

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION

BROWARD COMMUNITY COLLEGE,

Charging Party,

v.

BROWARD COMMUNITY COLLEGE,  
UNITED FACULTY OF FLORIDA,  
FTP-NEA,

Respondent.

Case No. CB-2008-016

BROWARD COMMUNITY COLLEGE,  
UNITED FACULTY OF FLORIDA,  
FTP-NEA,

Charging Party,

v.

BROWARD COMMUNITY COLLEGE,

Respondent.

Case No. CA-2008-061

HEARING OFFICER'S  
RECOMMENDED ORDER

Paul O. Lopez, Fort Lauderdale, attorney for Broward Community College.

Thomas W. Brooks, Tallahassee, attorney for Broward Community College, United Faculty of Florida.

CHOPPIN, Hearing Officer.

The Broward Community College United Faculty of Florida, FTP-NEA (UFF), represents a bargaining unit of faculty employed by Broward Community College (BCC).

BCC and UFF have filed dueling charges, each alleging that the other committed an array of unfair labor practices by its conduct following invocation of the statutory impasse resolution process. BCC's charge, filed on May 19, 2008, alleges that UFF violated

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Section 447.501(2)(a) and (c), Florida Statutes (2008), by refusing to submit for bargaining unit ratification a finalized collective bargaining agreement created as a result of statutory impasse resolution procedures and subsequent legislative body action. BCC also contends that UFF's refusal to bargain after the conclusion of the impasse resolution process and its insistence on inclusion in the contract of issues on which the parties did not agree pre-impasse constitute unfair labor practices.

UFF's charge, filed on June 30, claims that BCC violated Section 447.501(1)(a) and (c), Florida Statutes (2008), by unilaterally altering wages and terms and conditions of employment, conditioning its agreement to a proposed collective bargaining agreement on UFF's acquiescence to elimination or modification of provisions of the parties' current contract that were not the subject of reopener negotiations and were not subject to the impasse resolution proceedings, and failing to vest its negotiating representative with the authority to conduct collective bargaining negotiations.

The Commission's General Counsel found both charges to be sufficient, and both were assigned to me as hearing officer. I granted BCC's unopposed motion to consolidate the two cases and conducted a telephone evidentiary hearing between Tallahassee and Davie on August 27. Following two extensions of time, the parties filed post-hearing briefs, which I have considered in preparing this order. UFF seeks an award of attorney's fees and costs in both cases; BCC seeks an award of fees and costs only for defending the charge against it.

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### ISSUES

The issues framed by these proceedings are several; many are mirror image charges and defenses and are resolved together. They are:

1. Did UFF commit an unfair labor practice by refusing to submit the collective bargaining agreement proposed by BCC to unit members for ratification?
2. Did UFF commit an unfair labor practice by attempting to introduce new issues into the collective bargaining agreement after the conclusion of the impasse resolution process?
3. Did UFF commit an unfair labor practice by insisting on inclusion of those new issues?
4. Did BCC commit an unfair labor practice by unilaterally altering the wages and terms and conditions of employment of members of the faculty bargaining unit?
5. Did BCC commit an unfair labor practice by conditioning its agreement to a proposed collective bargaining agreement on UFF's acquiescence to elimination or modification of provisions of the parties' current contract that were not the subject of re-opener negotiations and were not subject to the impasse resolution proceedings?
6. Did BCC commit an unfair labor practice by failing to vest its negotiating representative with the authority to conduct collective bargaining negotiations?
7. Is either party entitled to an award of attorney's fees?

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### FINDINGS OF FACT<sup>1</sup>

1. UFF is the certified collective bargaining agent for full-time faculty employed by BCC. See Certification 539.
2. The current collective bargaining agreement between UFF and BCC is for the term of 2006-2009 and expires at the end of the 2008-2009 academic year. The duration clause of the contract provides that it will be reopened each year for negotiations on matters of compensation, insurance, any legislatively mandated issue, and three other issues chosen by each party. Pursuant to this provision, UFF and BCC entered into reopener negotiations in April 2007, addressing the issues of salaries and health benefits among other matters. (Exhibit 7, p. 55)<sup>2</sup>
3. Article 5.10E of the current contract addresses faculty salaries, as follows:  
  
E. Faculty Salaries  
  
Effective for the 2006 – 2007 academic year, for bargaining unit members employed as of 7/1/2006:

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<sup>1</sup>Although the parties generally agreed on the events that occurred, there was often disagreement on the meaning or significance of those events. In making my findings, I have resolved any such disputes by crediting UFF's witnesses, especially its negotiators, over those representing BCC. I found much of the testimony of BCC chief negotiator, Dr. Chun, to be evasive and, therefore, less than credible. Because her testimony was not characterized by candor, I am led to conclude that her conduct in the contract negotiations was also evasive and less than straightforward; a course of conduct that may be responsible for much of the confusion and disarray that plagued the parties' negotiations and brought them to this litigation.

