NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:

JAMESTOWN COMMUNITY COLLEGE,

Employer

--and-- PERB Case No. M2022-115

JAMESTOWN COMMUNITY COLLEGE SERVICE ASSOCIATION,

Union

Before Robert J. Reden, Fact-Finder

Appearances:

For the Employer:
Hodgson Russ LLP,
Jeffrey F. Swiatek, of Counsel

For the Union:
NYSUT,
Elizabeth Vignaux, Labor Relations Specialist

FACT-FINDER'S REPORT AND RECOMMENDATIONS

Having determined that an impasse exists in negotiations between the Jamestown Community College ("JCC", “Employer”, or “College”), a two-year educational institution, and the Jamestown Community College Service Association ("JCCSA" or “Union”), the New York State Public Employment Relations Board appointed the undersigned to serve as fact finder for the purpose of inquiring into the causes and circumstances of the dispute and offering recommendations for its resolution.

BACKGROUND:

The Union having filed a declaration of impasse dated September 20, 2022, on December 14, 2022 PERB appointed Greg Poland to mediate the matter. By memorandum dated July 17, 2023, the Union requested that the matter then proceed to fact-finding. On August 29, 2023, PERB appointed the undersigned to serve as fact-finder.

The parties sent me their proposals and their arguments in support thereof on September 20 and September 29, 2023, which was followed by an informal fact-finding hearing on October 18, 2023, in Jamestown, New York. Thereafter, the Union informed me of a change in representative and that the matter would resume some time thereafter.

The Union notified me on June 13, 2024 to advise of the parties' readiness to go forward. The parties and I had a telephone conference on June 28 to review the process going forward. The parties then sent me further submissions on August 14 and 15, and we held an informal fact-finding hearing on August 22, 2024. Supplemental submissions were sent to me on August 28 and September 9, 2024.

The Union represents about 76 employees whose titles are identified in the cba. The parties' last collective bargaining agreement ("cba") ran by its terms from September 1, 2016 through to August 21, 2019. The parties have remained without a contract since that one expired.

To some degree the instant impasse has continued because of the intervening pandemic. The effective date of the imposition of certain new terms the JCC has proposed (and which terms, other than the effective date, the Union has, with some reluctance, accepted) is a primary issue. The slow pace of negotiations, because of the pandemic, has contributed to the current circumstances.

ISSUES

Several issues remain, but the parties limited their submissions for recommendation to the following issues:

First: salary, including retroactivity of the same, and the effective date for creation of a new tier for newer employees;

Second: longevity;

Third: active employee health insurance contribution; and

Fourth: retiree health insurance.

DISCUSSION AND RECOMMENDATIONS

DISCUSSION ON SALARY AND A NEW SALARY MATRIX

Working off the parties' most recent submissions of August 14 and 15, the Union proposed the following salary increases:

2019-2020: 0% salary increase, with $500 lump sum.

2020-2021: 0% salary increase, with $750 lump sum.

2021-2022: 0% salary increase, with $1,000 lump sum.

2022-2023: 5% salary increase, with retroactivity at 3%.

2023-2024: 4% salary increase, with retroactivity at 3%.

2024-2025: 3% salary increase, with a new matrix for new employees.

2025-2026: 3%.

2026-2027: 3%.

The JCC proposed the following salary increases:

2019-2020: 0%

2020-2021: 0%

2021-2022: 0%

2022-2023: 4%, with a new matrix for new employees.

2023-2024: 3%

2024-2025: 2%

2025-2026: 3%

2026-2027: 3%

The Union argues in essence that the JCC maintains a healthy unreserved fund balance, that its revenue stream has matched its budget, and that its proposal for a lump-sum payment for retroactive wages only amounts to $105,230, which is still far below what its members lost because of the record-breaking inflation its members faced during the same period.

The JCC argues, amongst other things, that members have already received significant wage increases due to longevity payments, step increases, and employee upgrades. Moreover, it argues its settlements with the Faculty Association and PASA should be considered, as its wage proposal here is within the range of those settlements. It also argues that the JCC has been in an operating deficit over the past few years, and it would be dangerous to use the fund balance to fund continuing expenditures.

While the parties did supply me with the cbas of other, arguably similarly situated community colleges' service units throughout the State, neither party argued how wages of employees in those other units compare with the wages of members of the JCCSA. (The JCC did refer to some of those other colleges with regard to the issue of health insurance.) They largely limited their arguments to the financial ability of the JCC to pay, the terms negotiated with other units of the JCC, and the fact members of the unit have been without a contractual wage increase since the expiration of the current cba in 2019. Two overriding considerations are: (1) the JCC's ability to pay, and maintaining financial soundness into the future, so that its service to the communities of Chautauqua and Cattaraugus counties will continue; and (2) paying unit members a fair compensation, in keeping with the College's ability to afford any increased compensation.

