

June 11, 2009

Dear Local 2364 Unit Members and Colleagues:

The information in this memo is based on a letter to Council delegates from Nick Yovnello, the Council president, and other sources with whom I have spoken over the past few days. It is as up-to-date as possible and I hope it answers some of the many questions being raised on the campus.

President Gitenstein had a meeting with the TCNJ union presidents, as well as the presidents of the Faculty and Staff Senates, last week to review the evolving budget situation. At that time, the CWA tentative agreement had not been made public. After that happened, President Gitenstein told me that although she was still committed to no furloughs or layoffs she might have to reconsider her options if the CWA agreement is ratified by their membership. Evidently the State is intent on having all state employees share in the pain, not just those directly under the Governor's control. Based on previous conversations with President Gitenstein, I am convinced that she will continue to do everything possible to minimize the negative impact of these dire financial times on both TCNJ employees and the mission of our institution. Unlike some of our sister campuses, the working relationship between the various constituencies on the TCNJ campus has been collegial and mutually beneficial. Even though these are extraordinary times, I believe we can continue to work cooperatively and creatively to meet these challenges.

The tentative agreement reached between the Communication Workers of America (CWA) and the State provide for certain givebacks under the current CWA contract, in exchange for a certain commitments to CWA by the State, including a promise to forego layoffs for a defined period of time. Since that information was made public, I have received many inquiries from unit members about the terms of the Agreement, and what implications it might have for the AFT. I have outlined the key issues below.

The Issue – to reopen or not to reopen negotiations on our contract?

We are being asked by the State to reopen contract negotiations and basically accept the economic compromise worked out by CWA. This does not preclude us for seeking to negotiate for additional or alternative elements that have a more direct effect on our members, but the basic economic template is in place. Prior to the CWA agreement, the State threatened to take any number of unilateral actions adverse to its employees, and those threats remain in place for our union. There is no way to know which threats made by the State will be carried out. We do not have a crystal ball but below are some facts to consider.

Federal State Stimulus Funds

While we were successful in getting a restoration of the funds that the Governor proposed cutting from the 2010 higher education budget, the Federal waivers the State received allows the State a great deal of latitude as to what conditions can be required by our institutions in order to receive the restoration.

The Governor's original budget to the legislature was based on:

1. 12 days furlough for ALL State employees
2. No annual increases
3. No increments
4. Threat of thousands of State worker layoffs

The main elements of the CWA settlement are:

1. Agreed to defer the July 2009 raise of 3.5% to January 2011, the last year of the agreement.
2. Increments would not be affected and people would continue to move up in their salary guides incrementally.
3. Agreed to 10 furlough days, eight which would be of the employees' choice. In return, employees would be able to accrue seven (7) of paid leave between June 30, 2009 and June 30, 2010. These days could either be taken as paid time off or carried over into a "Paid Leave Bank" that can be cashed in upon retirement or leaving state service – and at the rate of pay that's applicable for whatever year that might be – in other words at a higher daily rate of pay than the value of the 2009-2010 rate.

4. Agreed to add the day after Thanksgiving as a paid holiday in lieu of Lincoln's Birthday which the legislature abolished as a paid holiday at the expiration of the current state collective bargaining agreements.
5. There will be No Layoffs of any CWA represented workers from the date of ratification of this Agreement at least until January 1, 2011. If any worker is laid off between now and January 1, 2011, in violation of this No Layoff Pledge, *all workers* will immediately get the 3.5% increase that was deferred. In addition, in the event of layoffs during the No Layoff period, all furlough days remaining at the time of the layoff would be cancelled. The No Layoff pledge does not apply to workers who are fired for disciplinary reasons
6. The State and CWA agreed that there would be no loss of pension benefits as a result of the furlough days.

What can the State or our institutions individually do to our unit if we hold firm on the contract?

The State can implement some or all of the following cost-savings measures, without having to go through the union or negotiating the changes.

1. They can furlough an unspecified number of days; currently 10 at William Paterson and 12 at Kean were formally announced. Under current labor laws, the employer can take this action without negotiating over the substantive decision if the furlough is effectuated by way of a complete closure of the facilities, applicable to all employees. In that event, the union could only negotiate over impact issues, such as when the furlough days would be scheduled.
2. Some legislative leaders are indicating they will follow governor's recommendations in the budget, which could mean the loss of either our 2009 cost of living increase (3.5%) or our increments, or both. In that event, we could be looking at a court battle over whether the legislative budget action or lack of it constitutes legislation that legally supersedes the contract? **In this regard, you should be aware that Article XXI of our contract makes our cost of living increase "subject to an appropriation by the Legislature" for that specific purpose.** Furthermore, given our history with such issues, an arbitration decision might not be rendered for months if not a year or more in the future. If we win the arbitration, the members could eventually be made whole. If we lose, members could lose the salary increases entirely, rather than just having them deferred.
3. Under our existing contract the colleges can withhold 3% of current pay for up to two years. In theory, this could be done unilaterally in addition to the failure and/or refusal to pay an anticipated salary increase or increment.
4. As a public employer, each College and University covered by our Agreement has the right to lay off employees, provided the applicable notice periods have been honored. Wide discretion is permitted these employers in terms of deciding where to effectuate staff cuts, and how many employees would be let go.
5. Different conditions will probably exist at the different campuses, raising the possibility of disparate treatment of members on these issues depending on where they are employed.

What does this mean for my wallet/pocketbook?.

Attached is a [Excel spreadsheet of sample salaries](#) similar to the one used for our contract ratification that shows the economic impact of the CWA settlement with the State if it was applied to our bargaining unit.

[The tab at the bottom labeled Sample 09 salaries](#) are the examples applying the possible wage freeze/furloughs. You can compare this to the 07 ratification tab to see any changes even though some of the comparison is in the 09 version.

