

FACT-FINDER REPORT
Before the
State Employment Relations Board
State of Ohio
August 15, 2003

STATE EMPLOYMENT
RELATIONS BOARD

2003 AUG 18 A 10:35

In the Matter of:

AMERICAN FEDERATION of STATE,
COUNTY and MUNICIPAL EMPLOYEES,
OHIO COUNCIL 8, LOCAL UNION 209,
AFL-CIO

Employee Organization

and

MIAMI UNIVERSITY

Employer

Case No. 03-MED-04-0481

I. HEARING:

DATE: August 1, 2003, 9:00 a.m.
LOCATION: Flower Hall, Miami University
Oxford, Ohio
ATTENDANCE:

For the Employee Organization:

Robert Turner, Regional Director, AFSCME Ohio Council 8
Randy W. Marcum, President, Local 209
Thomas E. Ellis, Staff Member, AFSCME Ohio Council 8
Myron Horn, Vice President, Local 209
Local 209 Committee Members Darrell Abrams, Barry Brewer, Greg
Burnett, William DeVore, Mattie Gray, Wendy Klamm, and Mark
Sawyer

For the Employer:

William C. Moul, Attorney, Thompson Hine LLP
Dennis E. Deahl, Senior Director of Personnel & Benefit Services
Kate Stoss, Assistant Director, Compensation, Employment & Technology
S. Craig Predieri, Attorney, Thompson Hine LLP
Don Lowe, Physical Facilities Department

Fact Finder:

James L. Ferree

INTRODUCTION:

Miami University (herein called “the Employer” or “the University”) operates a State supported institution of higher learning in Oxford, Ohio. The University employs over 3600 employees, including 891 service, maintenance, and building trades employees who are represented in collective bargaining by American Federation of State, County and Municipal Employees, Ohio Council 8, Local Union 209 (“the Employee Organization” or “the Union”). The Employer and the Union were parties to a series of collective bargaining agreements, the most recent of which was effective from July 1, 2000 through June 30, 2003. The parties met and bargained for a new collective bargaining agreement, reaching agreement on most of the articles of a new contract. The parties’ agreements on those articles are hereby incorporated into this report, and it is recommended that those agreed-upon articles be made a part of the new Agreement.

The parties were unable to reach agreement on eight issues. Consequently, the parties selected the undersigned, who was appointed by the State Employment Relations Board (“SERB”) to serve as Fact Finder in this matter, pursuant to Ohio Revised Code (“ORC”) Section 4117.14(C)(3). A fact finding hearing was conducted, at which the parties agreed to extend the time for fact finding to Friday, August 15, 2003. Having considered the evidence presented at the hearing, the Fact Finder hereby issues the following report and recommendations.

II. MEDIATION:

At the hearing, the parties entertained the Fact Finder’s offer to mediate, but the discussion which followed revealed that the parties were unwilling to compromise their previous positions. The remaining unresolved issues are:

- Issue 1: Article 3, Definitions
- Issue 2: Article 12, Union Security
- Issue 3: Article 18, Job Postings and Transfer Procedure
- Issue 4: Article 25, Hours of Work and Overtime
- Issue 5: Article 26, Wages
- Issue 6: Article 27, Insurance
- Issue 7: Article 36, Sick Leave
- Issue 8: Article 58, Termination

III. CRITERIA:

Consideration was given to the criteria listed in Rule 4117-9-05 of the State Employment Relations Board:

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

(1) Past collectively bargained agreements, if any, 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 the public service or in private employment.

IV. ISSUES AND RECOMMENDATIONS

Issue 1: Article 3, Definitions

The recently expired collective bargaining agreement defined four terms: “Temporary employee,” “Intermittent,” “Union staff representative,” and “Benefit Eligible Employee.” Two of these read as follows:

“**Temporary employee**” means one whose employment is anticipated to terminate upon completion of a project or at the end of a specified period of time.

“**Benefit Eligible Employee**” means one who is appointed to a position normally scheduled to work a minimum of thirty-two (32) hours per week, nine months per year. Benefit eligible employees shall be entitled to all benefits of the Agreement, except that they must also be full-time employees to be entitled to vacation benefits, and holiday benefits apply to Benefit Eligible employees working less than full-time only if the holiday falls on a day otherwise scheduled as a work day for the respective employee.

Union Position:

The Union proposed to substitute the following for the first sentence of the definition of “Benefit Eligible Employee, making the section read as follows:”

“Benefit Eligible Employee” means one who works thirty-two (32) hours per week or more for a period of four (4) weeks or more, or an employee who works thirty-two hours per week or more for eight (8) weeks out of any twelve (12) week period, or an employee who is hired to work a regular schedule of thirty-two (32) hours a week or more, regardless of how many weeks the employee has worked. Benefit eligible employees shall be entitled to all benefits of the Agreement, except that they must also be full-time employees to be entitled to vacation benefits, and holiday benefits apply to Benefit Eligible employees working less than full-time only if the holiday falls on a day otherwise scheduled as a work day for the respective employee.

The Union also proposed a new definition:

“Full-Time Employee” means any employee who is hired to work a regular schedule of thirty-two (32) hours per week or more or any employee who works thirty-two hours (32) per week or more for a period of four (4) consecutive weeks, or an employee who works thirty-two (32) per week or more for eight (8) weeks out of any twelve (12) week period.

The Employee Organization argued that the above clarifications are necessary because, of the 85 part-time employees, the University has failed to classify as “benefit eligible” 22 of them who worked more than 32 hours per week last year, including nine who worked 32 hours or more per week for more than nine months. Some of those employees have been employed by the University several years (up to 23 years). The Union feels its proposal “would allow the Union to better enforce the provisions of the agreement and provide relief to those long-term employees who have been denied benefits under the contract.”

Management Position:

The University proposed to add the following to the present definition of “Benefit Eligible Employee:”

One who is appointed to a position normally scheduled to work fewer than 32 hours per week shall not be worked in excess of that maximum. If such an individual is worked 32 or more hours in a given week more than once in any calendar year, that individual shall be paid an additional \$50 for each week, beyond the first week in that year, in which he/she works 32 or more hours.

The Employer would also add a definition of “Full-Time Employee” and would modify the definition of “Temporary Employee,” as follows:

“Full-Time Employee” means one who is appointed to a position normally scheduled to work a minimum of forty (40) hours per week.

“Temporary Employee” means one appointed for a specific project with a specified ending date or for not longer than one year. Temporary employees are not benefit eligible unless the employee works beyond a period of nine months, in which event subsequent eligibility will depend upon his/her hours of work, per the definition of “Benefit Eligible Employee.”

The Employer agreed that an effort to address the Union's concerns is appropriate, but maintains that it is unnecessary to disrupt the traditional definition structure, and any procedure for addressing the Union's concerns must be manageable.

Findings of Fact:

The Union presented a list compiled by the University of part-time employees, including 22 who worked more than 32 hours per week for periods of more than nine months, contrary to their classification. In effect, the Employer is getting a full-time employee at a much lower cost by saying that they are normally scheduled to work less than 32 hours. Some of those employees have been employed for several years, and have worked full-time hours for much of that period. The Union asserts that its proposal is a tested method of dealing with this problem, having been used with other employers.

The Employer agreed that the hours on the list are accurate, and pointed out that nearly all of the employees on the list are in the Housing, Dining and Guest Services department. The University asserted that its Personnel department was unaware, until contract negotiations began, that part-time employees were being scheduled to work more than 32 hours per week; the practice was against University policy, and has been stopped. A great number of the part-time employees are retirees who were anxious to accept the offer of additional work. The University has promised the Union that the part-time employees will not be scheduled for more than 32 hours per week, and has agreed to pay the employees a penalty of \$50 for each occasion, after the first one in any year, when they work over 32 hours in a week. The Union's proposal does not solve the problem because an individual cannot receive benefits like insurance coverage retroactively, after an eight week period has passed.

