

FACTS ABOUT THE UNO FACULTY SALARY DISPUTE

On August 4, 2009, the NU Board of Regents appealed the recent Commission of Industrial Relations (CIR) decision that upheld the Special Master salary award for full-time UNO faculty for 2009-2010 and 2010-2011. What this step means is that UNO faculty will not receive their raises for the current year until this litigation is completed, probably in 2010. I will attempt to explain what happened since January of this year after the UNO AAUP and the NU Board were unable to reach an agreement on salary increases and life insurance coverage.

Following the State Employees Collective Bargaining Act (SECBA), both parties provided each other their final offer on these unresolved issues. The AAUP's proposal called for a 3.8 percent increase in each of the next two years and an increase in life insurance coverage equal to a faculty member's base salary up to \$120,000. On the other hand, the Board's offer called for a 2.9 percent increase in 2009-2010 and 2.5 percent in 2010-2011 and no increase in life insurance beyond the current \$15,000. On the day of the final exchange, both parties agreed that UNO faculty salaries lagged more than 5.8 percent behind those of their peers. The current list of peer institutions, available on the website of UNO's Institutional Research office, was established in 1996 and has been used ever since for a variety of purposes, including collective bargaining. All the campuses of the NU system have their peer lists, and all of them have been adopted by NU Board action. At the outset of negotiations in September of 2008, the AAUP and Board agreed that if either side wished to consider additional schools, they would inform the other party by October 10, 2008. Neither side proposed any additional institutions by that date, nor did either side mention the possibility of adding to or altering the existing list at any time during negotiations.

On February 3, 2009, Ronald Hoh, an arbitrator agreed upon by both parties, conducted a Special Master hearing in accordance with Nebraska law. Both sides presented evidence and argument to support their case, and it was clear that both parties accepted the existing ten peer institutions as a basis of comparison. At the pre-hearing conference, it was acknowledged that both parties had previously agreed that the UNO faculty salaries lagged behind their peers by more than 5.8 percent and that figure was not at issue during the Special Master hearing. The NU Board's attorney did not dispute salary comparability, but stressed the "ability to pay" argument, especially in regard to UNO's peers, claiming that economic conditions were so bad in those states that the peer institutions would not be granting raises in the next two years. In regard to the insurance issue, he asserted the AAUP data was skimpy and inaccurate. It needs to be emphasized that a Special Master can consider a wide range of matters, including comparability and "ability to pay." The Board had ample opportunity to make an argument on "ability to pay" and, in fact, has routinely put forward that rationale in earlier Special Master hearings to justify paying the UNO faculty at a lower level than comparability with their peers would require.

On February 12, 2009, Mr. Hoh issued his decision. Required by Nebraska law to pick the most reasonable final offer on each unresolved issue, he awarded the UNO faculty a 3.8 percent raise in each of the next two years and life insurance coverage equal to a faculty

member's base salary up to \$120,000. On this last point, Mr. Hoh observed "that the comparability data shows at minimum, the life insurance benefit provided by the University is the third least favorable among the Peer Group at the existing \$15,000 level. . . ." Interestingly enough, Mr. Hoh also conducted a Special master hearing involving the UNK faculty. In that case, he found in favor of the NU Board, and the UNK faculty raises were set at 2.9 percent in 2009-2010 and 2.5 percent in 2010-2011. The difference in the two cases was that the UNK salaries were not as far behind their peers, and that its union asked for a higher percentage increase than did the UNO AAUP. Mr. Hoh suggested in the UNO decision that he might have found in favor of the NU Board in this case as well had the AAUP proposed a higher salary increase than it in fact did. What is noteworthy is that the Board offered both the UNO faculty and their UNK colleagues the exact same raise even though the UNO faculty salaries were further behind their peers. Even more noteworthy is that these proposed increases were the same as those negotiated between the state and NAPE-AFSCME, the union that represents state employees. That suggests that the Board made no effort whatsoever to base its final offers on comparability with peer institutions.

