein at 29.

One of the issues that Bornstein confronts is the matter of the Commonwealth’s ability to pay, which he links to “the State’s willingness to pay higher salaries.” Bornstein at 27. He says, “If the State values its community college system, it must pay community college teachers fairly, for they are crucial.” Bornstein at 29. This sentiment is akin to the ideas expressed by Chancellor Gill in her testimony in this matter, that she and BHE Chair Tocco are concerned about the condition of state college faculty salaries. It appears that the State, as represented by the Chancellor and the BHE Chair does value the state college system and wants to pay state college faculty fairly. What is lacking here is a willingness on the part of the governor. The same was true of Weld in 1991 and 1992. Bornstein at 24.

Bornstein went on to recommend a 24% increase for full-time faculty over three years. Bornstein at 31.

Statutory Obligations of the Employer

Pursuant to Section 1 of M.G.L. Chapter 150E, the Board of Higher Education is the employer for state college employees. Pursuant to Section 6 of M.G.L., Chapter 150E, the Board of Higher Education has an obligation to bargain in good faith with the certified bargaining agent. According to the Massachusetts Labor Relations Commission in SUP-4100 and SUP 4103, the governor's failure to pre-approve a salary increase did not prohibit the BHE's predecessor from offering one. Union Exhibit 9.

The Supreme Judicial Court decision in *Teamsters Local Union No. 404 v. Secretary of Administration and Finance*, introduced by the Employer as Employer Exhibit 1, does not say otherwise. The SJC permits the governor to meddle in the bargaining process of independent agencies; the SJC is not saying that an independent agency is constrained to wait for the governor to tell it what to put on the bargaining table before making an offer. "How the parties reach an agreement that is acceptable to the Governor, and how they convince the Governor that their agreement should be approved, is entirely up to the parties." Employer Exhibit 1 at 3.

Nowhere does the law bar an employer such as the BHE from proposing pay raises just because the governor has not pre-approved such a proposal. The Labor Relations Commission has held, "Notwithstanding the practicalities and conveniences to the parties of procuring the Governor's commitment to fund a financial package prior to bargaining, we conclude that those considerations do not take precedence over long-

standing labor relations policies nor should they frustrate the collective bargaining process.” *Higher Education Coordinating Council*, 23 MLC 250, 253 (1997), Union Exhibit 9. It should follow that the lack of pre-approval by the governor has no bearing on what a fact-finder can recommend pursuant to Section 9 of Chapter 150E.

Moreover, the MSCA has seen more than once that pre-approval from a governor can be meaningless. It is important to remember that the governor is not the employer of the employees of the state colleges, therefore Chapter 150E imposes no obligation on the governor to act in good faith. If a “commitment” from the governor can be reneged on, leaving the parties no recourse except to continue bargaining, what is the point of waiting months for such an illusory promise?

The Employer’s witnesses have testified that the BHE would like to see MSCA salaries improved. The reasonable inference from that is that the BHE would like to conclude an agreement that includes pay raises for MSCA unit members. It is preferable that the BHE act on its apparent inclination to offer salary increases rather than accede to the governor’s indifference or to an unwarranted claim that the Commonwealth cannot afford raises.

Another argument advanced by the Employer that it cannot make an offer because it does not want to embarrass the governor politically (Record, Vol. I, 31) should not preclude this Fact-finder from making a mere recommendation that an offer of a salary increase ought to be made. Indeed, such a recommendation might aid the process by providing both the Employer and the governor with a basis for seeking a pay raise for the affected bargaining unit.

Chancellor Gill offered a variation on this argument, i.e., that if the Employer made an offer, things would go badly for the Board of Higher Education and the campuses because there is an adversarial relationship between the BHE and the governor. This explanation does not stand in the way of a recommendation from the Fact-finder in favor of pay raises, because such a recommendation from a neutral would more likely ameliorate the situation than otherwise.

Ability to Pay

On the basis of an ability-to-pay theory, the Union's proposal is well-supported. The Employer's use of the two letters from Eric Kriss (Employer Exhibits 2 and 3) only underscores this. When Kriss wrote the letters he was relying on the legislature to corroborate his claim that pay raises would place an unacceptable strain on the Commonwealth's fiscal situation. In fact, within a month of Kriss's letters, the legislature passed (and the governor signed) those portions of Chapter 140 of the Acts of 2003 that afforded pay raises to other employees of Massachusetts public higher education. Joint Exhibit 20.

The Union's salary proposal is far less than the peer studies suggest is required to make the state colleges competitive. The estimated \$4 million cost of the 5% raise is negligible relative to the state's FY 2004 surplus.

The End of a Fiscal Year

Another argument lurks in the Employer's testimony. It is pernicious and must be dispelled. Although Gill testified that the BHE wants to make a salary offer above

zero to the MSCA, she mentioned that FY 2004 is over, implying that it can now be forgotten. Tsaffaras would have the Fact-finder believe that because the MSCA sought fact-finding for FY 2004, and the parties also began negotiations for FY 2005, FY 2006 and FY 2007, the Employer is relieved of any obligation to make an offer for FY 2004. Such a theory must be disregarded; it serves only to encourage employers to stall the process and would permit employers to benefit from unfair conduct.

It should be pointed out that the lack of raises for the Massachusetts Community College Council in FY 2004 does not establish any standard for determining what is appropriate for the MSCA, as the MCCC never initiated bargaining for FY 2004.

Markunas and Art were firm in their conviction that FY 2004 must be addressed. They made it clear in their testimony that the MSCA was not walking away from FY 2004. It is also clear from the record that the parties specifically separated FY 2004 from further negotiations over the subsequent three fiscal years. If the parties were able to agree on a settlement for FY 2004 following a recommendation from this Fact-finder, the tentative agreement would be ratified separately from any multi-year agreement for later years. Tsaffaras's assertion that a agreement for FY 2004 would "make any three-year deal a four-year deal" is incorrect and cannot be given any consideration.

Conclusion

The Union urges a recommendation in favor of its 5% proposal. The evidence supports such a recommendation, including evidence proffered by the Employer. The Employer's misgivings are unfounded.

Submitted for the Massachusetts State College
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