

REPORT OF MINUTES

BOARD OF TRUSTEES SPECIAL MEETING

**BAY de NOC COMMUNITY COLLEGE
Catherine Bonifas Board Room (201D)
Escanaba, MI**

SEPTEMBER 26, 2016

The meeting was called to order at 4:31 p.m. ET by Board Chair, Philip Strom.

Roll call was taken by Assistant Board Secretary, Laura Johnson.

Members Present: Joy Hopkins, Bill Lake, Tom England, Tom Butch,
Jim Hermans, Philip Strom

Member Absent: Eric Lundin

Administration: Travis Blume, Kevin Carlson, Laura Coleman,
Bridget DeGroot

Faculty: Molly Campbell, Mark Highum, Brent Madalinski,
Bill Milligan, Tom Warstler

Guest: Tom Smith (via phone)

Recorder: Laura Johnson, Assistant Board Secretary

Philip Strom stated the meeting was called to hear from the Full Time Faculty Association and Administration concerning the grievance filed by the Full Time Faculty Association on behalf of Brent Madalinski.

Phil proposed the Faculty Association present their stance, followed by Administration, with everyone present for the entire discussion. There were no objections expressed.

Bill Milligan, Full Time Faculty Association President, deferred the Association's representation to Brent Madalinski.

Brent Madalinski stated it was his opinion that the discrepancy stems from an email dated July 20, 2015 at 4:22 p.m. that clearly states six points the Full Time Faculty Association thought they were voting on for the new master agreement. The fourth item is in question.

1. "2 year master agreement
2. .5% pay raise in year 1 for all full time faculty
3. .5% pay raise in year 2 for all full time faculty
4. 1.5% increase in a new step placement of 16. Step placement 16 begins at the beginning of year 2. It is a new longevity step increase and will be applied to 28 full time faculty at the beginning of year 2, 2016-2017 academic year."

Brent stated the question is why step 16 is mentioned in this email - because the previous master agreement had no step 16. It had a longevity step instead. It was discussed (*during negotiations*) that step 13.2 would become step 14, and the longevity step would become step 16. That's why the email language states step 16 begins at the beginning of year 2 and is a new step increase.

That is what is in question – what is stated in that email. The current agreement states not only steps 13, 14, 15, and 16, but 17 & 18. Step 18 shows a 1.5% increase. Their position is step 18 should have been granted this year. The 1.5% increase is the highest step. It is a play on words. They're talking about a top step and voted as an Association on the six items listed in the e-mail. When faculty did not receive the increase, Brent communicated to the Faculty Association what was originally communicated to them.

Phil Strom asked if there were questions from the Board.

Tom Butch stated that looking at page 69 of the contract, the salary schedule for last year on the second page shows what it was before; 12 remained 12, 13.1 became 13; 13.2 became 14, 13.3 became 15 and longevity became 16.

The new schedule for 2015-16 year is as is because there were no changes to the new order mentioned above. Steps 17 and 18 were added this year (*2016-17*). The salary in step 17 stays the same as step 16. There is an increase at step 18.

Brent responded that in the email of July 20, nowhere does he mention new steps being created. He did not recollect going through the contract line by line with Bridget (*Bridget DeGroot, Director of Human Resources*) to review changes. He assumed that was what the Faculty would get (*the step increase*).

Bridget DeGroot stated she met with Brent on July 20, 2015 for approximately two hours.

Phil confirmed the timeline as Brent and Bridget meeting on July 20 from 1-3 p.m. to review the contract; the tentative Master Agreement was emailed to Brent from Bridget the same day (July 20) at 4:17 p.m. On the same day (July 20) it was forwarded from Brent to Bill Milligan at 4:22 p.m. and Bill forwarded it to the Faculty at 5:24 p.m.

Brent's email went to the Full Time Faculty Association for a vote. He did not send it to Administration because he didn't think there was any doubt.

Brent added a new step placement at 16 was referred to from the old agreement but we didn't discuss new steps being created as 17 and 18 (*during negotiations*). When he looks at the contract language, he looked at step 18. There was no discussion at the time he sent the email. Last year, when the first paycheck was received, he checked to make sure the raise was there when the contract came out. They got their step but didn't have the 1.5% increase. He assumed that 1.5% increase for step 18 would be given to qualified faculty this year. He did not berate the issue at the time.

Mark Highum stated the new step 16 is what happened last year. As a team, new steps were never talked about. They talked about language. Bridget clarified and cleaned up the language which would show no increase but everyone still got a point. If you look at the previous step, that longevity step would be the new step. They got step 16 last year but should have gotten a new step level each year so they could easily keep track of where they were at. Those at the top were already at step 16 so they assumed they would go to step 17 that year. There was no step 17 this year. The intent was to get that in the second year in the contract and they ended up not getting it at all this year. No one at the longevity step advanced between last year and this year. They thought they would get 1.5% across the board and the .5% increase.

