

SPECIAL MAGISTRATE REPORT
CASE NO. SM-2008-058

**FLORIDA ATLANTIC UNIVERSITY AND
UNITED FACULTY OF FLORIDA**

SUBMITTED TO:

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PREPARED BY:

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Special Magistrate
P.O. Box 17281
West Palm Beach, Florida 33416

March 21, 2009

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BETWEEN THE PARTIES AT IMPASSE

FLORIDA ATLANTIC UNIVERSITY AND

UNITED FACULTY OF FLORIDA

BACKGROUND INFORMATION

In a letter dated December 18, 2008 from Stephanie Williams Ray, Chair of the Florida Public Employees Relations Commission, Joseph M. Schneider was notified that he had been appointed to be Special Magistrate in a case involving an impasse between Florida Atlantic University and the United Faculty of Florida. Hereafter these parties will be referred to as "FAU-BOT" (Florida Atlantic University - Board of Trustees) and "UFF-FAU" (United Faculty of Florida - Florida Atlantic University).

Following this letter several written and verbal contacts were made with Michael Mattimore, the attorney representing FAU-BOT and Thomas W. Brooks, the attorney representing UFF-FAU, to identify the issues in dispute and to schedule a hearing in an effort to resolve the disputed issues. Mr. Mattimore stated in a letter dated January 14, 2009 that the unresolved issues related to 1) appointments (for summer classes); 2) non-reappointments and 3) salaries.

Mr. Brooks in a letter dated February 5, 2009 stated that appointments for summer classes had not been negotiated, and therefore should not be an issue before the Special Magistrate, and that the FAU-BOT had not properly invoked Section 447.4095 relative to the FAU-BOT declaring financial urgency. He agreed that non-reappointments and salaries were impasse issues.

Both parties agreed to schedule a hearing which was held on Tuesday, February 24, 2009 at 10:00 a.m. in the Grand Palm Room at the Student Union on the Florida Atlantic University Campus in Boca Raton, Florida. At the request of the attorneys the Hearing was conducted informally with a group of administrators of FAU-BOT along with the UFF-FAU's Chief Negotiator and several other of its representatives. In addition a crowd of approximately 30 people were seated a short distance away from the hearing tables. They requested that a microphone be brought into the hearing area so they could hear the conversations. In addition they asked for an explanation of the process, and that each person at the table introduce himself or herself. These requests were accommodated. During the course of the day there was a substantial decrease in the

number of people in the audience, and only a few remained when the hearing adjourned at about 5:00 p.m.

At the end of the day both parties agreed to file briefs. They were received on March 11, 2009 when the Hearing officially closed.

During the Hearing each side provided a substantial amount of written and verbal communication regarding the three issues of appointments, non-reappointments, and salaries. Information was provided by Dorothy Russell, Associate Vice President of Financial Affairs; Associate Provosts: Diane Alperin, Norman Kaufman, and Michael Armstrong; Sharmila Vishwasrao, UFF-FAU Chief Negotiator; LeRoy W. Dubeck, Professor of Physics at Temple University (via telephone); and Ken Jessell, Vice President of Financial Affairs.

THE SUMMER APPOINTMENT ISSUE

The UFF-FAU did not concur that summer appointments had been negotiated, and indicated that it was therefore not a proper issue before the Special Magistrate. The position of FAU-BOT was they had attempted to negotiate the subject in a number of instances, but were unsuccessful during the current set of negotiations for the 2008-2009 year. They indicated issues relating to non-reappointments and salaries remain at impasse from the 2007-2008 negotiations.

The FAU-BOT position is that summer appointments are very important because of cost considerations. During the Hearing Michael Armstrong, an Associate Provost, stated that it normally costs about \$8400 for a regular faculty member to teach a 3-credit class outside of his or her contract during one of the approximately 6-week summer periods. It costs only about \$3000 for an adjunct professor or \$2000 for a graduate assistant to teach such a class.