For the 2024-2025 school year, the JCC expects revenues of $32,793,008, while its expenses are expected to be $33,292,819, leaving a shortfall of $499,811. Its fund balance at the end of the 2023-2024 year was $6,690,021, out of which the JCC is using $499,811 to fund its budget for 2024-2025, and to balance the same. At the end of the 2024-2025 that will leave the fund balance at $6,190,210.

The budget for 2024-2025 represents an increase of 0.1% from the year before.

The trend in student attendance is on a downward slope. The current 2023-2024 year has a student enrollment of 2,200 full-time equivalent students, a drop from the 3,291 FTE nine years earlier. Additionally, the bargaining unit has dropped from 130 employees in 2019 to the current membership of 76.

The declining student population affects the JCC's State funding allotment, leaving that allotment static. Tuition revenues have gone up (although the JCC tries to limit these increases, to encourage enrollment), and the College's sponsor contributions (from Chautauqua and Cattaraugus counties) are expected to increase by about 2% a year, resulting in a slight increase in the 2024-2025 year from the year before. Over the past couple of years, as in the 2024-2025 year, the fund balance has been tapped to make up for budget gaps, so that, according to the JCC's annual reports, the College has seen a fund balance decrease from 10,492,656 in the 2022-2023 year to the anticipated amount of $6,690,021 in the 2024-2025 year. Historically, the fund balance in the six years between 2014-2015 and 2019-2020, before the influx of pandemic aid, has averaged $5,669,858. The large fund balance of $10,426,621 in the 2020-2021 school year was due largely to pandemic aid (with an influx of $6,741,335 in pandemic-related aid during the school years 2020-2021 through 2021-2022), and, at least judging from the previous six years, the large fund balance amount for those years was an anomaly. Still, the JCC has had to dip into the fund balance to meet its yearly expenditures, and it is moving in a downward direction.

The Government Finance Officers Association recommends that governments establish a formal policy of how much should be maintained in the unrestricted fund balance. I did not see a formal policy in the submissions. Nonetheless, while circumstances for each public entity will differ, the GFOS recommends an unrestricted fund balance of no less than two months of regular general fund operating revenues or regular general fund operating expenditures. In its budget for 2024-2025, the JCC expects expenditures of $33,292,819, which calculates out as $2,774,401 a month. Accordingly, the JCC should have an unrestricted fund balance of an amount equal to at least two such months, or no less than

$5,548,801. At $6,690,021, then, the JCC enjoys a healthy fund balance for this year, well in conformance with, or above, that recommended by the GFOS, at least for now.

The JCC suggests that since governmental entities in New York cannot legally reserve monies to fund post-employment commitments, the true cost of compensation and benefits for current employees is understated. The College is facing an unfunded retiree health insurance cost of $5,046,042, according to an audit. It calculates that applying the GASB standards mentioned above to the JCC's fund balances would result in a reduction of the College's fund balance from the 2022-2023 year from $8,886,650 to $1,248,355, below that recommended by the GASB. This unfunded retiree health insurance cost is for all covered employees of the JCC, not just employees covered in the Service unit.

The JCC budget for 2024-2025 does not appear to distinguish between amounts to be expended on current employee medical costs and retiree medical costs, and it does not use the fund balance to pay all these costs; rather, it has budgeted $2,940,420 to pay for medical costs, using its expected revenues for the year, some portion of which would be applicable to unit members and to unit-member retirees. Some, just short of $500,000, comes from the fund balance for the entire budget.

The JCC calculates that its proposal comes to $951,562, while the Union's comes to $1,320,502, a difference of $368,940. The Union's proposal includes retroactivity and lump sum payments. Now, in light of the JCC's financial condition, I recommend the following settlement on wages and retroactivity:

RECOMMENDATION NO. 1 (SALARY)

2019-2022: I recommend a 0% wage increase, with no retroactivity, but including a one-time lump sum to compensate to some degree those three years without raises, of $2,250 to each employee who was in the unit during this period and remains in the unit and actively employed at the date of ratification. The Union calculates the one-time cost to the JCC would be in the neighborhood of $105,250. This amount could come out of the unrestricted fund balance.