<sup>2</sup>Citations to the record are intended to indicate some, but by no means all, support for the annotated finding.

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All Faculty salaries will be increased by 4% on the 163-day contract, retroactive to July 1, 2006. After the 4% increase, all Faculty with salaries below the salary schedule step minimum will be raised to the new minimums.

In addition, Faculty with 35 or more years of experience will receive a one time bonus of \$500 as part of a foundation of a longevity program.

(Exhibit 7, p. 23)

4. Article 5.10F of the current collective bargaining agreement, which also pertains to salaries, provides:

**F. Daily Rate of Pay**

Faculty, both instructional and non-instructional, can take up to two days for non-specified professional development from their non-teaching duty days.

1. All Faculty salaries will be computed based on the 163-day calendar.
2. Faculty members on 194-day, 213-day and 225-day contracts will be adjusted on a daily rate of pay.

(Exhibit 7, p. 23)

5. On September 5, 2007, BCC presented its last proposal for change to the salary provision prior to declaration of impasse. It proposed the following language:

Effective for the 2007 – 2008 academic year, for bargaining unit members employed as of 7/1/2007:

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All faculty salaries will be increased \$1,000 on the 163-day contract, retroactive to July 1, 2007. After the \$1,000 increase, all Faculty with salaries below the salary schedule step minimum will be raised to this new minimum.

(Exhibit 22, attachment #3; Exhibit 27)

6. Since BCC transitioned to a 163-day contract for teaching faculty in 1999, the base salary for faculty has consistently been based on that contract term, with faculty on longer contracts paid additional monies based on their daily rate of pay to compensate for their additional work. Prior raises and salaries under the parties' contract have all been negotiated with the 163-day contract as the "base salary." (Exhibit 22; Transcript at 198)

7. The practice of BCC has been to indicate proposed deletions of contract language by lining through the language in the text of the current agreement or inserting the statement, "Delete the following language," followed by quotation of the language proposed for deletion. BCC did not indicate by either of these procedures that it was proposing that the \$500 longevity bonus in Article 5.10E be deleted from the contract. Neither party proposed to eliminate the longevity bonus prior to declaration of impasse. (Transcript at 209 -10)

8. In August 2007, Dr. Leisek, a member of the UFF negotiating team, sought to determine the number of faculty entitled to the longevity bonus in preparation for negotiations. BCC Vice President of Academic Affairs Ken Ross advised Leisek in an e-mail that four faculty members would be eligible for the bonus "unless it is removed."

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Thereafter, UFF negotiator Dr. Daniel Reiger learned that the \$500 bonus had not been paid in the checks of the faculty entitled to the bonus. He brought Ross's email and the unpaid bonuses to Chun's attention, but received no response. (Exhibit 22; Transcript at 210)

9. The longevity bonus was first proposed into the parties' contract in 2006 by BCC. The intent of the bonus was to reward faculty who had been at BCC thirty-five years or longer who were no longer benefiting from the salary schedule which ends after thirty years of experience. The contract provision is described as the "foundation of a longevity program" and was intended to be ongoing past its initial year. (Exhibits 7 at p. 23 and 22)

10. During negotiations BCC proposed to eliminate the language of Article 5.10F that authorizes faculty to take two days for non-specified professional development, quoted in finding 4 above. Subsequently, BCC submitted a series of proposals, culminating on September 5, 2007, in the following proposal:

Faculty, both instructional and noninstructional, can take up to two non-specified professional development days from their non-teaching duty days. Instructional and non-instructional faculty shall not exercise this option on the duty days immediately preceding a major term and non-instructional faculty shall not exercise this option during periods when staffing limitations exist. In all cases, faculty members who exercise this option shall provide a written request to the appropriate supervisor at least one week in advance for each of the two days.