The Union responded that there is no way to know whether the Employer will work a part-time employee more than 32 hours per week until after the fact. The Employer's proposal of a penalty, in effect, gives the Employer a license to hire full-time employees and not give them contractual benefits. If employees are paid \$50 per week for working over 32 hours per week, as the University proposes, the Employer gets a full-time employee for an extra \$200 per month, when the insurance benefit alone is worth double that amount. That is not a good deal for the part-time employees, or for full-time

employees whose job security is threatened. In response, the Employer said its proposal for a penalty does not detract from the fact that working a part-time employee more than 32 hours per week would be a violation of the contract, which has other remedies. Since it cannot be determined whether the employee worked more than 32 hours per week until after the fact, the Union's proposal cannot be administered.

The University stated that the parties have always understood that a full-time employee is one who is appointed to a position normally scheduled to work a minimum of forty (40) hours per week, and that is the understanding which should be put into the Agreement. The Employer proposed a definition of "temporary employee" to reflect the practice used, especially in the summer months, to accomplish sidewalk and driveway maintenance, etc. The proposal is a better option than contracting out the work.

Fact-Finder Recommendation and Rationale:

Inasmuch as there was no objection to the proposed refinements in the definition of temporary employee, I will recommend their adoption.

In the opinion of the undersigned, the excessive use of part-time employees in the Housing, Dining and Guest Services department has mistreated both the benefit eligible employees who were not given the work, and the employees who performed the work without receiving benefits. Ideally, this situation would be more appropriately addressed in the contractual grievance procedure, rather than during the negotiations for a new contract. The difficulty with using the grievance procedure in this situation lies in the lack of precision in some of the definitions; ambiguous contract language tends to deter a union from filing grievances alleging a violation of that section of the Agreement.

The solution is neither to make part-time employees "benefit eligible" whenever the Employer needs their services a few hours extra, nor to fine the Employer when it works part-time employees too much. Instead, I propose to more accurately describe the terms in the definitions section so that violations of the contract can be grieved, and to provide remedies for both benefit eligible employees who lose an opportunity to work and for part-time employees whose less-expensive labor is exploited. The Employer protests that it would be difficult to administer an after-the-fact determination that an employee is benefit eligible; however, the Employer can eliminate such administrative difficulty by

consistently working part-time employees for less than 32 hours per week or reclassifying them as full-time.

It is hereby recommended that the parties include the following in their new contract:

“Full-Time Employee” means one who is appointed to a position normally scheduled to work a minimum of forty (40) hours per week.

A **“Part-Time Employee”** is appointed to a position normally scheduled to work fewer than 32 hours per week. Part-time Employees shall not be worked in excess of that maximum. If such an individual is worked over 32 hours in a week, any regular full-time employee who is thereby deprived of overtime hours is entitled to receive time and one half for the hours worked by the part-time employee.

“Temporary Employee” means one appointed for a specific project with a specified ending date or for not longer than one year. Temporary employees are not benefit eligible unless the employee works beyond a period of nine months, in which event subsequent eligibility will depend upon his/her hours of work, per the definition of “Benefit Eligible Employee.”

“Benefit Eligible Employee” means one who is appointed to a position normally scheduled to work a minimum of thirty-two (32) hours per week, nine months per year, and part-time employees who have worked thirty-two (32) hours per week or more for eight (8) weeks or more in any twelve (12) week period. Benefit eligible employees shall be entitled to all benefits of the Agreement, except that they must also be full-time employees to be entitled to vacation benefits. Holiday benefits apply to Benefit Eligible employees working less than full-time only if the holiday falls on a day otherwise scheduled as a work day for the respective employee.

Issue 2: Article 12, Union Security

This Article of the recently expired contract provides, in paragraphs A, B, and C, that the Employer will deduct Union dues from the pay of bargaining unit employees who authorize the deduction 14 days before the deductions are to be made; and will give the deducted funds, together with a list of dues payers, to an officer of AFSCME Ohio Council 8 within ten days. Neither party proposed any change in paragraphs A, B, and C.

In paragraph D of the recently expired contract, the Union agreed to indemnify the University and save it harmless from any employee lawsuit arising from the deductions. In paragraph E the University agreed to give the Union a copy of any dues deduction revocation slips.

Union Position:

The Employee Organization proposed revising paragraph D to expand a reference to “deductions made under Paragraph A, above” to read, “deductions made under this Article,” because it would be more clear in the event the contract includes deductions

under other paragraphs of the article for a political fund and a fair share fee. The Union also proposes changing paragraph E to require the University to provide dues deduction revocation slips within five days of receipt, to enable the Union to keep its membership records current. Further, the Union proposes a new paragraph F to permit voluntary deductions for the Union's political action fund because the Union is limited in its use of dues money for lobbying which benefits the University and all Ohio public employees. Finally, the Union proposes a new paragraph G which would require all employees in the collective bargaining unit who are not members of the Union to pay a fair share fee to the Union.

Management Position:

The Employer, in its pre-hearing submission, opposed the addition of a fair share fee provision for several reasons, as reflected in the history of the bargaining relationship. The Union was certified in 1985 after a slim victory in a representation election. No collective bargaining agreement between the parties has ever contained a fair share provision; the Union has proposed the provision in previous negotiations but either withdrew the proposal or lost it before a fact finder. A 1989 decertification petition was dismissed on procedural grounds, but recognition was withdrawn until 1994. The Union has never enjoyed the support of a majority of employees who authorized dues checkoff, and the proportion of bargaining unit employees on checkoff has been under 40% until it recently increased to 43%. The Employer asserts that "imposing a fair share provision on those bargaining unit personnel presently exercising their right not to support the Union would create a substantial irritant, and likely disrupt labor management relations in a substantial way."

Findings of Fact:

With respect to the Union's political action fund, "Public Employees Organized to Promote Legislative Equality," or PEOPLE, the Union asserted in its pre-hearing statement that, in addition to representing employees in collective bargaining, the Union benefits all Ohio public employees by its political campaign and lobbying efforts. Because unions are limited in their use of dues money for political purposes, the Union argues that it needs to have a payroll deduction available for contributions to PEOPLE.

The Employer already permits payroll deductions for charity and the credit union, and many other public employers permit their employees to check off a contribution to PEOPLE. The University could also benefit from the political action fund's activities, so it should help itself by allowing its employees to voluntarily contribute to the fund.

Regarding the fair share fee, the Employee Organization's pre-hearing statement points out that the dues of 365 unit employees who are members of the Union support the Union's activities on behalf of all 887 employees represented by the Union, including some 33 recently hired probationary employees who are not yet eligible to join the Union. In December 1985 a majority of the bargaining unit voted to be represented by the Union. Since then, contrary to the University's claim that the employees do not wish to participate in the Union, they have not decertified the Union. As an institution supported by the taxpayers, the University should recognize that the Union also should be supported by all of its constituents. The Employer's expressed opposition to forced payment is inconsistent with its requirement that students pay tuition in order to attend classes. AFSCME Ohio Council 8 has fair share fee arrangements in contracts with 320 employers, including major public universities. Other public employers in Butler County have fair share fee arrangements in their collective bargaining agreements. Miami University itself has a fair share fee in the contract covering its own police department. In summary, the Union argued in its pre-hearing position statement, the fair share fee arrangement "has become the standard for public sector agreements in Ohio, and Miami University should be among those employers"

At the hearing, the University agreed to give the Union timely notice when dues deduction revocation slips are received by the Employer.

The Union presented exhibits showing scores of public employers in Ohio with provisions in their AFSCME collective bargaining agreements for voluntary deduction of PEOPLE contributions from employees' paychecks, and asserted that OCSEA/AFSCME Local 11 has a similar provision in its agreements covering 35,000 State of Ohio employees. There is no significant cost to the Employer, which already withholds charitable and other deductions.