To the right of the wages are the furlough calculations. Using the 1st example of a Professional Service Specialist IV as an example, those employees would lose \$901.19 in 2009/10 as a result of the failure to pay the 2009 salary increase and an additional \$1,857.97 resulting from the unpaid furlough. However, they would get 7 days of the furlough paid back when they leave State service at whatever the daily work day rate would be at that time – which would presumably be higher. So the effect in FY 2009 of combining the wage deferral and 3 unpaid furlough days would be \$1,358.58 as opposed to \$2,759.16 if we did nothing with the State and the institutions withheld the salary increases and issued 10 furlough days.

The same example is in each category of employee except the numbers get larger. In the last example of a full professor at step 12, the lost wages equals \$2,007 and 10 furlough days equals \$5,184. Combining the wage deferral with 3 unpaid furlough days totals \$3,562 as opposed to \$7,191 if we did nothing with the State and the institution withheld the 2009 salary increases and issued 10 furlough days.

Under the agreement reached between CWA and the State, the State agreed to defer the 2009 salary increase of 3.5%. That increase would instead become payable in January 2011, which would have the effect of bringing annual salary to the same as it would have been at the end of our current agreement – even though that annual salary is only for the last 6 months of our agreement.

Could we negotiate a better deal than the CWA?

The CWA got the State to agree to a number of issues which were of specific interest to their unit members. Although the core economic terms of a possible agreement for us would probably be virtually the same as CWA's, we believe we could leverage our bargaining position to obtain some of “extras” which would be beneficial to our unit, just as was done by CWA. In this regard, at Monday's meeting, the Council Executive Committee discussed some additional issues that may be incorporated in the event we agree to open negotiations with the State. Among these were:

1. Eliminating the faculty 35 hour work week concept statewide that the President of Kean University has stated is required of faculty due to State Health Benefit requirements before it can spread to other campuses.
2. Obtaining a guarantee that faculty chairpersons and their duties and compensation would remain intact for the duration of our agreement at the same level as we entered this current agreement in 2007 due to a possible attack at Kean and MSU which could spread to other campuses.
3. Including in the description of the "State College and University Committee" in the CWA tentative agreement and attached at end of this memo, language which would include a review of spending, tuition and costs at the nine state colleges and universities as well as ways to prevent the hiring of unnecessary management personnel.
4. Plus whatever other items we think the State might have the will to force the campuses to do in exchange.

Of course, there is no guarantee that we will be successful in getting all of the “extras” that we desire, but we believe that opening limited negotiations would provide an opportunity to address and resolve at least some of these important issues.

If we reach an agreement with the State, how can we be sure that it will be honored?

Republican candidate for Governor Chris Christie has stated that, if elected, he would do everything in his power, including declaring a financial emergency in the State, *"to make sure we don't have to honor this (CWA) deal.....This governor may be unwilling to say no to the state worker unions, but I'm going to be willing to say no to them,"* Christie said during the conference call with reporters. He repeatedly called Corzine timid.

Christie has said he wants to lay off thousands of state workers in order to balance the state budget. In light of these statements, should we enter into negotiations with the State, we would seek to insulate our agreement from attack by crafting penalty provisions that would be imposed upon the State in the event of a material breach. Although we cannot prevent anyone, including the Governor, from trying to void any agreement we reach, we can build into the Agreement certain fiscal disincentives to mitigate that possibility. Those penalties would apply no matter who won the next election.

So what are our options?

1. Hold firm on our agreement and allow these issues to play out on a campus by campus basis. However, you should note that College/University Presidents may be told or forced by the State to take certain actions, such as layoffs or wage freezes, even if the Presidents are against these actions in theory. Also, the State can act on its own to withhold salary from our members, as noted above.
2. Negotiate with the State to ensure that our members suffer the least economic harm for the duration of the current agreement? In this event, we would use the CWA agreement as a template and look to get better or

additional terms that have more application to members of our unit. We would also seek to add provisions making an attempted breach of the agreement by the State less likely, as discussed above.

Raising these possibilities does not mean that we are siding with or capitulating to the State. We are attempting to present a realistic view of issues which must be considered by the Council because the decision we make will impact our entire bargaining unit. All AFT unit members are encouraged to consider the options, ask any questions and provide any input they feel is appropriate. Our bargaining unit will decide what positions we take on these matters. Any suggestions you make will be given serious thought and consideration.

What happens next?

A small AFT group comprised of the Council president, the senior staff representative, and our attorney will meet with the State next week to discuss, **NOT NEGOTIATE**, the various issues described above. The results of this discussion will be reviewed with the Council Executive Committee of which I am a member, and a decision made by the CEC whether or not to enter into negotiations with the State. If the Council Executive Committee opens limited negotiations with the State and reaches a point where we recommend the unit accept a tentative agreement, a ratification vote such as is going to be held by CWA, will be conducted for our bargaining unit. The votes from all campuses will be combined and the results determined on a state-wide, not individual campus, basis.

As has been the policy on all Council ratification votes, **ONLY AFT MEMBERS WILL BE PERMITTED TO VOTE ON THE AGREEMENT**. If you are not an AFT member, you can fill-out a membership card and email it to aft@tcnj.edu prior to the ratification vote and you will be able to participate in the process. You can check to see if you are an AFT member or not by clicking [HERE](#).

In Solidarity,

A handwritten signature in black ink that reads "Ralph". The signature is written in a cursive, flowing style.

Ralph Edelbach, *President, TCNJFT, Local 2364, AFT*

Provision for a "State College and University Committee" in the tentative CWA agreement:

The State will establish a Committee to review spending, tuition and costs at the nine state colleges and universities. The composition of the panel will include, but not be limited to, representatives from each of the colleges and universities and from the unions representing state college and university employees.

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