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The parties did not reach agreement on this issue, referred to hereinafter as the "professional development issue," but it was not among the issues submitted to the special master for a recommended resolution. (Exhibit 20; Transcript at 213)

11. In Article 7.20, Professional Obligations, the current collective bargaining agreement provides:

7.20D-3. A Faculty members [sic] submitted schedule may show fewer than four hours per day for the same number of days for which he/she is scheduled for seven or more contractual obligation hours, with the adjustment to equal one hour for each of the days where seven or more hours are shown.

(Exhibit 7, p. 48)

12. During negotiations, BCC first proposed to delete the above-quoted language from Article 7.20D – 3 and insert new language in 7.20 A-4. Later, BCC proposed alternate language for D-3, eventually proposing:

Faculty members [sic] submitted schedule may show fewer than four hours per day with the approval of the Associate Dean for the same days for which he/she is scheduled for seven or more contractual obligation hours, with the adjustment to equal one hour for each of the days where seven or more hours are shown.

The parties did not reach agreement on this issue, referred to hereinafter as the "professional obligations issue," but it was not submitted to the special magistrate for proposed resolution. (Exhibit 21; Transcript at 213)

13. From approximately 2002 through 2005, a special committee of faculty from the faculty senate met to develop recommendations for evaluation forms, procedures, and timelines (referred to collectively as the "evaluation documents"). The

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parties bargained over adoption of the documents recommended by the committee in 2005 and 2006 but were not able to agree on the substance of the documents or whether they should be placed in the collective bargaining agreement. In the 2007 reopener negotiations, UFF again sought inclusion of the documents in the parties' contract. Prior to the declaration of impasse, the parties agreed to place the evaluation documents in the faculty handbook. BCC made no proposals to change the substance of the documents and, on August 27, 2007, BCC accepted the documents without change. This issue was not included in the impasse resolution proceedings. (Transcript at 89, 230-33, 224-29, 286-87; Exhibit 19)

14. UFF proposed to change a portion of Article 7.50 of the collective bargaining agreement that describes the purpose of evaluations to conform the contract to the evaluation documents. Currently the contract provides the following four purposes:

- (1) To promote the highest quality instruction (teaching/learning).
- (2) To encourage the highest quality performance by Faculty.
- (3) To encourage professional growth and development of Faculty.
- (4) To evaluate Faculty job performance.

Further, the contract currently provides that "[n]othing herein shall be construed to prevent an employee from challenging an evaluation in a disciplinary proceeding if such evaluation is used to support disciplinary action." BCC did not agree to the proposed changes in Article 7.50. Transcript at 233 - 36; Exhibit 7, pp. 50 - 51.

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15. Article 2.10 of the current collective bargaining agreement, **Prevailing Rights**, provides:

During the term of this Agreement, all rights, privileges, and fringe benefits not specifically addressed in this Agreement, but previously enjoyed by Faculty members, and which rights, privileges, and benefits contained in the Procedures and Guidelines Manuals and the Faculty/Staff Handbook as related to and limited to Faculty members, will remain in effect unless amended by mutual agreement.

(Exhibit 7, p. 2)

16. On October 3, 2007, the BCC declared impasse. Special Magistrate Thomas Young, III, conducted an impasse hearing on December 17 and 19, 2007, and issued a report. The contract issues that were presented for resolution and resolved by the special magistrate were compensation (Article 5.00), health care benefits (Article 6.00), health care benefits task force, seniority, and faculty evaluations (Article 7.50). (Exhibit 3)

17. In relation to salaries, the magistrate described BCC's proposal as "\$1000 across-the-board increase to the salaries of all bargaining unit members, with no adjustment to the salary schedule." BCC discussed its proposal as a "base building" raise. UFF sought a 3.48% increase for unit members with a corresponding adjustment to the salary schedule. The magistrate recommended "the BCC proposal of a salary increase of \$1,000 be accepted" and that the salary schedule be adjusted by 2%. It is not clear from the parties' briefs or the special magistrate's report whether the \$1,000 raise was to be based on the 163-day contract with adjustments made for faculty with

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longer contract periods or whether the increase proposed by BCC and recommended by the magistrate was to be a flat \$1,000 raise without regard to contract length.