The University responded that it has a policy of attempting to minimize withholdings from employees' salaries. There are thousands of constituencies within the University, each of which has a favorite project to support. The Employer's policy of simply not making deductions avoids the problem of explaining to these constituencies why a deduction was allowed for some other cause, and not theirs. The employees represented by the Union have relationships with banks and other financial institutions, and can easily instruct their financial institutions to send money to PEOPLE on a periodic basis, without burdening the University's payroll system. During bargaining, the Union conceded that only about 5% of employees covered by the contract provision make use of the PEOPLE checkoff.

At the hearing, the Union reviewed the history of its relationship with the Employer, which withdrew recognition for seven years. Nevertheless, the Union survived as the representative of the collective bargaining unit, and currently has 365 members whose dues are supporting the Union's efforts on behalf of all of the non-members who benefit from the Union's efforts at the bargaining table and in grievance processing. It is not unfair to ask all employees who benefit from representation to share in the cost of that representation. The University's arguments are ironic, coming from an institution which benefits from mandatory tax payments by the citizens, who might prefer to make only voluntary contributions.

The Union provided a list of over 300 public employers in Ohio which include a fair share fee provision in their collective bargaining agreements, including Ohio University, and the University of Cincinnati. Shawnee State and Ohio State have fair share fee arrangements in their contracts with CWA. In Butler County, where the University is located, public employers with a fair share fee provision include the City of Hamilton. OCSEA/AFSCME Local 11 has a similar provision in its agreements covering 35,000 State of Ohio employees. Hundreds of local school districts have contracts with other employees which include a fair share fee. Finally, the Employer itself has a fair share fee in its Agreement with the Fraternal Order of Police covering members of the Miami University police department.

The Employer responded, at the hearing, that the General Assembly left the fair share fee issue to individual employers, to be decided at the bargaining table whether such an arrangement would be appropriate in a particular setting. The University feels that its educational purpose is best served when freedom of choice, freedom of expression, and freedom of association are protected. The Union is asking the overwhelming majority of the bargaining unit who are not members of the Union to participate in the financial support of the Union. The University does not force people to do things which are not their free choice.

The Employer urged the Fact Finder to understand that the University's position is consistent with his previous decisions based on avoiding irritations in the employee body. Historically, the University had members-only agreements with the Union since the middle 1960s. SERB certified the Employee Organization in 1985, following an election in which it achieved a bare majority. The parties reached an Agreement after Fact Finder Larry Donnelly recommended against a fair share fee provision. In 1989, a number of employees filed a petition to decertify the Union and supplied the University a copy of the petitions. After SERB dismissed the petition on procedural grounds, the University appealed the decision. The initial common pleas court decision ordering SERB to conduct a decertification election was set aside on appeal, based on a procedural determination that the University did not have standing to appeal SERB's dismissal of the petition. The University, based on the signatures presented to it, concluded that the Union did not have majority status, and withdrew recognition. In 1989 SERB stated that an employer cannot withdraw recognition on the basis of its good faith doubt of the Union's majority status. After a series of court decisions, the SERB decision was upheld.

After resuming bargaining, the parties ended in Fact Finding, and the fact finder in that case also recommended that a fair share provision was not appropriate in the circumstances. In negotiations for new agreements since then, the Employer has rejected the proposal for a fair share arrangement, and the Union has withdrawn the proposals.

The Employer contended that the Union has failed to persuade anything close to a majority of the bargaining unit to support the Union, financially, because a majority of them do not wish to be represented by the Union. Since 1999, the percentage of

employees on dues checkoff has fluctuated, never reaching 40% until May 2003, when it rose to 43%. It is the University's view that nearly 60% of the unit should not be required to support the Union involuntarily. If a fair share arrangement were included in the Agreement, it would be a substantial change in the relationship between the parties, and a substantial change in the workplace. The Employer asserted that nothing would create more irritation to the tranquility of the workplace than a requirement that this 60% participate in financial support of the Union. Therefore, the University asked that the Union's proposal be rejected.

The Union responded, at the hearing, by observing that the history of the parties' bargaining relationship reveals that employees in the bargaining unit were educated in how to decertify the Union if they choose to do so. The Union pointed out the fair share fee arrangement in the University's collective bargaining agreement with the FOP, and asserted that a fair share fee does not affect an employee's right to associate with anyone; it merely requires the employee to pay his fair share of the cost of representation, from which they benefit. The Union's majority in the 1985 representation election was 66%, not a bare majority. The Fact Finder who recommended against a fair share arrangement in the first collective bargaining agreement, Larry Donnelly, recently recommended for a fair share fee in a similar circumstance involving Hamilton County Human Services, where the union is in a minority status. He wrote that a minority of employees should not be expected to subsidize the other employees. The Union believes that non-dues paying employees wish to continue receiving the benefits provided through collective bargaining, which probably contributed to their decision to work for the University. The Union has not seen friction in hundreds of bargaining units where contracts include fair share fees, including some in which the Union did not enjoy voluntary dues deductions by a majority of employees.

The Employer confirmed that its Agreement with the Fraternal Order of Police does include a fair share arrangement, but only one employee in the unit of 19 or 20 chose not to voluntarily join that union.

Fact-Finder Recommendation and Rationale:

In a previous fact finding case where I was faced with a similar issue,¹ I wrote:

In the opinion of the undersigned, the establishment of fair share fees requiring so-called “free riders” to reimburse a union for services it renders them is an equitable step which may benefit the Labor Organization without significant likelihood of harm to the Employer. Moreover, removing the irritant of non-paying unit members may contribute to more harmonious labor relations between these parties. I note that the Employer currently withholds from paychecks various kinds of deductions and presumably could easily accommodate one more deduction. The burden of determining the amount of the annual fair share fee and ensuring that it is properly allocated to legitimate collective bargaining purposes will fall upon the Labor Organization, not the Employer.

In the instant case, the Union has continued to enjoy substantial support from bargaining unit members, despite a history of opposition by the Employer and despite the lack of financial participation by a majority of the bargaining unit employees. I am primarily persuaded to recommend inclusion of a fair share fee arrangement by the potential benefit to the relationship between the Employer and the Union, as institutions, if the Union has some relief from the preoccupation with the funds it needs to continue. Moreover, I am not convinced that personal relationships among the employees will suffer if everybody is required to pitch in for the common good. Although the Employer claims to be protecting the interest of non-member employees, it is the role of the Union to speak for those employees in collective bargaining, and the Union deserves to be heard on their behalf, and to be financially supported for its efforts.

Certainly, the Union’s evidence that comparable public employers have adopted a fair share arrangement, including institutions of higher learning and other political jurisdictions in the immediate area, weighs in favor of ending the Employer’s holdout. The only internal comparable, the University’s police unit, also supports the argument in favor of a fair share fee for this bargaining unit. Because I believe that the future relationship of the parties will benefit from this clause, which is usual in contracts covering similar bargaining units in the area, I will recommend that the Union’s proposed fair share fee article be included in the collective bargaining agreement.

Consistent with the foregoing recommendation, I will also recommend that the reference in paragraph D to deductions under Paragraph A be changed to deductions under this Article.

¹ Princeton City School District and Princeton Association of Classroom Educators, 94-MED-03-0185, May 31, 1994.

I find the Union's arguments for a checkoff of funds to its PEOPLE political action fund to be well-supported by the evidence of what has been done in comparable bargaining units, including other educational institutions and public employers in the immediate area. The Employer raises an argument regarding the difficulty of administering thousands of such interest group deductions, if it opens the flood gates. As the Union points out, however, certain charities are already accommodated, and the University raised the likelihood that only 5% of the bargaining unit is likely to participate. Inasmuch as no employees will be required to participate, and the cost to the Employer is likely to be minimal, I conclude that the evidence of the practice followed by comparable public employers favors including the Union's proposal in the Agreement.

It is hereby recommended that paragraphs A, B, and C remain as previously agreed upon by the parties. It is further recommended that that the parties include the following in Article 12 of their new Agreement:

- D. The Union agrees that it will indemnify and save the University harmless from any action commenced by an employee against the University arising as a result of the deductions made under this Article.
- E. The University will provide the Local Union President with a copy of any dues deduction revocation slips for bargaining unit employees in a timely manner.
- F. The University will deduct voluntary contributions to the American Federation of State, County and Municipal Employees International Union's "Public Employees Organized to Promote Legislative Equality" (PEOPLE) Committee from the pay of an employee upon receipt from the Union of an individual written authorization card voluntarily executed by the employee.

