

To: C.J. O'Donnell, President MSCA
From: Francis McDonald, Chair, State University Council of Presidents
Copy: James Cox
Date: 9 October 2018

Introduction

I convened a hearing on a consolidated grievance on September 24, 2018, at 1100 at the Massachusetts Maritime Academy. Present representing the Association were Prof. C.J. O'Donnell, Prof. Hemant Pendharkar and Roberta James from the MTA. James Cox, counsel to the state universities also was present.

The grievance in this matter was filed as a consolidated grievance on July 27, 2018, grievance #01/18-19/C/A, and I accepted it as such.

The Association contends Article XII of the collective bargaining agreement and Art. XII-A of the Memorandum of Agreement, the latter agreement was executed by the parties in June and July of 2018, were violated when the state universities did not implement at the start of the Fall semester the equivalency table the parties negotiated in the Memorandum of Agreement.

Discussion

For the reasons discussed below, I believe there is no issue appropriate for a grievance, and I dismiss the consolidated grievance.

I find the following facts, and I believe there is no dispute concerning those I have numbered:

1. The parties negotiated and executed a Memorandum of Agreement (MoA). The MoA contains provisions that replace some provisions in the 2014-2017 Agreement (the Agreement). One provision the parties replaced is the equivalency table of Article XII. The new table includes provisions that provide a greater credit weight to specific established teaching activities. For instance, faculty assigned to laboratory instruction, shop instruction, and studio instruction will be compensated based upon more workload credits under the MoA than under the prior contract.
2. The employer determined that the new table and other contract provisions impose new costs upon the state universities. The employer also regarded these new costs as incremental costs that must be funded before they can be implemented. This conclusion was relayed to department chairs and others, including MSCA representatives.
3. Prof. O'Donnell stated in his presentation that this grievance does not concern or challenge the determination that the new, increased equivalencies are a cost item, but, instead, is focused upon the universities' failing to implement the workload equivalencies on September 1, 2018.
4. Mr. Cox commented at the hearing he thought the parties understood the equivalencies could not and would not be implemented in the fall 2018 semester. Prof. O'Donnell replied he did not have that recollection.
5. The new equivalency table has not been implemented at the Maritime Academy. No information was presented concerning use of the new table at other state universities.

In addition to these facts, I know from my work at the Academy that implementing the equivalency table will result in the imposition of significant new costs, as more faculty must be hired, or existing faculty must be paid more for performing their prior work.

The contract contains provisions that guide us during periods when a contract has been bargained and must be funded by the legislature. Art. XXI, C states: "The cost items in the Agreement are specifically subject to additional, complete and identifiable appropriation by the General Court and shall not become effective unless the appropriation necessary to fully fund such cost items has been enacted in accordance with Massachusetts General Laws Chapter 150E, §7, and allocated in accordance with law to accounts of the several State Universities, in which case the cost items shall be effective on the dates provided in this Agreement." The Agreement does not define a "cost item," but the law considers "cost items" as "the provisions of a collective bargaining agreement which require an appropriation by a legislative body," and "incremental cost items", as "the provisions of a collective bargaining agreement that require, in respect of any fiscal year, an appropriation by a legislative body that is greater than the appropriation so required in the preceding fiscal year; provided, however, that in respect of the first fiscal year or portion thereof during which an agreement has effect, 'incremental cost items' shall mean the provisions of a collective agreement that require an appropriation by a legislative body of monies that are newly required by the employer to discharge the obligations arising under the terms of such agreement."

I see no alternative but to conclude that the equivalency table is not yet effective, because the funding for its cost items and its incremental cost has not been provided to the DHE or any state university. Until funding for the new equivalencies is received, it is premature to grieve the universities' failing to implement a contract provision.

I therefore deny the grievance.



Francis X. McDonald
Chair, Council of State University Presidents
President
Massachusetts Maritime Academy