(Exhibits 1-3 and 22)

18. The issue before the special magistrate regarding evaluations did not pertain to the content of the evaluation forms. Rather, the parties' argument before the magistrate centered on whether language describing one of the purposes of the evaluations as being "to evaluate faculty performance" should be eliminated from Article 7.50 and replaced with a statement that evaluation is for the purpose of "professional development." The special magistrate recommended that the language proposed by UFF be adopted. (Exhibit 3; Transcript at 236-37)

19. UFF did not reject any of the special magistrate's recommendations. BCC rejected the special magistrate's recommendations regarding the health care benefits task force, seniority, and faculty evaluations. (Exhibit 14)

20. At a regularly scheduled meeting on February 27, 2008, prior to the BCC Board of Trustees (BOT) meeting as the legislative body, the BOT approved a recommendation from BCC President Armstrong to implement the special magistrate's recommendations that had been accepted by both parties, including an across-the-board base-building salary increase of \$1,000 for full-time faculty effective July 1, 2007, a 2% adjustment to the faculty salary schedule, and healthcare plan changes. The version of Article 5.10E submitted to the BOT for its approval provides that "[f]ull-time faculty salaries will be increased by \$1,000 effective July 1, 2007," showing deletion of the prior

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language that tied the 4% raise given in 2006 – 2007 to the 163-day contract. The proposal also showed the deletion of the longevity bonus. The changes were implemented soon thereafter. (Exhibits 12 and 15)

21. On March 12, 2008, the BOT met in its role as the legislative body to resolve the three issues addressed by the special magistrate but not accepted by BCC. In regard to faculty evaluations, the BOT approved language to be added to Article 7.50 describing the purposes of evaluations. The BOT also approved placing the evaluation documents in the faculty handbook. Language stating that the forms, procedures and timelines to be used are contained in the handbook appears in both parties' proposed contracts. (Exhibits 9, 16, and 18)

22. The parties met on March 21, 2008, to compile an agreement to submit for ratification but could not agree on what should or should not be included in the agreement. The parties' differing beliefs as to the application of the \$1,000 raise to faculty with varying contract terms and the elimination or survival of the \$500 longevity bonus came to light. There was also disagreement on the correctness of adjustments to the salary schedule. Further, UFF discovered that BCC intended to include in the contract its proposals relative to the professional development and professional obligations issues on which there had been no tentative agreement prior to impasse and which had not been submitted to the impasse resolution process. UFF also discovered that BCC did not concur in its belief that agreement had been reached on the substance of the

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evaluation forms prior to the declaration of impasse. Dr. Reiger complained of these matters to President Armstrong in an e-mail following the meeting. (Exhibit 6)

23. On April 10, 2008, the parties met again. At that meeting, a correct salary schedule was agreed upon, but BCC's chief negotiator, Dr. Chun, refused to sign it. She stated that she was not permitted to sign or agree to anything. BCC attorney, Kevin Fernander, who was present at the meeting, stated that the BOT had not given Dr. Chun authority to agree to or sign anything. After some discussion, Dr. Chun finally initialed the salary schedule for purposes of identification only. (Transcript 169-72)

24. At the April 10 meeting, BCC maintained its previous position on all of the disputes between the parties that had surfaced at the prior meeting and proposed changes to some of the evaluation documents which were recommended by the faculty committee and which UFF maintained the parties had agreed to adopt without change. UFF contended that the evaluation forms had to be submitted for ratification along with the contract since those forms established terms and conditions of employment; BCC disagreed. Further, BCC contended that UFF must be open to negotiating the remaining issues in dispute, whereas UFF took the position that negotiations had concluded with the declaration of impasse and there should be no further bargaining over the contents of the parties' new contract. (Exhibit 17)

25. UFF submitted a proposed contract to BCC on April 14. (Exhibit 16)

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26. BCC proposed meeting again on April 18, 2008. UFF took the position that further meetings would not be productive as long as BCC's position on the matters in dispute remained the same. Further, UFF stated that it would not come to the table to bargain issues that cannot be legally bargained post-impasse. UFF stated that it felt that it had compiled a final contract and was ready to proceed with the ratification process. (Exhibit 10)

27. On April 23, 2008, the BOT ratified a collective bargaining agreement prepared by BCC. That contract contains changes to the professional development and professional obligation provisions and establishes the \$1,000 raise without prorating for contracts longer than 163 days. The contract does not contain the \$500 longevity bonus. UFF has refused to approve the agreement or submit it to its members for ratification. (Exhibit 9)