The current language in the Collective Bargaining Contract gives preference to bargaining unit faculty for summer classes. Such language was negotiated after 2003 when the state constitution was changed to have individual Boards of Trustees at each public state university. The FAU-BOT argues that this language is designed to apply only to the first class being offered to bargaining unit faculty, and it is the only university that provides this contractual preference of the public universities in the State of Florida.

The UFF-FAU disagrees that the preference applies only to the first class, and indicated that this subject is being contested in the grievance and arbitration procedure.

The current language in Article 8.4 of the Collective Bargaining Contract is silent with regard to whether this preference applies to a single summer class, or if it is

applicable to any subsequent class or classes. Since each party has a different interpretation on how the language should be applied, it clearly is important to resolve the issue and clarify the intent of the language.

Based upon the information submitted at the Hearing it appears that the FAU-BOT did make an appropriate effort to negotiate the subject, and therefore a recommended decision is being provided. It should be noted that the issuance of a recommended decision is not intended to directly impact on any dispute currently being addressed in the grievance/arbitration procedure which presumably relates to an action or actions that occurred during the summer of 2008. This recommended decision is intended to relate to the modification of current language in the Collective Bargaining Contract which should be changed in order to clarify its intent *for summer employment in the future (i.e. beginning with summer employment in 2009.)*

Recommended Decision: Adopt language in Article 8 of the Collective Bargaining Contract for the 2008-2009 year which clarifies that the FAU-BOT is obligated to provide bargaining unit faculty preference relating to summer employment for a single class, rather than multiple classes for qualified bargaining unit faculty.

THE NON-REAPPOINTMENT ISSUE

Article 12 of the Collective Bargaining Contract relates to providing written notification to full time non-tenured faculty who are not going to be reappointed for the following year. Currently non-tenured faculty in their first two years of continuous university service are obligated to receive one semester or 19.5 weeks of notice so that they have a reasonable opportunity to seek other employment. Non-tenured faculty with two or more years of continuous university service are required to receive two semesters or 39 weeks of such notice. There is also provision for personnel employed with “soft money” who have more than 5 years of service to receive up to one year of notice if funding is available.

The proposal of UFF-FAU is to generally increase these notification periods to be consistent with standards adopted by AAUP (American Association of University Professors). That proposal requires notice by March 1 for first year teaching faculty; notice by December 15 for second year teaching faculty and at least one full year of notice for faculty with more than two years of service.

FAU-BOT has countered with a proposal which adds some detail that is not included in the current Collective Bargaining Contract . While it decreases the notice requirement for first year faculty, its language approximates the proposal of the UFF-FAU and the AAUP for such short-term faculty, and it would add language regarding how 12-month non-reappointments are handled. It would also maintain the notice requirement of 19.5 weeks for faculty with one to two years of university service.

Additionally it would maintain the 39-week or two semester notice requirement for faculty with more than two years of university service.

The UFF-FAU's proposal requires that a full year's notice be given for faculty with more than two years of service. While the argument was presented that FAU-BOT could pay the non-reappointed faculty member in lieu of having him or her teach or perform other duties, it would be costly since in many instances the University would have to pay two salaries for the services of a single position. This situation would be especially difficult to justify in today's economy.

Based upon these facts the revised proposal of FAU-BOT is recommended.

Recommended Decision: Amend Article 12 of the Collective Bargaining Contract to include the non-reappointment language submitted by FAU-BOT.

THE SALARY ISSUE

The position of FAU-BOT was that they had been subjected to major reductions in state funding which is their only source of recurring funds, and they were unable to grant an increase beyond one (1) percent for the 2008-2009 year for the bargaining unit faculty. They also were willing to pay a \$1000.00 non-recurring bonus or payment. Last year the State of Florida authorized a non-recurring bonus or payment of \$1000.00 for the 2007-2008 year to the bargaining unit faculty. Details of the University's financial condition were provided by several associate provosts along with an Associate Vice President and the Vice President of Financial Affairs, and were included in a manual of exhibits.

