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Barbara Zausner

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Dutchess County Community College and Dutchess United Educators

Abstract
In the Matter of the Fact-finding between DUTCHESS COUNTY COMMUNITY COLLEGE and DUTCHESS UNITED EDUCATORS. PERB Docket No. M2006-244. BEFORE: Barbara Zausner, Arbitrator.

Keywords
New York State, PERB, fact finding

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NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT

In the Matter of the Fact-finding

between

DUTCHESS COUNTY COMMUNITY COLLEGE

and

DUTCHESS UNITED EDUCATORS

PERB Docket No. M2006-244

BEFORE: Barbara Zausner, Arbitrator

REPORT DATED: July 14, 2009

APPEARANCES

Roemer Wallens & Mineaux
Attorneys for the College
By, William M. Wallens, Esq.

Gleason, Dunn, Walsh & O'Shea
Attorneys for the Union
By, Ronald G. Dunn, Esq.

REPORT OF THE FACT FINDER

In October 2006 the College instituted a Learning Assessment Program to comply with mandates of the SUNY system and the Commission on Higher Education of the Middle States Association. According to the Union, members of the DUE were required "to perform duties over and above duties previously required." The work is "fundamentally different" from other faculty duties (Brief, p. 2). The Union

cites the report of the Ad Hoc Assessment Committee that "much of the work ... will be beyond ... our customary professional obligations." The Union contends the College "steadfastly refused to provide any new compensation taking the position that Academic assessment is 'an inherent job responsibility of full time Faculty'" (Quoting from College Exhibit 2).

At the heart of the dispute is whether faculty are entitled to additional compensation for "extra work." DUE proposes that faculty be "compensated at $75.00 per hour for all work related exclusively to the Learning Assessment Program based on a submitted log" (U-1). The College proposes, for work on weekends or during intercession beyond the contract work year, that faculty receive $35.00 per hour. DUE believes that rate, which is the contract rate for non-teaching duties, is "too low for the high skill, more sophisticated work required as part of the Learning Assessment Program" (Brief, p. 7).

The current agreement, according to DUE, does not speak to the issue at hand. It does contain language about compensating teaching faculty for additional non-teaching duties, which rate was $35.00 per hour as of September 1, 2007. DUE relies on language of the Assessment Committee Report that recommended "'compensation for Faculty at norming sessions' and other events related to the project" (J-2, p 28).

DUE asserts, "Any fair reading of the testimony reveals that it is both an extension ... and new in that [the assessment work] required the creation of an entirely new set of assessment tools never before used at the College." It summarizes testimony of faculty members who "testified that these new means for measurement required significant and substantial work over and above their customary duties and across all disciplines." Department chairs performed duties "that were also quantitatively and qualitatively different from what was required previously (Tr., 102-111; Brief, p. 10).

DUE contends the record in the Employer's comparability data, is "somewhat incomplete." Only one contract is in evidence and it shows that faculty are "compensated at the overload rate ... for additional assessment work that is outside the traditional student proficiency testing and assessment which has always existed." The College's survey also shows that faculty at other community colleges receive additional pay or a reduced load for extra duties (C-10).

DUE asserts compensation should be "some hourly rate based on the amount of work performed." "Just as additional contact hours over and above a full load require additional compensation, so too should additional duties associated with Learning Assessment" (Brief, p. 14).

It is the College's position that "academic assessment is and has always been an inherent function of the faculty…." Therefore, "additional compensation is not warranted nor justified" (Brief, p. 6).

The College's position is somewhat at odds with the financial resources laid out in the action plan (C-4, p. 5)). The College would pay for "an assessment coordinator" for each department. For the spring 2007 semester, "a dedicated budget line of $5,000 for the 2006-07 fiscal year" "to support academic assessment activities." The amount was $10,000 for the 2007-08 fiscal year. "The Dean of Academic Affairs would be provided $10,000 for the spring of 2007 and $25,000 for 2007-2008 to support academic assessment." There were also funds "to have discipline based consultants come to campus to assist the faculty" (Brief, pp. 4-5).

Support efforts along similar lines are reflected in the responses to SUNY Vice Chancellor Dr. Dennis Golladay's survey of assessment practices at other community colleges. The survey responses show payments were made in certain circumstances for assessment work. Some collective bargaining agreements set forth payment rates. Some colleges offer reduced credit hours or course loads (C-10 summary and individual survey results).