The contribution amount will be certified to the Employer by the Union. Monies deducted will be remitted to the Union within ten (10) days of the date they are deducted. Payment will be made to the Treasurer of PEOPLE and transmitted to AFSCME, AFL-CIO, P. O. Box 65334, Washington D.C., 20035. The payment will be accompanied by an alphabetical list of the names of those employees for whom a deduction was made and the amount of the deduction. This list must be separate from the list of employees who had union dues deducted and the list of employees who had fair share fees deducted.

An employee shall have the right to revoke such authorization by giving written notice to the Employer and the Union at any time. The Employer's obligation to make the deductions shall terminate automatically upon receipt of revocation of authorization or upon termination of employment or transfer to a job classification outside the bargaining unit.

All PEOPLE contributions shall be made as a deduction separate from the dues and fair share fee deductions.

- G. All bargaining unit employees who are not members in good standing of the Union are required to pay a fair share fee to the Union as a condition of employment. All bargaining unit employees who do not become members in good standing of the Union are required to pay a fair share fee to the Union as a condition of employment. This condition is effective sixty-one (61) days from the date this agreement is signed by the parties, or at the completion of an employee's new hire probation period, whichever is later. The fair share fee amount will be certified to the University by the Union. The deduction of the fair share fee is automatic and does not require a written authorization for payroll deduction. Payment to the Union of fair share fees deducted will be made according to the same provisions of the Agreement that govern the payment of regular dues deductions. The payment will be accompanied by an alphabetical list of the names of employees for whom a deduction was made and the amount of the deduction. This list must be separate from the list of employees who had union dues deducted.

Issue 3: Article 18, Job Postings and Transfer Procedure

This Article of the recently expired contract provides a detailed procedure for the Employer to post a notice of vacancy "when a bargaining unit position becomes vacant," for employees to apply for the positions, and for the Employer to select an applicant.

The Union proposed several changes which were accepted by the Employer:

- defining when a vacancy arises,
- extending the posting period from three to five days,
- including in the posting the qualifications for the position, duties of the position, and the initial shift,
- eliminating a phrase which would allow only employees "who meet the qualifications" to apply,
- providing that "all" applicants must meet University qualifications, and
- permitting outside hiring if no internal applicant is selected within 120 days after the five (not three) day posting.

The Fact Finder hereby recommends that the above-described agreements be incorporated in the parties' new collective bargaining agreement.

The parties disagree only on Section B.4. of the recently expired contract, which is:

Past service to the University is recognized as a valued attribute in an applicant. Therefore, seniority will be considered as the determining factor, when qualifications are substantially equal.

Union Position:

The Employee Organization proposed to change Section B.4. to read as follows:

Past Service to the University is recognized as a valued attribute in an applicant. Therefore, the qualified senior applicant for the position will be awarded the job.

The Union characterized its proposal as a “sufficient ability clause” which would allow the senior qualified employee who bids on a job to get the position. The Union asserts that determining which applicant is most qualified “is often subjective and seen to be less than fair by employees.” No two applicants will bring exactly the same qualifications to a job, so seniority is unlikely to be a consideration in making selections because candidates will seldom be viewed as “substantially equal.” The Union points out that the Employer will still determine the qualifications which applicants must meet, so the applicants must meet the University’s qualifications before seniority comes into play. This method “recognizes service with the Employer,” and will provide a boost to employee morale, the Union asserts.

Management Position:

The University prefers to maintain the existing language, which provides that “seniority will be considered as the determining factor when qualifications and abilities are substantially equal.” The Employer characterized the Union’s attempt to require vacancies to be filled on a strict seniority basis as a drastic change from the commonly-accepted procedure which uses seniority as the determining factor only when two candidates have substantially equal abilities.

Findings of Fact:

At the hearing, the Union emphasized that employee morale is adversely affected when appointments and promotions are perceived to be made on subjective judgments, and that seniority is considered to be an objective measure of merit. The Union sees the selection of the “qualified senior applicant” as a good compromise between strict seniority and the Employer’s subjective judgment that applicants’ qualifications are “substantially equal.”

The Employer considers the current language to be the accepted standard in public and private employment. “Substantially equal” is no more ambiguous than much of the language throughout the contract, and the Union’s proposal to “satisfy the Employer” that

a candidate meets “reasonable qualifications” is just as subjective and ambiguous. It would be contrary to the public interest to compel the Employer to prove that the senior applicant does not have some minimal qualifications for the vacant job. The University has higher standards than that, and it has many qualified and motivated employees whom it would like to promote.

The Union responded that its proposal does not include the terms objected to by the University, and the burden of proof in the grievance procedure would still be on the Union to show that an employee is qualified, as defined by standards set by the Employer.

Fact-Finder Recommendation and Rationale:

While a list of an applicant’s job qualifications and prior experience performing another job are not perfect predictors of how well a candidate will perform on the vacant job, neither is seniority a certain indication that the candidate has learned and improved over time. The parties agreed upon the existing balance between seniority and qualifications at some time in the past, and have lived under that language without any difficulty, so far as the evidence shows. Absent the agreement of the parties or a pressing need to correct a bad situation, I am unwilling to recommend the proposed change in existing language. Therefore, it is hereby recommended that the Union’s proposed change in Article 18, section B, subsection 4 not be adopted, and that the existing language be continued in their new Agreement.

Issue 4: Article 25, Hours of Work and Overtime

The recently expired Agreement defines the normal work week as 40 hours, provides pay at time and one-half for all hours worked in excess of 40, requires 48 hours notice for scheduled overtime, sets forth guidelines for equalizing overtime, etc.

Management Position:

The Employer’s only proposed change in the existing contract language is to require bargaining unit employees to work a reasonable number of overtime opportunities. The University asserts that it has encountered an attitude by a few employees that they have no obligation to be available for a reasonable amount of overtime work. The Employer is not proposing mandatory overtime or a requirement that an employee accept any particular overtime opportunity. The University would keep track of overtime

opportunities offered, and the employee's response. Any failure to accept a reasonable amount of overtime would be treated like any other failure to meet a job requirement, through the discipline process. A requirement of reasonable overtime, which "is an elementary component of the employment relationship," is necessary to assure that services will be provided.

Union Position:

The Employee Organization prefers to retain the existing contract language. The Union said that the Employer provided no examples in negotiations of any problem in getting employees to work overtime. The Union criticized the proposal as vague and difficult to enforce. Since the proposed language would create more problems than it would solve, the Union concludes that it would be better to remain with the status quo.

Findings of Fact:

The Employer expressed dismay at the Union's unwillingness to acknowledge a basic element of employment, that an employee may be needed on occasions when not regularly scheduled to work. **Don Lowe**, who is with the University's Physical Facilities Department, testified that there are three situations in which problems arise:

- event support, when personnel are needed at night or on weekends because the employee scheduled for work calls in sick,
- emergencies, sometimes due to weather, such as water leaks, electrical outages, or HVAC failures which require employees with certain skills, and
- planned projects in which the work must be scheduled not to interfere with classroom teaching activities, and an employee is unwilling to work when needed.

He testified that "on occasion," the University has not been able to get employees to respond to the need for overtime work.

The Union questioned the use of the word "reasonable," which is ambiguous and probably would cause more problems than it would solve. The Employee Organization stated that it was unaware of any employee being disciplined for refusing to work overtime, or of any job which did not get done for lack of employees who would work overtime. The proposed change is not necessary or desirable. The University stated that it probably had grounds to discipline employees under the current contract language; however, it chose not to do so, but to propose a clarification of the contract instead.

