

**IN THE MATTER  
OF  
FACT FINDING**

STATE EMPLOYMENT  
RELATIONS BOARD

2002 APR -2 A 10: 15

**REPORT**

<b>BETWEEN</b>	<b>CASE NO: SERB 01-MED-10-0983</b>
<b>UNIVERSITY OF TOLEDO CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS</b>	<b>FACT FINDER: JOHN S. WEISHEIT</b>
<b>AND THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF TOLEDO</b>	<b>HEARING DATE(S): March 5, 2002</b>
	<b>AWARD ISSUED: April 1, 2002</b>

**REPRESENTATION**

by

<b><u>Employer Representatives</u></b>	<b><u>Union Representatives</u></b>
Dr. Earl Murry, Ph. D. Vice Provost for Faculty Development	Marilyn L. Widman, Esq. ALLOTTA & FARLEY Co. L.P.A.
Roy H. Olsson, Jr., Chair/Professor PHRS Kevin West, Vice Provost for Fac. Dev. Brooks Phelps, Vice Provost for Fac. Dev. Intern	Kathleen Thompson-Casado, UT-AAUP Harvey Wolff, UT-AAUP Paul Koslowski, UT-AAUP

**AUTHORITY**

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117.

## **BACKGROUND**

The Board of Trustees of the University of Toledo, hereinafter called the “Board” and/or “Employer”, recognizes the University of Toledo Chapter of the American Association of University Professors, hereinafter called the “AAUP” and/or the “Union”, for all full-time tenure or tenure track faculty employed by the Board. The bargaining unit includes about 500 members. The parties have entered into a collective bargaining agreement effective July 1, 2000, through June 30, 2003. The parties engaged in collective bargaining in keeping with provisions of ORC 4117 and terms of a reopener provision set forth in Article 12 of the Agreement in October, 2001. In the course of good faith bargaining, impasse occurred in negotiations and the above named Fact Finder was attained through the Ohio State Employment Relations Board. A Fact Finding Hearing was held on March 5, 2002, at the University of Toledo, Toledo, Ohio. All pre-hearing filings were timely submitted and received by the Fact Finder.

The parties asked the Fact Finder to conduct mediation regarding the disputed issue prior to conducting a formal Fact Finding Hearing. Such mediation was conducted with the understanding that any offers, concessions or modifications made in the course of mediation would be offers without prejudice. While mediation did not result in resolution of the issue by tentative agreement by the parties, it did result in the parties modifying their positions at Fact Finding. An evidentiary Fact Finding was then conducted allowing each party the opportunity to present such additional testimony and evidence considered relevant in assisting the Fact Finder making his recommendation. The parties authorized the Fact Finder take into consideration information shared by the parties in the course of mediation in forming his recommendation in the Report. When each party indicated they had no additional facts, evidence, or testimony to present and acknowledged they had ample time to present such information considered relevant, the Fact Finding Hearing was closed. It was agreed that the Fact Finder’s Report would be issued on April 1, 2002.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public Employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public Employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

This Report is based on facts provided in document and testimony introduced at that time and in keeping with statutory consideration cited above.

**SUMMARY OF THE RESPECTIVE POSITIONS  
ON ISSUE AT IMPASSE**

The following Article remains unresolved and is properly before the Fact Finder for recommendation in keeping with ORC 4117 and applicable Rules and Regulations of SERB :

<b>Employer</b>	<b>Issue</b>	<b>Union</b>
<p>Increase base salary by 3% effective August 20, 2001.</p> <p>Increase base salary by 3% effective August 19, 2002.</p> <p>Propose to delete departmental and discretionary dean's merit pay provision.</p> <p>Reject inclusion of pay equity provision as proposed by the Union.</p>	<p><b>Article 12 Compensation</b></p>	<p>Increase base salary 3% effective July 1, 2001.</p> <p>Increase base salary by 3% effective July 1, 2002 (12-month Faculty) or the beginning of the Fall 2002 semester (9-month faculty).</p> <p>Retain 1.5% departmental merit pay provision as set forth in 12.1.2. for the duration of the Agreement.</p> <p>Provide a fund equaling 1% of compensation cost for salary equity adjustments to effective July 1, 2002 (12-month Faculty) or the beginning of Fall 2002 semester (9-month faculty).</p>

## **DISCUSSION & DETERMINATION**

### **General**

The negotiations history of the current collective bargaining agreement (CBA) between the parties indicates significant thought and consideration exercised in the course of framing the language found in Article 12. Each component part is found significant to the unique compensation structure for bargaining unit members. At issue in this dispute is not only the issue of cost but also structure in terms of certain provisions unique to higher education faculty members.

The parties have significantly narrowed the difference in the total cost involved in this case. Ability to pay, as applied in collective bargaining, is not claimed nor found applicable in this situation. The cost difference in the position of the AAUP and the Board arise from budgetary consideration and spending priorities. This results in a common breach in reaching agreement when bargaining compensation issues.

