



Use of Students/Preservation of Bargaining Unit Work Discussion Summary

Summary of Issue:

Historically, there has been no mutual understanding or agreement between the University and AFSCME or AFSCME and SSHE on the parameters of use of paid student workers. AFSCME has a growing concern that the University or its managers may overly rely on paid students in tight budget years to avoid hiring additional help when warranted or to avoid filling vacant AFSCME positions which are necessary to the University's operations. There is the concern that if the trend goes unchecked, the University could one day use paid students to the extent that AFSCME employees might be downgraded or even laid off. The University and its managers, on the other hand, see fiduciary obligations to use all their resources wisely. Moreover, the University recognizes additional obligations it must meet under the FWS Program to provide some career-related work experience to FWS students. Several grievances from AFSCME in recent months are further evidence of a lack of common ground in this area and the need for a broader approach aimed at resolving outstanding issues regarding the use of paid students. As a final note, difficulty in obtaining comp time agreements with the Union and employees has also exacerbated the situation.

Charge:

To review the contract, relevant arbitral decisions, University past practice, and Federal Work Study regulations, guidance and criteria. To recommend additional University guidance in the form of a proposed Memorandum of Understanding on the Use of Students in paid employee capacities at West Chester University.

References:

1. The majority of WCU's paid use of students is within the Federal Work Study (FWS) Program. Participation in this program requires employers to follow certain guidelines in the form of an eligibility criteria. Among these criteria are requirements that the employer's need to develop as much as possible, high tech training experiences for FWS students which allow them to take classroom learning and apply it in areas of career interest. The emphasis here appears to be on real-world training and project experiences, rather than purely operational productivity. (II.A.2) A career interest or goal is one relative to major or minor programs of study. (I. Definitions)

Interpretation: FWS students should be permitted to do more than run errands and answer phones, so long as the purpose has a strong nexus to professional skill

development and the primary focus of the assignment is not to purely fill a productivity needs of the department.

2. FWS students may not displace employees in the normal workforce, including those in lay-off or strike status, nor may they interfere with existing contracts, including labor contracts. (II.A.6)

Interpretation: FWS students should not be used to avoid displace or disadvantage bargaining unit employees.

3. A FWS student must have a supervisor who is a fulltime employee who must supervise the FWS student's performance of all assignments, tasks and projects and to ensure that the work the student is doing is consistent with the purposes of the FWS Program. (II.B.4) The student should not be left alone on the premises or sent on assignment absent the presence of the supervisor. (II.B.6)

Interpretation: A student should have a stable, immediate supervisor who can provide direct supervision on a daily basis to ensure that the student's work experience is consistent with the job description and FWS guidelines. The requirement for supervision extends to assignments off campus. The supervision need not be constant.

4. A job description must be created for each FWS student. The job description should reflect a career orientation, a community service disposition, and be of high quality. (II.B.2) If appropriate, professional guidelines relating to interacting with clients on or off duty should be a part of the job description. (II.B.5.g)

Interpretation: A basic job descriptor should exist for all FWS students providing a description of the nature of the experience and the variety of activities the student will be asked to perform or master. Individual job descriptions need not exist for all students. A common job description should be acceptable for students doing similar work in a department.

5. Neither the present AFSCME Master Agreement nor Appendix S to that Agreement provide direct guidance regarding the use of students in paid employee capacities on University campuses. Article 43 provides guidance related to when and under what circumstances bargaining unit work may be assigned to independent contractors, consultants or other non-Master Agreement bargaining unit state employees and first level supervisors – not students.

Interpretation: The contract is silent.

6. Historically, the University and the Union have maintained a consistent understanding that painting work is not appropriate for students to perform. This understanding is illustrated in a number of grievances where the University has acknowledged the inappropriateness.

Interpretation: There is no dispute that students should not be doing painting work.

Discussion Points: (Issues requiring clarification and agreement)

1. *What are the upper limits of student employee use?*
2. *What are the University's true eligibility obligations to student employees and the Union under FWS guidelines?*
3. *Level of Supervision?*
4. *Relief Work for Fulltime Staff?*
5. *Nature and detail of Job Descriptions?* (Settled, I think)

External Input:

There is a lack of arbitral law in this area, except as it relates to reclass grievances, and the core issue in those arbitrations has been that student work does not reach a level of training and supervision required of normal employees because of the very limited, routine nature and frequency of their duties. This does not appear to be a problem on other campuses. No additional institutional guidelines have surfaced from other sister institutions in SSHE. Tom Krapsho has said he is unaware of any written system guidance or Office of Administration guidance in this regard.

Possible Resolution Strategy:

I. **Time Limitedness:** The economic circumstances affecting the University are unique at present. New positions are not being created. Only mission-critical vacancies are being filled. The likelihood of a University budget reduction is absolute, and the potential for lay-off levels in the significant range are very real. We must understand the present operating environment for what it is. Organizational growth will not occur in the short-run. It is a very good possibility that the organization will be smaller 12 months from now. This proposed agreement would have a life as long as the current hiring freeze and budget reduction condition remains in effect at West Chester University, so long as a CBA remains in place.

II. **Priorities:** From our prior discussions it appears that the University's and the Union's concerns are these

A. Management Priorities – Flexibility in staffing and scheduling, more efficient utilization of resources.

B. Union Priorities – Avoid losing jobs, permit vacant AFSCME positions to be filled, and allow filled AFSCME positions to be reclassified upward when circumstances warrant it.

III. **Proposed Specific Resolution Strategy:** The strategy basically calls for certain assurances from the University in return for the Union recognizing some reasonable flexibility in the use of students.

A. Assurance 1: If units or departments are operating with reduced staffing levels due to lay-offs, reorganizations, or freezing of positions due to budget circumstances, the level of use of students in those units or departments will not be increased.

B. Assurance 2: The University will not use students to avoid filling critical vacancies, or avoid approving reclassification of AFSCME employees when warranted by increased or changed job duties.

C. Assurance 3: The University will not use students in order to demote, lay-off people or eliminate positions. (This seems self-obvious, but for the purpose of being comprehensive, it is listed as a further assurance to reemphasize the good faith and fair dealings the University intends to embody the agreement.)

D. Understanding 1: The Union agrees that work study students may be used to cover reception or other administrative support areas during AFSCME employee breaks, lunches, or for clerical absences when a student is used no more than 4 hours in

that day. Students will not be used to cover for multi-day absences of AFSCME employees.

E. Understanding 2: The Union agrees that automated appointment schedulers may be used in the context of Understanding 1, so long as the student has been trained to competently perform the full range of requirements involved in the computer application.

F. Understanding 3: So long as students are adequately supervised, are not making independent decisions (operating from established and understood protocols) and are competently trained, they may be assigned to a relatively broad range of support tasks within any unit or department.

G. Further Agreements: The Union agrees to drop all current grievances involving the use of students and management agrees to refrain from using students to enter data or otherwise maintain the Facilities Work-Order System. The parties further agree that this document will be the sole source used to evaluate the merits of future controversies involving the use of students, so long as the University remains under a hiring freeze or in an institutional budget reduction scenario.