Tom England confirmed faculty received a .5% raise last year so the issue is this year. They got .5% this year also but the issue is step 18 which contains the 1.5% increase they expected this year.

Bill Milligan stated the steps weren't implemented until the second year (2016-17).

Mark added had they created step 17 last year, all those at step 16 would have gotten to step 17 this year but would have advanced to step 18 this year. They couldn't go to step 17 last year because it wasn't included that year.

Tom Butch stated the contract was signed with no step 17 last year.

Brent stated he assumed qualified faculty would have moved to step 18.

Tom Butch referred to the language in section 1002.1 of the contract (pg. 72) which speaks of the .5% increase for 2015-16 over 2014-15 (comma) and the .5% for 2016-17 over 2015-16 (comma) as well as two additional steps (17 and 18) put on this year.

Mark responded they don't think the paragraph says that it (*the additional steps*) was put on in the second year.

Tom Butch responded, "except that the table says this".

Phil asked for comments from the Administration.

Dr. Coleman stated there is another email from Bill to Bridget (July 20 at 7:33 a.m.) asking how many years he had been at his step level and when he would be eligible for the longevity step. She responded that he would be at step 16 in 2015-16 and next year (2016-17) the step 17 would be in effect and she would be meeting with Brent that day to go through contract changes. Bridget and Brent did look at the contract changes. Faculty signed their step contracts in the fall.

Based on Dr. Coleman's standpoint at negotiations, Don Maki (Federal Negotiations Mediator) suggested, to solve the contract, the Board could give faculty a small raise. The

Board was definitive on no raises but she asked for a half percent increase for each year of the contract. There had been conversations in negotiations about adding steps for people here for a long period so a ghost step (step 17) was created. In the last contract 13.1, 13.2, and 13.3 were ghost steps. Tom Smith's (Administration's Chief Negotiator) personal notes talked about the ghost step and then steps 17 and 18. The contract language clearly states this. The Powerpoint from Tom Smith that dismantled the language reflects negotiations. Administration firmly believes it is what was budgeted for and intended.

Bridget answered Bill exactly what the steps were going to be in her email response. Before the vote took place, Bill emailed this question to Bridget at 7:33 a.m. She responded at 8:19 a.m. and met with Brent from 1 p.m. – 3 p.m. Bridget sent the contract with the revisions from negotiations at 4:17 p.m. to Brent. Brent added his comment and sent it to Bill who sent it to the Full Time Faculty Association. On July 21 at 6:40 a.m. Bill thanked Bridget for her hard work on getting the agreement ready.

Dr. Coleman stated she feels badly there is this disagreement but she knows the intent of the Administration and the Board.

Bill Milligan explained the question in the email he sent on July 20. He was at the top of the scale at a three-year freeze and then would get a step. It's a convoluted setup we have. He asked Bridget in the email where he was on the scale because he didn't know. He and Brent never had a conversation after this email because it was about his personal stuff. "Should he have? Yes, he should have." If we didn't have a new contract he would have gotten a longevity step. He was frozen for three years and got another ghost year because of the new contract.

Mark stated Bill was not receiving longevity in the last contract and that was why he was confused. He would not have gotten step 18 this year anyway because he would have been going to step 16.

Bridget responded that Brent called to say, on Tuesday before opening days (this year), he thought we have something wrong with the scale. She called Tom Smith and asked how we were interpreting this. He confirmed what she put on paper was what Administration's perspective was throughout negotiations. There is not anything untruthful in the contract and the contract was done in a way that is not untruthful. She was concerned about that perception. Tom Smith confirmed this and went through the process of how the paragraph was written up compared to the scales. She developed the language and interpreted it to reflect the scale to implement steps 17 and 18 this year from negotiations and conversations with others. Folks were not jumping from step 16 to 18 this year.

Tom Butch referred to Section 1001.0 B on page 65, Teaching Experience. "Teaching experience at the post-secondary level will be applied to initial placement above step one (1) as follows." The chart shows one step per year is allowed. He stated we have to look at past practice and if that plays here.

Brent asked if we have placed faculty at the longevity step in our hiring practice. Bridget responded that was modified during negotiations because of a new instructor that could have come in with a Ph.D. and current steps didn't reflect experience. We used to have maximum step placement and got rid of it to recognize experience. A new instructor with a Ph.D. and lots of experience was placed at step 18 because that old language went away.

Brent asked how many faculty were at the longevity step under the old contract. Bridget responded there were 28. Brent asked how many faculty are at this step under the current contract. Bridget responded there are 21. There are fewer due to retirements.