#### ANALYSIS

The first issue to be addressed concerns the \$1,000 raise. Each party charges that the other committed an unfair labor practice by treating its interpretation of the special magistrate's recommendation on the \$1,000 raise as the accurate interpretation and acting consistent with that belief. Thus, BCC, which interprets the recommendation as a flat across-the-board raise of \$1,000 to each bargaining unit member regardless of contract length, charges that UFF violated the law by failing to approve and offer for ratification a proposed contract containing that raise provision. Conversely, UFF, which

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interprets the raise recommendation as a \$1,000 raise to a 163-day base salary with additional money paid to employees with a longer contract on a prorated basis, defends that the law does not require it to approve or offer for ratification a contract containing a version of the raise that was not recommended by the special magistrate or imposed by the legislative body and charges that BCC violated the law by inserting that provision in its ratified contract.

Neither the parties' briefs to the magistrate nor the magistrate's report and recommendation offer much guidance. There are some references therein to a raise to base pay and an across-the-board raise which support both parties' positions. The special magistrate recommended that "the BCC proposal of a salary increase of \$1,000 be accepted." Bill Pennell, chief financial officer for BCC testified credibly that the \$1,000 raise was budgeted and submitted for BOT approval in September 2007 based on a raise that was not prorated for different contract lengths. Pennell, however, was not part of the BCC negotiating team, although he did testify at the special magistrate's hearing where he concedes the issue of tying the raise to a contract term was not addressed. Therefore, I do not find his testimony dispositive of the issue of what raise was actually proposed by the BCC negotiating team in the special magistrate proceeding and, consequently, what proposal was actually recommended by the special magistrate and accepted by the parties.

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Neither did I find the testimony of Dr. Chun dispositive on this issue. Dr. Chun testified that Pennell's recall of the presentation to the special magistrate was consistent with her own recollection that the raise was to be an across-the-board increase. It is apparent that regardless of what the BCC witnesses believed was being proposed, the presentation was hopelessly ambiguous.

In the face of the evident ambiguity in the proceedings before the special magistrate and the resultant report, I find it significant that the final proposal related to the raise offered by BCC prior to the declaration of impasse was an offer that "all salaries be increased by \$1,000 on the 163-day contract...." Thus, BCC's final offer before impasse contemplated prorating the raise for employees on contracts with terms longer than 163 days. Such a proposal is consistent with Article 5.10F, which provides that all faculty salaries will be computed based on a 163-day contract and the pay of faculty on contracts of greater length will be adjusted on a daily rate of pay. Equally telling, it is consistent with the parties' past practice of calculating all raises based on the 163-day contract with adjustment for longer contracts. In light of the BCC's final offer, the contract provision, and the parties' past practice, I find that the raise being offered by BCC during the impasse proceedings was a raise to the 163-day contract base pay and would be adjusted for employees on longer contracts and that it was that proposed raise that was recommended by the special magistrate and accepted by the parties.

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Accordingly, I conclude that UFF did not commit an unfair labor practice when it refused to accept and submit for ratification a contract that contained a provision for a flat \$1,000 raise that had not been negotiated by the parties, recommended by the special magistrate, or imposed by the legislative body. Jacksonville Association of Fire Fighters, IAFF, Local 122 v. City of Jacksonville, 15 FPER ¶ 20327 (1989) ( finding that union's refusal to submit for ratification wage proposal that was erroneously computed was not unlawful). In contrast, BCC's ratification of a proposed contract containing a raise that was not agreed to by the parties or the product of the impasse resolution process was an unfair labor practice. See §§ 447.403(4)(e) and 447.501(1)(c), Fla. Stat. (2008).

Furthermore, regardless of whether its interpretation of the \$1,000 raise was accurate, BCC committed an unfair labor practice when it unilaterally implemented that raise, the 2% salary schedule increase, and the health plan changes prior to ratification of the contract. § 447.501(1)(c), Fla. Stat. (2008).

I turn now to the issue of the \$500 longevity bonus. It is undisputed that the parties did not address either the removal or the maintenance of this bonus in their negotiations, that the special magistrate did not treat the issue, and that the issue was not resolved by legislative body action. Despite this almost universal avoidance of the issue, the bonus was deleted from the proposed contract ratified by BCC and represents yet another stumbling block to UFF's approval and ratification of that proposed contract.