Obviously, it is advantageous to enjoy a healthy fund balance. The College cannot responsibly tap into that fund regularly for recurring expenses, except, perhaps, in limited circumstances. But, in my opinion, in appropriate circumstances, using a small portion of that fund for a one-time expense -- in a responsible manner, in a way that keeps the fund in a healthy state – in order to bring the two parties closer to a mutually satisfactory agreement, is a responsible use of that money.

2022-2023: 4% increase, retroactive to September 1, 2022.

2023-2024: 3% increase, retroactive to September 1, 2023.

2024-2025: 2% increase, retroactive to September 1, 2024.

2025-2026: 3% increase.

2026-2027: 3% increase.

The above recommendation keeps the JCC's yearly cost at a level as advocated by the JCC, in order to be fiscally responsible, but it uses some small part of the College's fund on a one-time basis to pay for the lump-sum payment.

RECOMMENDATION NO. 2 (NEW EMPLOYEE WAGE MATRIX)

In addition, the parties have agreed to a salary new matrix for newer employees, which lowers the percent increase as employees progress on the Step ladder. But they disagree on the effective date for the new matrix. The matrix will result in newer employees earning less over the course of their careers with the College.

The College argues for an implementation date for the matrix of September 1, 2022, suggesting that had the negotiations concluded in 2019 as originally planned, it could have reaped the financial benefit to its proposal. The Union argues it would be unfair to subject current employees to the lower wage increases, since they were hired with the expectation of a different wage scheme, and it proposes implementation effective the date of ratification. Twenty-six unit members have been hired since September 1, 2022, of whom about ten were hired between September 1, 2022 and September 1, 2023.

On the issue of wages only, the new salary matrix would restrict the new hires to step increases of 2.5%. Currently, step increases range from 4.49% to 7.5 percent. The Step 1 salary would not change (except, of course, for yearly raises).

Implementing the change effective September 1, 2022 could conceivably result in some members, who may have moved up a step since September 1, 2022, having their salary reduced. But because of the short time frame, that is unlikely. With an effective date of September 1, 2022, the College would not immediately reap the benefits of the reduced costs of the 26 members hired since then, but in the long run it will reap those benefits, as employees leave and new employees come on board, and as the 26 employees climb up the Step ladder. In addition, each half of a percent increase in salary for the 72 members currently employed, according to the College's most recent submission, costs the College about $16,057. The effect to the College of the 26 members staying on the current step schedule would be about one third of that amount for every half-percent increase, or about $5,352, but most likely less, since they are newer, and therefor lower-earning, employees. Moreover, under the cba, moving to the next higher step is not automatic, but rather a function of an employee's years with the College, plus his evaluations, completion of credit courses, and attendance at seminars. The employee accumulates points for each of these criteria, and once he accumulates ten such points, he moves to the next step. There is no certainty that many, or any, of the 26 members hired since September 1, 2022 will move very quickly up this ladder. As such, having an effective date of September 1, 2022 does not appear, at first, to be much of a savings over an effective date upon ratification.

But, in the event all 26 members moved from Step 1 to Step 2 in one year, instead of a 2.5% increase in pay under the new matrix, they would get a 7.3% increase under the current step matrix, or almost five percent more. At about $5,000 for each half-percent increase for all unit members, the total additional cost difference to the JCC between the two step schedules would be about $50,000. Not every one of those 26 members would move to the next step in lock-step, as it were, and so that amount would no doubt be lower. The calculation is of necessity speculative. Nonetheless, the cost to the College over time could be considerable, and since employees of the College hired since 2022 are at the very beginning of their careers and have not in the main moved through the Step ladder, to help ensure future financial stability – which benefits the College, the community, and the staff – the earlier an effective date the better.

Accordingly, on the issue of the effective date of the new salary matrix, I recommend an effective date of September 1, 2022, except that any employee who has already moved up the Step ladder shall not have his salary reduced; the new Step matrix will apply to him for further progression up the Step ladder effective on ratification.

DISCUSSION ON LONGEVITY

On the issue of longevity, the JCC proposes a longevity schedule that is paid periodically (that is, once every five years), as opposed to the current yearly payments, as follows:

Year 5:	$500
Year 10:	$1,000
Year 15:	$1,500
Year 20:	$2,000
Year 25:	$2,500
Year 30:	$3,000
Year 35:	$3,500

The Union proposes maintaining the current longevity payment system for current employees, but agrees to the JCC's proposal for all employees hired after ratification. The current system is as follows:

Years 5 to 9:	1.3% of annual salary;

Years 10 to 14:	2.3% of annual salary;
Years 15 to 19:	3.3% of annual salary; and
Years 20 & over:	3.8% of annual salary.