During the mediation process the parties not only communicated a willingness to modify their respective financial bargaining positions but also to modify structure of the key elements that were instrumental in reaching impasse.

The testimony and facts introduced, regarding the fairness and equity of pay issue, demonstrated that this has been an on-going bargaining concern of the parties. This factor also impacts computation and distribution of the merit pay provision. Such a provision is not an uncommon part of higher education compensation programs. In this instant case, the parties have taken cooperative efforts in study, demands and concession in the course of resolving this issue. The parties have participated in a joint committee approach to successfully facilitate this matter. It is also noted that certain procedures, inherently subjective, and reflecting a philosophical difference of opinion, must be addressed by either inclusion or deletion of such identified practice.

The general patterns of public sector labor agreements reflect compensation settlements in the 3-4% range. Fact Finding recommendations to exceed that range is generally not exceeded unless convincing mitigating circumstances are demonstrated in the facts introduced. Such is not found in this instant case. This is emphasized by the fact that the impasse results in the course of a reopener provision in the Agreement. Also, existing negotiated terms, testimony, supporting documentation, and action of the parties indicate the issue of fairness and equity were the focus point of difference of opinion. These factors form the premise for the following recommendation.

### **FACT FINDER'S DETERMINATION**

It is recommended that Article 12 - Compensation be modified in the following manner:

#### **ARTICLE 12 - COMPENSATION**

##### **12.1 Salary Increases for 2001-2002**

Each member employed as a member of the bargaining unit on April 15, 2001 and still employed on August 20, 2001, shall receive an increase to base salary of 3% effective August 21, 2001.

12.1.1 Departmental merit increases for 2001-2002 shall be effective January 1, 2002, based on the principles set forth in Article 9.0. The pool of funds shall be 1% divided among departments in proportion to their contributions to salary base on April 15, 2001. All increases shall be based upon performance reviews. No across the board increase may be recommended or granted at any level of review.

## **12.2 Salary Increases for 2002-2003**

Each member employed as a member of the bargaining unit on April 15, 2002, and still employed on August 19, 2001 shall receive an increase to the base salary of 3.0% effective August 19, 2001.

12.2.1 Departmental merit increases for 2002-2003 shall be effective August 19, 2002, based on the principles set forth in Article 9.0. The pool of funds shall be 1% divided among departments in proportion to their contributions to salary base on April 15, 2002. All increases shall be based upon performance reviews. No across the board increase may be recommended or granted at any level of review.

12.2.2 A salary equity adjustment fund of the equivalent of the cost of a 0.5% base wage increase will be established effective August 19, 2002. A joint AAUP/Board Committee, consisting of three appointees from each, will accept requested adjustment on an individual basis submitted to the Committee no later than October 1, 2002. The Committee will determine the need and award equity adjustment, if any, by November 1, 2002.

Current Sections 12.5 through 12.10 will remain in the Agreement as 12.3 through 12.8.

**RECOMMENDATION**  
**&**  
**TOTALITY OF AGREEMENT**

Recommendations set forth in this Report shall be included in the Agreement between the parties.

If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.

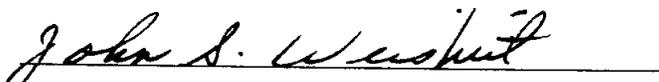
This will affirm the foregoing report, consisting of **8 pages**, inclusive of this page, and recommendations contained herein are made in this matter of this Award by the below signed Fact Finder.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

**Certificate of Issuance**

The foregoing is accurate to the best of my knowledge. The preceding Report & Award is understood to conform with the directives of the Ohio State Employment Relations Board and applicable provisions of ORC 4117 and authority by which the Fact Finder performs his service

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this date of **April 1, 2002**.

  
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**John S. Weisheit, Fact Finder**

# CERTIFICATE OF SERVICE

STATE EMPLOYMENT  
RELATIONS BOARD  
2002 APR -2 A 10/11

*This will affirm that the Fact finding Report in the Matter of Fact finding between*

<b>BETWEEN THE UNIVERSITY OF TOLEDO CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS  AND THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF TOLEDO</b>	<b>CASE NO: SERB  01-MED-10-0983</b>
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*was served to the below named parties at the stated addresses by Facsimile and USPS Overnight Mail on April 1, 2002.*

Marilyn L. Widman, Esq.  
ALLOTTA & FARLEY CO., L.P.A.  
2222 Centennial Rd.  
Toledo, OH 43617

Dr. Earl Murry, Vice Provost  
Faculty Development  
The University of Toledo  
2801 W. Bancroft St.  
Toledo, OH 43606

*by U.S. Postal Service mailed, overnight express, on April 1, 2001*

*A Copy of this Award was submitted U. S. Postal Service by First Class Mail to Neil Zimmer, Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on April 1, 2002.*

*I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations.*

 *4-1-02*  
John S. Weisheit, Fact Finder      Date