Fact-Finder Recommendation and Rationale:

As in the case of the Definitions issue, this appears to the undersigned to be a problem which could have been handled under the recently expired contract, if the proper language had been available. The Employer makes a convincing argument that the proposed language reflects an accepted fact of employment and would merely set forth the usual standard, which has not been expressed in the contract until now. The Union's response regarding ambiguity and lack of necessity for a change is not persuasive, and I will recommend approval of the proposed language.

It is hereby recommended that the parties include in their new Agreement the following addition to Article 25:

K. Employees are expected to work a reasonable number of overtime opportunities.

Issue 5: Article 26, Wages

The recently expired Agreement states, "The Union accepts the University's implementation of the classification and pay program. No employee shall suffer loss of pay as a result of the implementation of this program." The contract then sets out three items which will apply "within the framework referenced above."

- The bargaining unit was entitled to 3% wage increases effective with the first payroll period in July of 2000, 2001, and 2002; and employees would receive a general pay increase in excess of 3% in the event that non-bargaining unit classified staff received such increases.
- Employees with at least ten years of University service on December 1 of 2000, 2001, and 2002 would receive a lump-sum payment of a percentage of their annual pay which would match any such payment which might be made to non-bargaining unit classified staff.
- The Union would have an "opportunity to participate in committees appointed to develop new pay programs or modifications to the existing pay program for classified employees;" and if a new pay program was implemented, or the present program was revised, the Union would have the opportunity to be included in the program.

The classification and pay program, referred to in the collective bargaining agreement, consists of a broadbanding classification plan that places jobs into “bands,” which group together jobs at a similar level of skill and responsibility, and “zones” which are similar to pay grades within each band, except the zones have no maximum amount of pay. For example, jobs in Band E are characterized as follows:

Follows procedures with some discretion

Limited technical skills specific to area

Those jobs are placed in pay zones E1 and E2. Jobs in E1 include Materials Handling Assistant, Senior Service Assistant, and Staff Assistant; E2 jobs include Maintenance/Technician, Materials Handling Assistant, and Senior Services Assistant.

Pay ranges for bargaining unit employees fall within zones D2 through G2, thus:

ZONE	MINIMUM	MARKET	MARKET
		REFERENCE POINT A	REFERENCE POINT B
D1	\$ 7.32	\$ 8.24	\$ 9.16
D2	\$ 7.73	\$ 8.70	\$ 9.67
E1	\$ 8.14	\$ 9.25	\$ 10.36
E2	\$ 8.62	\$ 9.80	\$ 10.98
F1	\$ 9.04	\$ 10.42	\$ 11.81
F2	\$ 9.63	\$ 11.11	\$ 12.58
G1	\$ 10.16	\$ 11.88	\$ 13.60
G2	\$ 10.89	\$ 12.73	\$ 14.57
H1	\$ 11.53	\$ 13.67	\$ 15.80
H2	\$ 12.41	\$ 14.71	\$ 17.01

According to the Employer, the following procedure is followed:

The Personnel Office is responsible for the periodic analysis of the zone structure. Adjustments to the zone structure are based upon the analysis of relevant market data for benchmark jobs, general salary trends, and the University’s financial situation. Miami University reviews the actual wages paid by local organizations and other state universities, since this reflects the appropriate labor market.

The zone minimum is based upon the entry-level rates for the benchmark jobs in that particular zone. *Benchmarks* are the jobs for which sufficient salary data is available. In order to determine the appropriate minimum for zone E1 for example, the University would gather relevant market data for the E1 benchmark jobs.

As jobs progress in difficulty and skill level required, the range of wages that organizations are willing to pay for those jobs grows. The Market Reference Point B is set using this concept. The difference between the zone minimum and Market Reference Point B for jobs in Band D is 25%. As you progress up the Bands, this difference between the minimum and Market Reference Point B increases. By the time you reach Band H, there is 37% difference between the minimum and Market Reference Point B. Market Reference Point A is the midpoint between the minimum and Market Reference Point B.

Union Position:

The Employee Organization proposed to replace all existing contract language with ten new sections and an appendix to the contract, as follows:

- A. The pay scales and wage rates for all bargaining unit classifications will be set forth in Appendix A of this Agreement and made a part hereof
- B. Newly-hired employees will be placed in Step 1 of the appropriate pay scale for their classification and will advance to Step 2 of the pay scale upon the completion of their initial probationary period. Thereafter, each employee will advance to the next step of the pay scale on his/her anniversary date of hire until the top step of the scale is reached by the employee.
- C. An employee who is promoted will go into the step of the pay scale for the classification into which he/she has been promoted that reflects at least a 5% increase over the pay the employee was receiving immediately prior to the promotion. Thereafter, a promoted employee will advance through the steps of the pay scale annually upon the anniversary date of the employee's promotion.
- D. An employee who transfers to a different classification that is in the same pay scale as the one held by the employee will continue to advance through the pay scale on the original anniversary date used at the time the employee entered the pay scale.
- E. All current employees will be slotted into the step of the pay scale that represents at least a six percent (6%) wage increase. Those employees who are in a wage that is above the wage in their respective pay range will receive all across-the-board wage increases granted under this Agreement, including 6% in each year of the Agreement.
- F. Any employee who demotes to a lower paying classification, either voluntarily or as a result of a layoff or disciplinary action, will be placed in the step of the lower pay scale that reflects the smallest possible decrease in wages. Such employee will subsequently advance through any remaining steps upon the anniversary of the date he/she was placed in the lower paying classification.
- G. Any employee who performs the duties of a classification in a higher pay scale will receive the higher rate of pay for all hours worked in the higher classification in the same step of the higher pay scale as the one in which the employee is currently serving in his/her regular classification.
- H. Employees will receive longevity pay based upon total years of service with the University. Each employee with five (5) or more years of service will receive four (4) cents per hour for each year of service. For example, an employee with five (5) years of service will receive twenty cents (\$.20) per hour, while one with six (6) years of service will receive twenty-four cents (\$.24) per hour and so on for each year of service. Such longevity pay will be added to the employee's regular hourly rate.
- I. Any employee who holds a special license that is related to the duties that he/she performs for the University that is in addition to any license or certifications which must be held as a basic qualification for the position will receive an additional 2% on the base rate of pay.
- J. In the event any classified staff who are not a part of the AFSCME bargaining unit covered by this Agreement receive an across-the-

board wage increase that is greater than the wage increases set forth in this Article for the bargaining unit employees, the difference shall be applied to bargaining unit employees and the wage rates set forth in this Agreement will be adjusted accordingly.

APPENDIX A

<u>CLASSIFICATION</u>	<u>PAY RANGE</u>
Assistant Sales Clerk	D2
Building and Grounds Assistant	E1
Building and Grounds Coordinator	F1
Building and Grounds Specialist	G1
Building and Grounds Supervisor	G1
Building and Grounds Technician	F1
Food Service Assistant	E1
Food Service Operations Coordinator	F1
Maintenance Engineer	G2
Maintenance/Repair Specialist	F2
Maintenance/Repair Technician	E2
Master Trades Specialist	G2
Materials Handling Aide	D2
Materials Handling Assistant	E1
Materials Handling Technician	F1
Master Senior Food Service Assistant	E2
Postal Services Assistant	E1
Sales Clerk	E1
Senior Building and Grounds Assistant	E2
Senior Building and Grounds Specialist	G2
Senior Building and Grounds Supervisor	G2
Senior Food Service Assistant	E2
Senior Maintenance/Repair Specialist	G1
Senior Maintenance/Repair Technician	F1
Supplies Assistant	E1
Trades Assistant	F1
Trades Specialist	G1
Transportation/Delivery Assistant	E2
Transportation/Delivery Specialist	F1

PAY RANGES – HOURLY RATES

EFFECTIVE June 21, 2003

RANGE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
D2	8.19	8.44	8.79	9.23	9.69	10.17
E1	8.63	9.66	10.69	11.72	12.75	13.78
E2	9.14	10.24	11.33	12.42	13.52	14.61
F1	9.72	11.04	12.36	13.68	15.00	16.32
F2	10.34	11.75	13.16	14.57	15.98	17.39
G1	10.96	12.62	14.28	15.94	17.60	19.26
G2	11.62	13.48	15.34	17.20	19.06	20.91

The Union is proposing that in Year 2 of the contract, the above scale be increased by 6% and in Year 3 of the contract, subsequent 6% across the board wage increase be added to the scale.