The JCC argues it is unsustainable to continue to provide longevity payments on an annual basis, and computed on the basis of an increasing percentage of salary. Longevity payments, it argues, should be assigned a flat dollar amount and be paid only periodically, which will assist the College in funding its proposal for salary increases.

The Union argues that where employee turnover is high, as here, longevity payments encourage employees to stay on board. In addition, the impact on employees of the JCC's proposal would be considerable, it argues, since over his work life, an employee would only early $14,000 under the JCC's schema, as opposed to the current system, where an employee would earn, over the same period of time, from $31,043 to $63,910. It also argues that it is unlikely its members would vote for a proposal that effectively reduced their wages.

The cba between PASA and the JCC was entered into in July 2022, with an effective date of April 1, 2022 for changes to the calculation of longevity awards, but only for employees hired on or after the effective date. For both groups of employees, a set dollar amount was agreed to instead of a percentage. I do not know what the parties under that contract had before the current contract. But for those hired on or after April 1, 2022, the amount of longevity award is identical to what the JCC proposes in the instant matter, for Service employees. For those PASA employees hired before April 1, 2022, the award is half what is offered to newer employees. However, PASA employees got a five percent raise for 2021-2022, unlike here, where the parties have agreed to, and I have recommended, no raise (with the JCC proposing no retroactivity, and the Union proposing a lump sum of $1,000, which lump sum I have recommended be adopted).

As for faculty, members governed by that contract received a 3% raise for the 2021-2022 year, plus an additional 4% to address certain inequities, as opposed to the 0% raise proposed and agreed to for Service employees. Moreover, for the 2024-2025 year, faculty are receiving a 3% raise, as opposed to the 2% proposed by the JCC, and which I recommend.

I mention the above to illustrate that each bargaining unit is different, and economic terms will differ from one contract to the next. I see the advantage to the JCC in having uniformity in the manner in which longevity is calculated, using dollar amounts instead salary percentage, and paying periodically instead of every year. Yet, as the Union points out, adopting the JCC's proposal for current employees would effectuate what could be a reduction in the pay increase for current employees accustomed to the current longevity schema.

For instance, I am recommending a salary increase over the years 2022 through 2025 of a total of 9%. Under the current cba, some employees are receiving yearly longevity payments of 1.3% to 3.8% of their salary. If the yearly, percentage-based longevity payment had been eliminated in 2022, an employee earning a 3.8% longevity payment now would effectively, then, over the three years, have realized an increase of income of just 1.4 over the three years. Since I recommend a 3% raise for the 2025-2026 year, an employee who currently gets a 3.8% longevity payment would actually see a 0.8% effective decrease in pay for that year over what he currently earns, if the yearly percentage payment were eliminated.

(Longevity payments do not accrue to annual base salary, but an employee's effective salary for any one year would be affected.)

The College wants to adopt the new way of calculating longevity effective for all employees. The Union proposes making the new longevity schema effective for employees hired following ratification. Employees hired since 2022 have obviously not accumulated five years of seniority, and so they have not yet received nor become accustomed to, nor have they much relied on the anticipation of receiving, the annual longevity payments. While I am persuaded by the JCC's argument that set dollar amounts are preferable to a percentage calculation to arrive at the longevity payment for each employee, I also agree with the Union that paying the amount every five years as opposed to the current yearly payment would reduce current employees' effective yearly pay. Perhaps in future negotiations, the parties could come up with a longevity schedule with set dollar amounts for employees hired before September 1, 2022. This would leave up to the parties the difficult navigation of determining a longevity dollar amount.

RECOMMENDATION NO. 3 (LONGEVITY)

For now, though, I recommend that the JCC's proposal on longevity payments be adopted effective September 1, 2022 for all employees hired from that date on (according to the parties, about 26 unit members have been hired since that date), and that the current longevity payment schema be continued for employees hired before that date.

DISCUSSION ON THE NEW TIER FOR BENEFITS

On the question of the new tier for benefits (as opposed to wages and longevity payments, which I have discussed above and for which I have made recommendations), specifically health insurance premiums and retire health insurance, the College relies largely, as with its other proposals, on the need to reduce the benefits, to help ensure the long-term financial health of the College. The Union opposes the changes for employees hired before the eventual ratification of the parties cba, but it is willing to change the benefits as proposed by the JCC for all employees hired after ratification. The JCC proposes an effective date for all employees hired on or after September 1, 2022.

The JCC's proposed change would increase the employee contribution for health insurance from 11.25% of the premium cost to 15%, but only for employees hired on or after September 1, 2022. The Union proposes such increase in employee contribution for health insurance be effective as of ratification of the new cba.