Most of the information provided indicated that the University's funding was under serious constraints, and the state allocation had been reduced several times including twice in the past year. However one of the Associate Provosts, Norman Kaufman, provided information regarding a new funding source which had become available during the past year as a result of a long term lease which the University had signed within the past year. It allowed a company called Clearwire Spectrum Holdings 11, LLC to use Federal Communications Commission (FCC) authorized band width which had become obsolete for the University. Florida Atlantic University now receives monthly checks from Clearwire which are expected to total approximately \$5 million per year. Dr. Kaufman provided an exhibit which outlined a 5-year "Proposed Allocation of Payments" Plan. Approximately 10 percent of that amount was to "Reward Faculty and Staff Contributions FAU's Mission" with the balance being used for student programs, information technology infrastructure, research, academic enhancement and academic enhancement endowment.

The UFF-FAU's position was that they should be receiving an additional increase for the 2007-2008 year of 2.5 percent plus another 2.5 percent increase for the 2008-2009 year. Their Chief Negotiator, Sharmila Vishwasrao, provided a presentation which summarized salary information, reviewed salary comparison studies, and submitted a number of years of budget comparison data which showed annual increases in the total budget and its individual classifications. In addition a telephone call was placed to Professor Dubeck of Temple University, who reviewed the financial statements of FAU-BOT, and concluded that the University was in strong financial condition, and was therefore capable of granting the increases proposed by the UFF-FAU.

The Vice President of Financial Affairs of FAU-BOT, Ken Jessell, did not concur with the University's ability to pay the increases proposed by the UFF-FAU. He indicated the lease agreement with Clearwire was not necessarily a stable source of funding, and they did not consider these funds to be recurring. He noted that the company's stock had declined rapidly since the relationship with FAU-BOT began.

The estimated cost to fund the FAU-BOT proposal of one (1) percent increase plus the \$1000 non-recurring bonus payment is projected to be about \$1.7 million dollars. The UFF-BOT estimated the cost to fund their proposal of 2.5 percent for the 2007-2008 year to be \$1.8 million and the estimated cost for a 2.5 percent increase for the 2008-2009 year to be an additional \$1.9 million for a total cost of \$3.7 million. (These amounts are exclusive of promotional or related salary adjustments amounts which were not disputed by the parties.)

A detailed analysis of contract salaries being paid at Florida Atlantic University does not provide any dramatic information. Its size in terms of Full Time Equivalent students (FTE) is sixth which is the exact middle among the eleven public institutions of higher education. Its salaries for Professors, Associate Professors, Assistant Professors, and Instructors vary somewhat, but they are not at the top or the bottom of the average salaries being paid within the State University System. One data page provided by Dr. Alperin indicated that Florida Atlantic University was in the seventh position of the eleven state public universities with an average 9-month faculty salary of \$67,703.

Due to education funding problems throughout Florida there were no high percentage increases being granted. Based upon other information provided from Dr. Alperin, the highest university proposed or actual increase in the university system apparently was at the University of South Florida (i.e. total of 6%); with the University of Florida and Florida State University at 3% and Florida International University at a 3.5 % total increase. FAU was one of three universities with a proposal of a 1% increase with a \$1000 bonus payment, and the data did not reveal a salary proposal for three other state universities.

In Palm Beach County the local school board gave a 2 % increase during the 2008-2009 year plus they granted an average increase of 3.5% for the 2007-2008 year. The faculty at Palm Beach Community College had built in across the board increases of 5 % for each of these two years.