Brent stated we had 28 faculty under the previous contract at the longevity step. He asked Bridget how many faculty are at step 18. She responded there was one.

The Full Time Faculty Association wanted them to receive a 1.5% increase at the beginning of this year.

Mark added the Faculty were at step 16 but didn't get moved to 17 because there was no 17. This was never addressed at negotiations.

Molly Campbell shared from her perspective the issue is the missing step 17. She spoke to the payroll person last year because she assumed she would be at the top where she was supposed to be. Based on the summary of the contract changes provided at the Board meeting on August 3, 2015, when the contract was approved, Section 1002 changes included "salary is increased by .5% in 2015-16 and by another .5% in 2016-17. A new step at 18 is created in 2016-17 and is 1.5% greater than step 16". When reading it she thought she would get .5% and 1.5% in 2016. There was talk of the new step 18 but not of step 17. That is administrative language that step 18 would be created in year 2. The case is the missing step 17. It should have been put in the table. Referring to the master agreement language, it is clear that there is an increase of .5% in step 16 and .5% in step 17 as well as two additional steps. The bottom line is two additional steps had to be created that were not created properly. All three of those things should have happened.

Phil asked Tom Smith for his view.

Tom Smith responded he could appreciate where everyone was coming from. He agreed that it was unfortunate parties didn't take greater caution a year ago but having said that, in trying to reconcile what was done, most of the conversation was about intent. It is very easy to go back and recollect what parties' intents were, unfortunately when either or both parties have an intent they wish to move on in negotiation, they discuss it in their own caucuses and it is not generally shared with the other side; so going back in time doesn't hold a lot of credence. So we have to go to the actual contract language. It was written and whether approved appropriately or not, it was written and approved to the point each party felt comfortable and ratified it. Now, what does the agreed contract language says: First, in 1002.0 are the actual schedules for 2015-16 which incorporates new steps and ends with step 16. With any bargaining, the old contract is expired and gone. The new contract and

schedule was agreed upon with step 16. Then, on the next page we have the schedule for the 2016-17 year which has two additional steps with 17 and 18. That was agreed upon.

This is followed upon with text in 1002.1 which attempts to describe what was included in the schedules. In that text, the basic salary schedule reflects a .5% increase for 2015-16 over 2014-15, a .5% increase for 2016-17 over 2015-16, as well as additional steps.

Tom Smith stated he followed Molly's logic. Throughout his career when contract disputes occurred he recognized that while he may think something or have an opinion to what it means, he may not be correct. He researched what the contract actually said. He thinks the point the union is making is that they felt steps 17 and 18 were applied upon ratification. Nobody moved but it was still there based on text. He disagrees. When a sentence is grammatically correct, you can have any number of items in a series. The sentence has items a, b, c. Notice it doesn't say a and b, as well as. He believes the correct interpretation is item a (.5% for last year) and the important word "and" separates two clauses, item b (.5% increase for the current year), item c "as well as" does not apply to both – it applies separately. This reference was made based on his research from the Gregg Reference Manual. He thought the presumption that it is a list of three equal important things is incorrect. When the text of 1002.1 is read and compared to the schedules they are consistent with each other and it consistently lies in step 17 which does not apply until 2016-17 and step 18 which doesn't apply until the following year.

Tom Butch asked, "Is this the impression of what was negotiated?"

Tom Smith responded, "Yes" and added there was lots of discussion about freezes and during negotiations it was his impression that the Full Time Faculty were looking at the long term gain rather than the short term gain. By not taking a raise in 2016-17, that greater good would be served when they got the 18th step the following year. This was his personal and professional opinion as the negotiator.

Tom Butch asked Tom Smith to verify that the raise was .5% last year, .5% this year, and whatever would be negotiated next was the 1.5% for step 18.

Tom Smith responded he believed step 18 will survive so the 18th step schedule will be negotiated for the next contract.

Phil Strom questioned whether it is uncommon to bargain for a benefit not to be realized within the contract recognized?

Several participants responded, "Yes, it is."

Tom Butch stated he had not heard it suggested step 18 is going away next year.

Brent Madalinski stated, "We had 28 (*faculty*) at the highest step under the old contract and only one is there now so all those lost longevity this year? They don't have it right now."

They are short 1.5% - those qualified faculty.” He shared he brought up the 1.5% longevity increase feeding off Mark Highum’s suggestion to look at wages at peer colleges. It was not good for steps and that is why they negotiated for the longevity increase.

Phil stated his interpretation on 1002.1: “When looking at it on its own, it is vague but when reading it in conjunction with the table, and you have to read it in conjunction, and when you do that, it is clear that steps 17 and 18 don’t apply for last year. They start to apply for next year.”

Brent stated there should have been more faculty at step 18. By just picking out the language the real intent of negotiations is being missed.