I have recommended salary increases to all members, including those hired between September 1, 2022 and September 1, 2024. In exchange for those increases, it is appropriate that the 15% employee contribution for health insurance for newer employees be effective on September 1, 2022, as well. The JCC has pointed to other similarly situated colleges that require up to 25% for the employee's contribution.

RECOMMENDATION NO. 4 (NEW BENEFITS TIER)

I accordingly recommend that employees hired before September 1, 2022 continue to pay 11.25% of the health insurance premium cost. I further recommend that employees hired on or after September 1, 2022 pay 15% of the premium cost.

DISCUSSION ON RETIREE HEALTH INSURANCE

The last issue I have reviewed is that of retiree health insurance. The JCC proposes having retirees pay the same amount toward the premium cost of retiree coverage as the retiree paid as an active employee. Currently, the College pays the full cost of such health insurance coverage.

The College also proposes a new tier for unit members hired on or after September 1, 2022, wherein unit members between the ages of 55 and 64.99 and have been employed for ten or more years at the time of retirement, may retain single medical coverage for themselves, under the same terms as for active employees. Moreover, the College proposes that such employees (hired after September 1, 2022) receive the benefit of medical coverage for only up to the earlier of three years, or until the retiree reaches age 65 or qualifies for Medicare. The JCC points to the need to reduce future costs, while referencing other similar community colleges which either require such contributions or offer no retiree health insurance at all. The Union is largely agreeable, but only with respect to employees hired after ratification. It argues that for employees hired after ratification, the JCC's proposed terms may be harsh, but such employees have the option at the time of hire to consider the benefit. It would be unfair to eliminate the benefit for current employees.

Currently, retirees retain full health insurance for themselves and dependents for one year after retirement, and then single overage until the retiree reaches the age of 65 or otherwise qualifies for Medicare.

Any changes to retiree medical benefits would affect future costs, and would not affect the College's current expenditures. Moreover, the evidence shows that only one of the thirteen current unit employees who would qualify for retirement in the next five years was hired after September 1, 2022. Except possibly for that one employee, should she choose to retire in the next five years, implementation of the JCC's proposal for a change in retirement medical benefits would have no effect on the JCC's budget during this time, whether that implementation were as of September 1, 2022, or following ratification. But the implementation date would affect the College's future costs.

Employees very close to retirement age may have been relying on the current contractual benefit and made retirement plans with that in mind. It would be fair to continue the current terms for employees who intend to retire in the next couple of years.

Obviously, the parties cannot agree to changes to the benefits of current retirees, nor am I authorized to make recommendations for such persons outside the bargaining unit. But the parties can come to agreement on treatment of all future retirees, including those hired before September 1, 2022.

RECOMMENDATION NO. 5 (RETIREE HEALTH INSURANCE)

I make the following recommendation with regard to retiree health insurance:

First: For current employees retiring on or after September 1, 2027, as retirees they will contribute toward their health insurance premium the percentage of the premium they paid while employed; employees retiring before that date will retain the current contractual benefit;

Second: Employees hired before September 1, 2022 will continue to enjoy at retirement the retiree benefits as described in Section 21.16 of the current cba, except as described in paragraph "First" above;

Third: Employees hired on or after September 1, 2022, who will have been employed by the JCC for ten or more years as of the day before the date of retirement, will have the following terms applied to their retirement:

- They must be between the ages of 55 and 64.99 to qualify;
- They must have been employed by the JCC for a period of at least ten years;
- If they qualify by age and term of employment, they may retain single medical coverage for themselves following retirement, under the same terms, conditions, and costs of an active employee during the time they were employed; and
- Such single medical coverage is to continue until the retiree reaches the age of 65 or otherwise qualifies for Medicare, provided, however, that the College will limit such payment of its portion of the health insurance to three years.

My recommendation for retiree health insurance will not immediately result in large savings to the College, but it will in the long run.

CONCLUSION

My recommendations are based on the evidence presented and the arguments of the parties. I have made no recommendation regarding issues other than those set forth above, which were the only ones in front of me. It is my sincere wish that these recommendations lead to agreement on these and other outstanding issues.

Dated: Buffalo, September 30,2024 Robert J. Reden, Fact-Finder

STATE OF NEW YORK
COUNTY OF ERIE

I, Robert J. Reden, an attorney at law licensed to practice law before the courts of the State of New York, do hereby affirm, under penalty of perjury, that I am the individual described herein and who executed this instrument, which is my report and recommendation.

Robert J. Reden