A further review of the impact of a one-time \$1000 bonus payment may also be helpful, since this is the second consecutive year that such a payment could be made. If a faculty member was employed at the University at a contracted salary of \$50,000 for the 2006-2007 year, that person would have received a \$1000 bonus payment for the 2007-2008 year. While his or her total compensation would be \$51,000 for the 2006-2007 year, he or she would revert back to a \$50,000 contracted salary for the 2007-2008 year. For the 2008-2009 year he or she would again receive a \$1000 bonus plus 1%. That faculty member would now have a new contractual salary of \$50,500 for the 2009-2010 year which is three years after his or her employment date. Needless to say that faculty member has been unable to have his or her salary keep up with inflation.

The salary comparison data does reveal that Florida Atlantic University should, if at all possible, increase the salary levels of the faculty. Those levels are not increased with one-time bonus payments which are not included in the following year's contractual salaries. The obvious funding source for such salary increases when the State is reducing its funding allocation is the revenue which Clearwire is providing through its lease agreement with the University. While such a revenue source is not as stable as the State of Florida (which also obviously has its limitations relating to the revenues they receive), it is nonetheless on-going and therefore is expected to be recurring.

The fact that the University prepared a proposed five-year plan to expend the funds received from the lease agreement signed on April 29, 2008 with Clearwire indicates there is at least a reasonable expectation that these funds will continue for some time in the future even if the relationship does not last a 30-year period. During the Hearing it was indicated that the first year funding for the FAU-BOT proposal would be paid from Clearwire funds.

The projected cost for the FAU-BOT salary proposal is approximately \$1.7 million. The projected cost of a 2.5% increase for the 2008-2009 year is about \$1.9 million which should be considered the minimum salary increase needed to keep the faculty salaries competitive in the labor market. That difference apparently can be taken from Clearwire funds.

The UFF-FAU received only a \$1000 bonus payment from a specific authorization from the State for the 2007-2008 year. Unfortunately the State has reduced its funding to Florida Atlantic University several times since, and the FAU-BOT had major financial concerns. Those concerns have been reduced considerably as a result of

the recent funding received as a result of the lease agreement with Clearwire which has been in effect less than one year. Accordingly the recommended decision is being made for the 2008-2009 year only.

Recommended Decision: Grant an across the board increase of 2.5 percent consistent with past practices for all bargaining unit personnel who were employed for the 2008-2009 year along with the previously agreed upon promotional increases of 9 percent or 12 percent as appropriate to academic rank.

ISSUED this 21st day of March, 2009



Joseph M. Schneider
Special Magistrate

ADDENDUM TO SPECIAL MAGISTRATE REPORT

The following reference from Florida Statue 447.403(3) is applicable to the resolution of impasses after the hearing with a Special Magistrate:

“...Within 15 calendar days after the close of the final hearing, the special magistrate shall transmit his or her recommended decision to the commission and to the representatives of both parties by registered mail, return receipt requested. Such recommended decision shall be discussed by the parties, and each recommendation of the special magistrate shall be deemed approved by both parties unless specifically rejected by either party by written notice filed with the commission within 20 calendar after the date the party received the special magistrate’s recommended decision. The written notice shall include a statement of the cause for each rejection and shall be served upon the other party.”

INVOICE FOR SERVICES - SPECIAL MAGISTRATE

RE: FLORIDA ATLANTIC UNIVERSITY AND
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CASE NO. SM-2008-058

Hearing - February 24, 2009 - 1 day (includes 2 hours of travel time)	\$695.00
Report Study and Preparation - 2.8 days	1946.00
Transportation Mileage - 52 miles @ .44/mile	23.00
Meals - Lunch	12.00
Mailing Cost/Postage - Priority Mail - Certified	<u>24.00</u>
Total	\$2700.00
AMOUNT OWED BY FAU-BOARD OF TRUSTEES	\$1350.00
AMOUNT OWED BY UNITED FACUTY (UFF-FAU)	\$1350.00

Please make check payable to Joseph M. Schneider and send it to P.O. Box 17281, West Palm Beach, Florida 33416. If there are any questions call (561) 801-0544 or send an e-mail to joemschneider@yahoo.com.

3/21/09