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While the fact that the bonus does not appear in any of the salary proposals might suggest that there was agreement that it would not be included in the new contract, this assumption is inconsistent with the parties' practice for indicating proposed contract changes. The evidence establishes that BCC has a practice of indicating proposed deletions of contract language by striking through the language or prefacing the language with a "delete this" statement. Neither of these methods was used to communicate to UFF that BCC's salary proposals included deletion of the bonus.

BCC contends that it was not necessary to formally indicate deletion of the bonus in its proposals because the bonus was instituted "[e]ffective for the 2006 – 2007 academic year" and, therefore, expired by the terms of the parties' existing contract when it was not re-proposed during the reopener negotiations. This argument, however, ignores the fact that the BCC salary proposals included amendment of the effective dates of the salary article. Thus, in the absence of any mention of the bonus in negotiations, UFF could reasonably believe that the prefatory language proposed by UFF would make all the components of the salary article, including the unmentioned bonus, effective for the 2007 -2008 academic year.

In reaching my determination that the parties did not agree to the elimination of the bonus, I note that when questioned about non-payment of the bonus during negotiations, Dr. Chun did not take that opportunity to explain that BCC considered it to have been eliminated in its proposals or that it had been a one-year benefit. I infer that she did not offer an explanation either because she had not previously contemplated removal

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of the bonus or because she had contemplated elimination of the bonus but did not want to alert UFF to the issue. Either course is a poor model for collective bargaining. It would be contrary to the goals of labor stability and harmony to allow the kind of "gotcha" bargaining that arises when negotiation over one aspect of a contract can result in loss of another bargained-for benefit that was not touched upon in those negotiations. This is especially true if one party understands and intends for its proposals to effect that change and knowingly allows the other party to remain unaware of the full impact of those proposals.

In sum, I conclude that the parties did not agree to elimination of the bonus and it was not addressed in the impasse resolution procedure. Therefore, a correct post-impasse contract should include the longevity bonus. Omission of the bonus from BCC's proposed contract provided yet another basis for UFF's refusal to approve that contract and submit it for a ratification vote. BCC's ratification of a proposed contract without the bonus provision was an unfair labor practice. §§ 447.403(4)(e) and 447.501(1)(c), Fla. Stat. (2008).

Two issues are raised regarding the evaluation process. First, UFF insists that it cannot approve and offer for ratification a contract without including with it the evaluation documents that are referenced in the contract. Second, UFF alleges that a tentative agreement was reached on the substance of those evaluation documents prior to impasse and, therefore, BCC has violated the law by insisting on continued negotiation

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about the substance of those documents. I have credited UFF's claim that the parties agreed to adopt the committee's recommended evaluation documents prior to declaration of impasse. Therefore, BCC had no right to continue to demand negotiation of that issue. Moreover, as those documents establish terms and conditions of employment for bargaining unit members and are destined to be part of the faculty handbook which is incorporated in the collective bargaining agreement by the prevailing rights clause, the documents are properly part of the contract materials to be presented for ratification. I conclude, therefore, that UFF did not violate the law by refusing to submit BCC's proposed contract for ratification in the absence of the evaluation documents.

UFF also charges that BCC has committed an unfair labor practice by placing in its proposed and ratified contract changes to the professional development and professional obligations provisions. It is undisputed that UFF did not agree to these changes and that they were not presented to the special magistrate. BCC's defense is a claim that the changes are "discretionary." Discretionary or not, there are only two ways for terms to enter a collective bargaining agreement, through agreement of the parties or imposition by the legislative body following impasse proceedings. The BCC followed neither path here. Accordingly, I conclude that the BCC's unilateral insertion of new language into the parties' collective bargaining agreement violated its bargaining obligation.

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Next I turn to BCC's claim that UFF committed an unfair labor practice by refusing to meet to bargain following the legislative body action. As my findings indicate, UFF did meet with BCC to attempt to reduce an agreement to writing, as is required by Section 447.403(4)(e), Florida Statutes (2008). It soon became apparent that the parties had irreconcilable differences in their view of what the content of the collective bargaining agreement should be. In seeking further meetings, BCC did not indicate any softening or compromise of its position on those differences. Rather, it sought to bargain with UFF. However, the post-impasse role of the parties is to reduce to writing an agreement that includes the issues agreed to by the parties and those disputed impasse issues resolved by the legislative body's action, not to engage in further negotiations. See § 447.403(4)(e), Fla. Stat. Therefore, I conclude that there is no merit to this aspect of BCC's charge.