One additional point might be made relating to the gap between UNO faculty salaries and those of their peers. Portland State faculty had a delay in the implementation of their 2008-2009 raises, as they did not take effect until January 1, 2009 for 12 month faculty and February 1, 2009 for 9 month faculty. Consequently, due to statutory deadlines, up-to-date salary data for this institution was not available in time for it to be utilized in our comparative salary analysis. All Portland State faculty received a 4.5 percent cross-the-board raise, and there were other raises for the unit as well. Realistically, taking these raises into account, UNO faculty salaries lagged behind their peers by well over 6 percent rather than the 5.84 percent figure used at the Special Master hearing.

On March 13, 2009, the NU Board appealed the Special Master decision to the CIR. In the previous six special Master hearings involving the Board and the AAUP, neither party had appealed a Special Master decision. The Commission heard the case on May 27, 2009. The Board or its attorney sought to introduce new evidence not presented at the Special Master hearing and make arguments not previously offered. Prior to the hearing, the Commission determined that only evidence brought forth before the Special Master could be used. A similar decision was made in three other cases that appealed Special Master decisions. What the Board sought to do, and this is apparent both in the exhibits it sought to use and the argument before the Commission, was to deny that UNO faculty salaries lagged their counterparts by more than 5.8 percent and to change the list of peer institutions!

The Commission announced its decision on July 9, 2009, upholding the Special Master ruling and reaffirming the salary award of 3.8 percent in each of the next two years. On the day of the hearing, the Board informed the AAUP that it would not contest the insurance benefit award. About the same time, the University announced that it was providing a new insurance benefit for all of its employees, equal to an employee's base salary up to \$120,000.

The CIR decision stated that the SECBA limited the CIR's role in cases involving salary

disputes for state employees to simply reviewing the Special Master's ruling to determine whether or not it conformed to a finding of comparability. It quoted from the statute: "The Commission shall show significant deference to the Special Master ruling and shall only set the ruling aside upon a finding that the ruling is significantly disparate from prevalent rates of pay or conditions of employment. . . ." Losers in a Special Master hearing do not have the right to start over again. If their evidence or argument was insufficient before the Special Master, their only recourse is to show from the same evidence that the Special Master acted unreasonably in making his determination on the basis of comparability. Another way of saying this is that the CIR reaffirmed that it only has an appellate role in cases involving a Special Master decision. There was a dissent in this case, but a close reading of that opinion should provide little solace to the NU Board. It states: "No matter how we interpret SECBA, the Commission has never approved allowing anything more than a limited amount of evidence before the Commission which is relevant to the issues to be decided. Evidence to support adding new array members would not be relevant, and information intended to support changing the array by removing previously agreed upon members would also not be relevant." (In an earlier dissent to a similar case, this Commissioner wrote: "This does not mean the parties are free to start over and change their theories, their proposed arrays, or their evidence.")

So where are we now? The University has spent tens of thousands of dollars in its effort to deny the UNO faculty an appropriate raise as determined by the Special Master and affirmed by the CIR. To be sure, it has the financial resources to appeal the salary issue to the Court of Appeals and, after it loses in that forum, to the Nebraska Supreme Court. A quarter of a century ago, during an earlier salary dispute, an NU president allegedly said that "the University has deep pockets." But deep pockets aside, what is the wisdom of pursuing such an expensive option? The Board's best chance was at the Special Master level where an "ability to pay" argument can be taken into account. In February, the Board tried to make such a case, and the Special Master found it wanting. Now, of course, University officials can spend many more thousands of dollars in additional legal costs, but to what end? What is the point of raising the stakes when they do not have a good hand? They have the ability to delay the salary increases, but I am confident that the UNO faculty will ultimately prevail in court and get their raise at the level that the Special Master awarded back in February.

Bill Pratt
Chief Negotiator,
UNO AAUP