Management Position:

The Employer proposed a continuation of the present pay structure, but with each unit employee receiving general wage increases of 3% effective August 15, 2003; 2% effective July 1, 2004; and 2% effective July 1, 2005. The University also proposes to delete contract language referring to non-bargaining unit personnel and any impact which pay increases for non-unit employees might have on bargaining unit compensation.

Findings of Fact:

The Union characterized the wage issue as the purest economic clause in the agreement, and the major issue. The Union asserted that, by any standard, the University pays very low wages to this bargaining unit. The 1995-96 Mercer Report concluded:

Miami's average pay position for both the all participants sample and selected University participants is significantly below the market . . . Miami's overall structure positioning appears to be approximately 18% to 19% below market . . . Miami's average midpoint pay position relative to average midpoint pay is slightly less competitive than midpoint position relative to average market pay . . . The University's minimum position is lower than their midpoint competitiveness while their maximums are more competitive.

There has been nothing done since this report issued, the Union contends, which would have changed the situation for this bargaining unit.

During the 1980 – 1995 hiatus in bargaining, roughly in 1990, the University unilaterally implemented its wage structure, removed the step system which had been in place under the collective bargaining agreement, and established new starting rates under which employee advancement beyond the rate depends on across-the-board increases and incentives made available to them. The end result is shown in Union Exhibit 6, which

breaks down the wages of 887 employees receiving 431 different wage rates. In 1997 the University instituted "broad banding," putting some job classifications together, but they failed to broad band the wages. Most employers which do broad banding will put the employees in a band at the same rate of pay, generally the highest rate received by any job in each band, but the University did not do that. Employees in pay range D2, who earned \$7.16 per hour in 1997 currently earn \$7.73; those in E1 were getting \$7.53 and now get \$8.14. and so on. Starting wages have not been adjusted since September, 2001.

The Union explained that bargaining unit members work in jobs in pay ranges D2 through G2. The very few D2 employees are the least skilled positions; most entry level jobs in the bargaining unit are in wage bracket E1; and G2 is where the most skilled positions are placed. Of the 24 employees in D2, who earn five different rates of pay, 21 make less than \$8 per hour, and one makes \$11.69. The Union found that the employees whose compensation rate was set under the former step structure were well above everybody else, and they were able to retain that differential; employees hired under the broad banding structure have fared considerably worse.

There are more bargaining unit employees in E1 (524) than any other bracket, and they receive 161 different rates of pay, ranging from \$8.14 to \$15.85. Most of the E1 employees (307) earn between \$8.00 and \$8.99. Several hundred employees make less than \$10 per hour, 37% in the \$8.00 to \$8.99 range. The 2002 Department of Health and Human Services Guidelines considers a family of four with annual income of \$18,100 to be in poverty. That amounts to about \$8.70 per hour, so the 353 bargaining unit employees (about 40% of the unit) who earn less than \$9 per hour are hovering around the poverty level if they are providing for a family of four.

Union exhibits show that the University's supervisory, administrative and technical support staff (including clerical employees not represented by a union) received a 4.25% wage increase, plus merit awards, in June 2003. The University's police officers have received increases totaling 44% since 2001, raising their average from \$15 to \$21.90 per hour. University administrative officers (executives) received increases averaging 5.68% from 2000 to 2002.

The Union's wage survey of current contractual pay rates paid by comparable public employers shows that the Employer's bargaining unit employees start at a lower rate, and do not progress. For example, employees in the University's E1 pay range start at \$8.14, while the lowest minimum among the comparable jurisdictions is \$8.98 (building custodians at Shawnee State University as of November 2000). Custodians at Central State University, and Toledo University start at \$9 per hour, and at the University of Cincinnati they start at \$8.99. A Service Worker I for the City of Oxford starts at \$11.71 per hour. Ohio University custodians start at \$10.50 and progress to \$14.08 in five years. The Union asserted that the Employer's wages are not competitive with comparable employers, and the University does not claim an inability to pay more. In summary, the system is broken and needs fixing, so the Union has proposed optimum wage rates.

Local 209 President **Randy Marcum** testified that the starting custodian's pay has gone up only \$1.52 per hour from their rate under the previous contractual step system, which is ten cents per year. Under the former contractual pay schedule, a custodian progressed to the top of his pay schedule in four years. Under the 1997 pay scale introduced by the Employer, an employee in E1 classification receiving a 3% increase annually would top out at \$12.80 in 19 years. Under the current wage scale an employee in the E1 classification is projected to top out at \$19.18, but it would take 30 years. Annual increases were not keeping up with the pre-9/11 rate of inflation. The cost of houses was going up 5% per year, and at those pay rates, the \$28 per month for Union dues has seemed to be a lot.

In short, President Marcum testified, employees lost both step increases and longevity pay during the hiatus in collective bargaining, and the Employer would not give them back. Employees who are below the poverty level need a living wage.

The Employer characterized the Union's wage proposal as a frontal attack on the very structure and foundation of the compensation plan which was developed carefully and has been accepted by the Union in a series of Agreements. The compensation package goes beyond wages to include the group insurance discussed below and other employee payments. Over and above the across the board increases which the University

plans to give during the term of the next contract, the Employer encourages and rewards employees who improve themselves, which the Union's proposal ignores. The University plan pays rates competitive in the relevant labor market. The existing structure is the status quo, and the Employer proposes to enhance it with reasonable annual wage increases.

The Union's proposal is unacceptable because its automatic progression schedule is contrary to the goal of rewarding employees who seek self improvement, and it would be too costly (a 10.7% increase in costs the first year alone, without longevity payments, and 13.3% with them). The University's proposal, wage increases of 3%, 2%, and 2%, would cost \$578,662 in the first year, as compared with \$6,768,057 for the first year of the Union's proposal. The Union agreed in 2000 that the archaic wage step interval plan of previous contracts were out of date, that a market driven pay plan should replace it, and that starting rates should be reduced \$3.00 to the market rate.

Now, about 75% of the bargaining unit receive only annual general increases and are eligible for job enrichment increases, awards and other valuable benefits. The overall compensation package has been sufficient to hold the employee turnover rate down. Wage increases enjoyed by the bargaining unit have more than kept up with inflation; since 1994, employee wages rose 28.5% while the consumer price index went up 22.6%. Those employed by other employers, including those covered by union contracts, have not done as well as that. Other Ohio public universities gave median annual wage increases of 3.25% in their current contracts with AFSCME. Unlike Miami, some of those universities have laid off employees and plan to do so in the future if State budget cuts occur. Without considering the University's ability to pay the proposed increases, the University is nevertheless obligated to exercise prudent stewardship of public funds, which are on the decline.

The Employer's 2001 collective bargaining agreement with the Fraternal Order of Police, which covers only 20 employees, rectified a pay scale which resulted in excessive turnover among police officers and inability to attract the best qualified candidates. The facts of the labor market dictated the large increases for the police, but the facts pertaining to the bargaining unit involved in this proceeding do not support a large increase.

The University contended at the hearing that the issue is market equitable wages. In the Union's exhibit, "Previous Step Raise System" for 1988, the bargaining unit was in pay ranges 1 through 12. It is not true that most employers give annual pay raises. The data presented by the Union represents only union-organized employees, and government statistics show that less than ten percent of U.S. employees are represented by unions, so the Union's comparables are unrealistic. The Ohio University collective bargaining agreement's Appendix A rates were "grand fathered," but new hires are on pay bands. The Union's "1997 Pay Scale," which shows employees in the G2 classification topping out at \$38,983, is out of line with market surveys of wage rates.