The College argues "DUE failed to satisfy its burden of proof that there has been an impact of Middle States assessment justifying

additional compensation." It points to comparisons with other community colleges in the State system. "Middle States assessment is not unique to DCC" (Brief, p. 14). But, as noted above, consideration by way of a reduced workload or monetary compensation is not unusual.

As the College notes, it "offered each department a coordinator who would assist the Department Head and faculty in the assessment efforts. Generally, the Department Heads rejected the offer of the coordinator at the behest of DUE" (Brief, p. 15, citing testimony of Joseph Cosentino who is a faculty member and a department head, at Tr., 140-141).

The College "offered significant resources and assistance to the faculty" (Brief, p. 15). "Only three department heads elected to utilize the services of a coordinator while seven did not" (Brief, p. 16, citing testimony of Dr. Denti, Tr., p. 293). No request for the available funding was turned down (C-11, approved payments). The College also provided professional development in 2007 and 2008. In May 2007, Dean Denti offered compensation to volunteers who were willing to work during the summer on assessment instruments (C-14).

On January 8, 2008, DUE urged members not to accept "any of the compensation being illegally offered to you by the College." At the time, DUE was pursuing its argument that the College had a duty to bargain

over additional duties and the rate to be paid. Faculty members were advised to keep records of their work.

The College cites faculty testimony to support its argument that assessment work has always been performed without extra compensation along with other faculty duties that faculty engage in during and after the "work" day. The College views the amount of time spent on various assessment duties, as documented in records and testimony, inadequate to establish the performance of "new work" (Brief, pp. 18-22). It also points to time spent in workshops during the scheduled work year (for example) and asserts faculty members have already been paid for that work (Brief, p. 23).

The College argues the "documentation in support of DUE's claim" is too small a sample to be "deemed representative of the bargaining unit" and furthermore has "no probative value" (Brief, p. 25). It takes issue with the proposition that faculty should be paid extra "for attending professional development and workshops that deal with academic assessment while conceding that they do not receive compensation for attending professional development and workshops on other topics relating to their professional responsibilities" (Brief, p. 27). Some submissions for extra pay came from members of the nursing department. That department was not involved in the Middle States assessment. The

College views much of the testimony and documentation as referring to work that faculty have always done and that is within their professional duties for which no extra compensation is due.

Conclusions and Recommendations

Criticisms of the evidence offered by the Union and summarized above are well taken. Additional documentation would be required to prove the entitlement of any one faculty member to additional compensation. That is not to say that I agree the evidence is not probative or useful. On the contrary, the credible testimony and documents support what the Ad Hoc Assessment Committee, which carefully studied the subject, found to be a new level of work for the faculty.

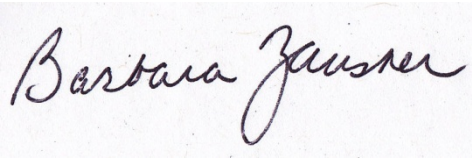
The Committee's findings and conclusions are good evidence that the Middle States assessment responsibilities differ from other assessment work. Under the section on recommended support, the report describes much of the work as "beyond our customary professional obligations." Further, "the new, externally driven assessment requirements are an order of magnitude more demanding" and will "depend on extensive commitment by faculty to do the extra work…." (J-2, p. 21).

On the other hand, the College took heed of the Ad Hoc Committee's recommendations and provided various forms of support. It

also compensated a number of faculty members who submitted payment authorization forms. The forms are approved by the department head or supervisor (C-11). The College also offered funding for assessment support, some of which was rejected at the Union's suggestion. The Union had the right to pursue the strategy it developed but that strategy did not succeed.

Based on the record before me, I recommend the College compensate faculty who submit payment authorization forms for work such as that detailed in the C-11 records at the contractual rate in effect at the time. While the work is distinguishable from "non-job related assignments" there is no other negotiated rate in the contract. If, going forward, individuals can prove they have done extra work (with documentation acceptable to the College) they should be compensated at the "non-job related" hourly rate + $10.00 in recognition of the fact that the work is job related and more demanding. I would also recommend that the parties make a fresh attempt to negotiate over the subject now that they have had several years of experience.

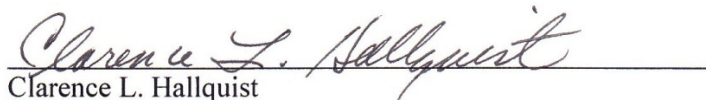
These recommendations are respectfully submitted by,



July 14, 2009

State of New York
County of Ulster

Barbara Zausner appeared before me on July 14, 2009 and she affirmed the foregoing is her fact finding report and recommendations.



Clarence L. Hallquist

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