Finally, I come to UFF's claim that BCC violated the law by sending to the table a negotiator that was not authorized to tentatively agree to or sign anything. The evidence on this issue was scant and undefined. The only evidence that Dr. Chun refused to sign a document and asserted a lack of authority occurred not during the parties' negotiations, but at a post-impasse meeting intended to compile a contract. It is not clear what Dr. Chun's authority was during the actual negotiations. I note, however, that UFF's claim that the parties reached agreement on some items belies its charge that BCC failed to send a person with the authority to enter into agreements to the table. Therefore, I conclude that UFF has failed to prove this portion of its charge.

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Section 447.503(6)(c), Florida Statutes, authorizes the Commission to award attorney's fees and costs of litigation to a prevailing party when it determines such an award is appropriate. BCC seeks fees only for its defense of the charge brought by UFF. However, BCC is a prevailing party as to only one minor aspect of that charge, the negotiating authority of Dr. Chun. The Commission awards fees to a prevailing respondent if the unfair labor practice charge filed by the charging party was frivolous, unreasonable, or groundless when filed or the charging party continued to litigate after it clearly became so. See National Union of Hospital and Health Care Employees v. Southeast Volusia Hospital District, 8 FPER ¶ 13419 (1982), aff'd, 436 So. 2d 294 (Fla. 1st DCA 1983). Because the charge relating to Dr. Chun's authority was instigated by and premised on statements made by Dr. Chun and BCC's attorney, I cannot conclude that it was frivolous, unreasonable, or groundless when filed or that it clearly became so during the course of litigation. Therefore, I conclude that BCC is not a prevailing respondent and is not entitled to attorney's fees or costs.

UFF seeks an award of fees and costs for both its defense against BCC's charge and for its prosecution of the charge against BCC. Because I have found the conduct of BCC's chief negotiator to have been a significant factor in creating the dispute over the proper contents of the parties' agreement, I conclude that BCC's charge was unreasonable when filed. Therefore, UFF is entitled to an award of fees and costs for its defense against that charge.

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UFF is also eligible for an award of fees and costs for litigation of its charge against BCC. A prevailing charging party is entitled to fees if the employer knew or should have known that its conduct was unlawful. See DeMarois v. Military Park Fire Control Tax District No. 4, 7 FPER ¶ 12065 (1981), aff'd, 411 So. 2d 944 (Fla. 4th DCA 1982). The Commission's case law on unilateral change is longstanding and well-established. Further, the ambiguity over bargaining proposals was fostered by the conduct of BCC's chief negotiator. Thus, I conclude that an award of fees and costs is appropriate because BCC knew or should have known that its conduct was unlawful.

#### CONCLUSIONS OF LAW

Based upon the foregoing discussion, I make the following conclusions of law:

1. BCC is a public employer within the meaning of Section 447.203(2), Florida Statutes (2008).
2. UFF is an employee organization within the meaning of Section 447.203(11), Florida Statutes (2008).
3. UFF did not engage in an unfair labor practice in violation of Section 447.501(2)(a), Florida Statutes (2008).
4. BCC did engage in unfair labor practices in violation of Section 447.501(1)(a) and (c), Florida statutes (2008).

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5. UFF is entitled to an award of reasonable attorney's fees and costs as both a prevailing charging party and a prevailing respondent. BCC is not entitled to an award of attorney's fees and costs.

### RECOMMENDATIONS

I recommend that the Commission adopt the foregoing recommended order. The Commission should order BCC to cease and desist from engaging in the unfair labor practices identified above and to meet with UFF to reduce to writing an agreement consistent with the foregoing discussion and determinations. Further, the Commission should direct both parties to submit the resultant agreement for ratification and otherwise proceed in accordance with Section 447.403(4), Florida Statutes (2008). Finally, the Commission should order BCC to pay to UFF the reasonable attorney's fees and costs incurred in the prosecution and defense of these cases.

Any party may file exceptions to my recommended order, but exceptions must be received by the Commission within fifteen days from the date of this order. See Fla. Admin. Code Rule 28-106.217(1). An extension of time for filing exceptions will not be granted unless good cause is shown.

ISSUED and SUBMITTED to the Public Employees Relations Commission in accordance with Florida Administrative Code Rule 28-106.216 and SERVED on all parties this 28<sup>th</sup> day of October, 2008.

  
SUZANNE M. CHOPPIN, Hearing Officer

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