The Employer observed that it disagrees with the Union on how to determine wage levels, and what is the market to be surveyed. In a survey of the market, the University's median pay is 95% to 100% of the market rate, and the University gives multiple benefits not available from other employers. The proof of the adequacy of the Employer's pay is its turnover rate, which was just over 5% in Fiscal Year 2002-2003 for this bargaining unit. In other words the retention rate is quite good. The Fact Finder should not expect the University to live with the antiquated pay structure depicted in Local President Marcum's presentation.

The Union agreed to the current pay structure in 1997, and has agreed to continue it in subsequent contracts. The revolutionary change proposed in the pay plan is not appropriate for a fact finder's award. The Union's argument about the poverty level ignores that most families now have multiple incomes and that bargaining unit employees receive valuable benefits in addition to their paychecks. University wage rates have increased more rapidly than the cost of living, and the Union's proposed increases would be too costly. The Employer introduced into evidence the 2002-2005 Agreement between AFSCME and Ohio University, and pointed out that Articles 17 "Pay Plan" and 18 "Wages" those employees had no guaranteed wage increase this year; the "me too" provision, which would result in an increase if non-unit classified staff received a higher raise, did not result in such an increase.

Kate Stoss, Assistant Director of Compensation, Employment & Technology for the University, described the broadbanding classification plan, as set forth on page 20,

above. She testified that, in 2001, the minimum rates were adjusted upward by 8%, and a 3% general increase was added, resulting in an average wage increase of 5.26% for the bargaining unit. In exceptional cases involving jobs at a high level of difficulty, the market may dictate paying more than the band covers, such as the G2M rate provided for stationary engineers. The job enrichment program provided 150 increases from promotions in place (for example a maintenance employee developing skills and being reclassified as an electrician), and 176 bonuses last year. Since 2001, 533 bargaining unit employees have received awards.

The market survey is similar to the Mercer study, referred to above, but has undergone some improvements, Ms. Stoss stated. The Spring 2003 survey included eight state supported institutions of higher learning, three area cities (Fairfield, Hamilton, and Oxford), the local hospital, and Union County. University job titles were compared with average and weighted average wage data from two to twelve of those organizations. The largest groups of unit employees are in pay zone E1, including 331 Building and Grounds Assistants whose average hourly rate of pay is \$10.04, and 176 Food Service Assistants who receive an average of \$8.94. Pay zone E2 includes 62 Maintenance/Repair Technicians whose average pay is \$12.15, and 53 Senior Food Service Assistants whose hourly average is \$10.92 for cooks and \$9.89 for bakers. Pay zone F1 includes 46 Building and Grounds Technicians who earn an average of \$12.73, and pay zone G2 includes 47 Master Trades Specialists whose average pay ranges from \$15.58 (carpenter) to \$16.56 (plumber).

Considering the unit employees' average pay rates, Ms. Stoss testified, the University pays large groups of employees 96% of the market weighted average. The chart shows Building and Grounds Assistants and Food Service Assistants, in pay zone E1, at 92.96% and 95.92% of the market weighted average, respectively. The bargaining unit's highest wages paid are generally more than 100% of the market's average highest rates, with the exception of a few technician positions in the high 80 percent and 90 percent range.

Ms. Stoss said that employees with at least ten years of service with the University as of December 1 of each year are eligible for a lump sum payment, which varies

depending on the ability of the University to make the payment. She pointed out the benefits provided to employees, including waiver of tuition for University courses, which is extended to the employee's spouse and dependents after three years of employment; housing grants up to \$10,000; 50% discounts on membership in the recreational sports center, interest free loans for computer purchases, and discounted meals at University dining locations. University employees also are eligible to purchase tickets to a dozen entertainment and educational venues in the region. The Employer submitted a document summarizing job enrichment bonuses paid to unit employees in the past two years, averaging over \$1000 per employee each year; and leadership development bonuses paid to Physical Facilities Department employees which totaled \$4800 in 2001-2002, and \$3200 the next year. Promotion in Place increases averaging \$1060 were paid to 119 unit employees in 2001-2002, and 156 employees received an average of \$906 last year.

In summary, the Employer says its system of paying employees according to how they do their jobs is better than the Union's proposal to pay according to what they do. The Union has accepted the broad banding system, and its criticism does not take into account the bonuses and valuable benefits employees receive. The Employer has already compromised with the Union, proposing annual wage increases during the term of the contract, which other University employees are not certain to receive.

Fact-Finder Recommendation and Rationale:

This is a complex issue, with many valid arguments and facts supporting each party's position, as is evident from the foregoing narrative. There is a large disparity between the present broad banding system, in which the University unilaterally establishes benchmark wage rates and the various individual rates of pay, and the Union's proposal, which would establish fixed rates and predictable progression by employees.

The flaw which I perceive in the Employer's current practice is illustrated by the following extract from the foregoing summary from the University's evidence (page 28):

The largest groups of unit employees are in pay zone E1, including 331 Building and Grounds Assistants whose average hourly rate of pay is \$10.04, and 176 Food Service Assistants who receive an average of \$8.94. Pay zone E2 includes 62 Maintenance/Repair Technicians whose average pay is \$12.15, and 53 Senior Food Service Assistants whose hourly average is \$10.92 for cooks and \$9.89 for bakers. Pay zone F1 includes 46 Building and Grounds Technicians who earn an average of \$12.73, and pay zone G2 includes 47 Master Trades

Specialists whose average pay ranges from \$15.58 (carpenter) to \$16.56 (plumber).

The wide disparity in wages within a pay zone lends some support to the Union's assertion that employees perceive the pay system as subjective. If Food Service Assistants have a level of skill and responsibility similar to Building and Grounds Assistants, who are also in pay zone E1, then why are they paid an average of 11% or 12% less? Why is there a wage differential of \$2.26 per hour between Maintenance/Repair Technicians and Bakers, both of whom are in pay zone E2? The disparity cannot be wholly attributed to one group of employees taking advantage of promotions in place, while the other group did not, so far as I can tell. The broad banding system which provides the Employer with a great deal of flexibility offers the employees no certainty regarding their levels of compensation. The Union has a legitimate complaint in this regard.

The Employer's contract with the Fraternal Order of Police, which covers only 20 employees, established a pay structure with 16 pay grades and six tiers, with each cell on the grid assigned a specific wage rate for each year of the contract. The bargaining unit in this case, with nearly 900 employees and 22 job titles, is considerably more complex, however, and adoption of the Union's proposed pay system would be a major undertaking which I will not recommend.

In the opinion of the undersigned, the Employer's broad banding compensation and classification plan, which was already incorporated into the Agreement by reference, should be modified to meet the needs of the bargaining unit and it should be described in the contract to the extent necessary. The disparities in pay levels among jobs within a pay zone should be moderated by ensuring that employees will be brought up to Market Point A no later than the third anniversary of their placement in the pay zone.

The minimum pay rates should be adjusted upward to reflect contractual wage rates of newly hired employees of the comparable public employers. The "Market Reference Point A" rates should be similarly adjusted upward to more closely approximate the rates received after three years by unionized public employees. Inasmuch as the Market Reference Point B was not reported to have created wage inequities, I will not recommend any contractual restriction on the Employer's establishment of that reference

point. These adjustments will affect only the bargaining unit covered by this collective bargaining agreement, and the Employer, of course, will be free to determine the minimum rates and market reference points of its other employees.

For the second and third years of the contract, I will recommend across the board increases of 3.0%, which is the rate of increase experienced by this bargaining unit under the recently expired contract and is consistent with my understanding of current trends in wage levels.

It is hereby recommended that the parties include the following language in their new contract:

ARTICLE 26

Wages

The current classification and pay program will continue in effect, as modified herein. Classification of positions will remain as set forth in Appendix A. Market Reference Point B will be determined by the Employer's periodic wage surveys. Pay rates for the Minimum and Market Reference Point A for each year will be as set forth in Appendix A. Employees will be paid within their pay zones as in the past, except that employees will be brought up to Market Point A no later than the third anniversary of their placement in the pay zone.