Phil stated the language is not clear but the charts show it is clear.

Dr. Coleman stated it was agreed the longevity step would no longer be called “longevity”.

Tom England stated he remembered we would no longer have a longevity step. We got rid of it.

Bill Milligan stated this is an honest disagreement and he has the utmost respect for everyone involved. If there is nothing that can be agreed to, the next step is arbitration and the attorney’s all have their opinion. He guessed they can go to the next step.

Tom Butch stated in reaching an agreement, both sides may have different intents. Papers get exchanged or not, sometimes people read them or don’t, there are intentions. In contract interpretation, if by reading the document you can clearly say it is not ambiguous, it will stand. An arbitrator may say they don’t agree with either one and come up with what they think a reasonable person would interpret the language as and the intent is pushed to the side. The whole document is read compatibly to come up with a decision.

Tom England stated everything was signed in good faith at the time. When we started tonight, Brent said they voted on what they thought they were voting on. Its interpretation on the agreement signed.

Tom Butch stated it is his own feeling that if the Board’s interpretation was that it was not their intent (*administration’s*), they would do the right thing and he is not sensing that. Everyone is in good faith on each side.

Bill Milligan stated in honest and good faith, we all believe what we believe and it’s just a disagreement and we’ll see where it goes.

Tom England stated we can disagree agreeably. It is the Faculty’s right to go to arbitration.

Tom Butch asked faculty members present for time to discuss the matter without them. Faculty members (Molly Campbell, Mark Highum, Brent Madalinski, Bill Milligan,

and Tom Warstler) left the room at 5:30 p.m. The meeting remained open to the public.

Trustees further discussed the language in question and verified faculty cannot move two steps at once.

Tom Smith disconnected from the meeting at 5:43 p.m.

Phil invited faculty members to return to the meeting at 5:44 p.m.

Molly Campbell, Mark Highum, Brent Madalinski, Bill Milligan, and Tom Warstler returned to the meeting.

Phil thanked faculty members for allowing trustees the opportunity for discussion. The meeting was still in open session and they discussed the matter further.

Phil stated according to page 46 of the contract, it was in order for the Board to take action. The grievance process was at Step 3 which required the Association to present their views to the Board and the Board to render a decision on the grievance. He asked the Board if there was a motion.

It was motioned by Joy Hopkins, as she thinks this matter is not being resolved at this level and the interpretations of the language are different, that:

“We deny the grievance and move to Step 4 of the Grievance Procedure.”

The motion was seconded by Jim Hermans.

Tom Butch stated the Board checked with Tom Smith, Bridget DeGroot, and Kevin Carlson and asked, “Is our intent firmly understood as we understand it now? Everyone confirmed that that was our intent. If our intent was not that strong and it was not perceived that way, sometimes that means we disagree agreeably and it is the Faculty’s option to move to the next step.”

Phil thanked everyone for their time and effort throughout the process.

No further discussion.

Roll Call:

Ayes: Jim Hermans, Joy Hopkins, Bill Lake, Tom England, Tom Butch, Philip Strom
Nays: None
Abstentions: None

The motion carried unanimously.

Phil requested the required written notice of the Board's decision be provided to the Association as appropriate.

Bill Milligan thanked everyone for their time.

It was moved by Bill Lake and seconded by Joy Hopkins to:

“Adjourn the meeting.” No discussion. Motion carried unanimously. The meeting adjourned at 5:50 p.m. ET.

Faculty members left the meeting.

It was realized there was another item of business to discuss.

Bill Lake rescinded his motion to adjourn, supported by Joy Hopkins. The meeting was called back to order at 5:53 p.m.

Dr. Coleman advised the General Release and Settlement Agreement for John Mathews was completed by the attorneys for each side. She asked the Board to approve the settlement of \$5,000 and a tuition waiver for the 2016-17 and 2017-18 academic years for Mr. Mathew's daughter to attend Bay College in exchange for the withdrawal of Mr. Mathew's grievance.

It was motioned by Tom Butch and supported by Joy Hopkins to:

“Approve the settlement drafted by the attorneys to pay John Mathews no more than \$5,000 for settlement of the grievance and allow his daughter a tuition waiver for this year and next year only.”

Discussion was held about how grievances would be viewed in the future.

Roll Call:

Ayes: Tom Butch, Bill Lake, Tom England, Philip Strom, Joy Hopkins
Nays: Jim Hermans
Abstentions: None

The motion carried.

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It was moved by Bill Lake and seconded by Joy Hopkins to:

“Adjourn the meeting.” No discussion. Motion carried unanimously. The meeting adjourned at 5:59 p.m. ET.

	9/28/16	
Laura L. Johnson Assistant Board Secretary	Completion Date	Approval Date

Philip L. Strom Board Chair		Approval Date
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