APPENDIX A

<u>CLASSIFICATION</u>	<u>PAY RANGE</u>
Assistant Sales Clerk	D2
Building and Grounds Assistant	E1
Building and Grounds Coordinator	F1
Building and Grounds Specialist	G1
Building and Grounds Supervisor	G1
Building and Grounds Technician	F1
Food Service Assistant	E1
Food Service Operations Coordinator	F1
Maintenance Engineer	G2
Maintenance/Repair Specialist	F2
Maintenance/Repair Technician	E2
Master Trades Specialist	G2
Materials Handling Aide	D2
Materials Handling Assistant	E1
Materials Handling Technician	F1
Master Senior Food Service Assistant	E2

Postal Services Assistant	E1
Sales Clerk	E1
Senior Building and Grounds Assistant	E2
Senior Building and Grounds Specialist	G2
Senior Building and Grounds Supervisor	G2
Senior Food Service Assistant	E2
Senior Maintenance/Repair Specialist	G1
Senior Maintenance/Repair Technician	F1
Supplies Assistant	E1
Trades Assistant	F1
Trades Specialist	G1
Transportation/Delivery Assistant	E2
Transportation/Delivery Specialist	F1

APPENDIX B

July 1, 2003 – June 30, 2004

ZONE	MINIMUM	MARKET REFERENCE	
		POINT A	
D2	\$ 9.45	\$	10.21
E1	\$ 9.93	\$	11.22
E2	\$ 11.10	\$	12.62
F1	\$ 11.63	\$	13.37
F2	\$ 12.39	\$	14.25
G1	\$ 13.07	\$	15.29
G2	\$ 13.98	\$	16.36

July 1, 2004 – June 30, 2005

ZONE	MINIMUM	MARKET REFERENCE	
		POINT A	
D2	\$ 9.73	\$	10.52
E1	\$ 10.23	\$	11.56
E2	\$ 11.43	\$	13.00
F1	\$ 11.98	\$	13.77
F2	\$ 12.76	\$	14.68
G1	\$ 13.46	\$	15.75
G2	\$ 14.40	\$	16.85

July 1, 2005 – June 30, 2006

ZONE	MINIMUM	MARKET
		REFERENCE
D2	\$10.02	POINT A \$10.84
E1	\$10.54	\$11.91
E2	\$11.77	\$13.39
F1	\$12.34	\$14.18
F2	\$13.14	\$15.12
G1	\$13.86	\$16.22
G2	\$14.83	\$17.36

Issue 6: Article 27, Insurance

The recently expired contract included the following:

The University will continue to provide to benefit eligible employees in the bargaining unit the group insurance plan (hospitalization, basic medical, major medical, dental, life and accidental death and dismemberment) as approved by the Board of Trustees. However, the University reserves the right to modify that coverage, either in terms of benefit levels and/or cost to the employee, in the same manner and effective on the same date(s) as it may choose to alter such benefit levels and/or costs to all other University employees covered by said Plan. Additionally, the University reserves the right to change the present or successor insurance carriers, and to designate an alternate carrier or carriers of its own choice, in lieu thereof, so long as the same benefit levels remain unchanged.

Optional, additional, accidental death and dismemberment coverage will continue to be made available for employee purchase. The University will implement the Anthem Advantage program prior to August 31, 2000.

Union Position:

The Employee Organization proposed to:

- guarantee no change in benefit levels, at no further expense to employees, by changing the first paragraph above to add “at no cost” to the first sentence,
- delete the language providing that the Board of Trustees approves the insurance plan, and delete the provision permitting the Employer to modify the coverage with respect to either benefit levels or cost to the employee
- omit the final sentence about implementing the Anthem Advantage program
- add the AFSCME Care Plan to the agreement, in which case it would forego the current dental benefit (paragraph B, on the following page).

The revised language would read as follows:

- A. The University will continue to provide at no cost to benefit eligible employees in the bargaining unit the group insurance plan (hospitalization, basic medical, major medical, dental, life and accidental death and dismemberment) that was in effect on the effective date of this Agreement. Additionally, the University reserves the right to change the present or successor insurance carriers, and to designate an alternate carrier or carriers of its own choice, in lieu thereof, so long as the same benefit levels remain unchanged. Optional, additional, accidental death and dismemberment coverage will continue to be made available for employee purchase.
- B. Effective on July 1, 2003, the University shall contribute \$102.75 per month to the Ohio AFSCME Care Plan for each employee who is covered by this Agreement for the purpose of providing the Vision Care III benefit, the Life Insurance benefit, the Prescription Drug benefit, the Hearing Aid benefit, and the Dental IV benefit.

Management Position:

The Employer proposed no change in the language of the recently expired contract regarding insurance, which requires the University to provide bargaining unit employees the same benefits as other employees, including faculty and executives. (The Employer agrees that the last sentence of the current contract language, referring to implementation of the Anthem program prior to August 31, 2000, is out of date and should be deleted.) Without the full participation of this bargaining unit, the Employer would lose its advantage in contracting for insurance coverage. The Employer intends to ask all its employees to share in the cost of insurance, which would be offset by a cash payment in the first year. Future developments are unforeseeable, but whatever is provided to other employees would be provided to this bargaining unit. If the Union insists on guarantees that bargaining unit employees' share of the cost of insurance be a fixed amount, the Employer needs a provision which would permit unilateral changes in carriers, providers, and benefit level/ structure. The marketplace dictates that such a guarantee would limit employee contributions to at least 20% of the total premium in the first year, and in excess of 30% by 2006. The Employer rejects the proposed additional coverage under the AFSCME Care Plan, which would overlap existing coverage at an added cost.

Findings of Fact:

The **Union** asserted that its proposal to insert the phrase, "at no cost" to employees, is not a change in the status quo, but merely places the current practice into the Agreement. The AFSCME Care Plan benefits are needed to supplement current

coverage. The proposed plan is better coverage than the current plan, especially the dental plan. The prescription drug employee co-pay is also lower.

The Union stated that the Employer revealed in an April 8, 2002 memorandum that it had involved other employee groups in planning future insurance coverage, but the University did not include any Union representatives on the employee committee, and did not send a copy of its memorandum to the Union. The Local Union 209 president asked to participate, and he was turned down. Having been shut out of the process, the Union is seeking to participate in the selection of the bargaining unit employees' insurance plan through its contract proposal.

The **University** prefers to retain the language of the recently expired contract, basically unchanged. Insurance is a part of the employees' compensation package, as is clearly set forth in the present contract language. The Mercer Consulting "2002 National Survey of Employer-Sponsored Health Plans" shows that the University's benefit levels are relatively good. Giving the Employer a free hand to negotiate a single plan for all employees gives the University two advantages: the plan will be less costly to administer, and the price is better for larger groups.

It has become quite uncommon for employees to make no contribution toward their health insurance premium, as documents submitted by the Employer reveal. In November 2002 University Vice President Richard M. Norman made several recommendations to the Board of Trustees, arising from an Advisory Committee on the Health Care Cost Sharing, which had been established in April 2002. The committee recommended to

- phase out the preferred provider option, in which enrollment had declined, leaving only the point of service plan;
- expand coverage levels to four tiers: single, employee and child, employee and spouse, and family;
- introduce employee premium contributions for medical coverage, with progressive amounts based on salary;
- provide a one-time base pay increase of \$100 for all benefit eligible employees to help offset the co-pay for employees least able to afford premium contributions; and

- introduce a three-tier drug program (formulary, generic, and mail order) with a first year out-of-pocket maximum to ease the transition for employees.

The University adopted the recommendations, and beginning in January 2004 employees will be expected to share the cost of health insurance, albeit through modest, progressive contributions. Given the proposed \$100 increase in all employees' base pay, the net cost for most employees in the first year will be nothing.

Historically, the Employer explained, the University has administered the insurance plan favorably to the employee, but the Union's proposal would eliminate that flexibility. If the Union insists on removing the University from administering the plan, and requires bargaining on any change in benefits, then the Employer expects, at best, to limit employee costs to 20% or 30% of the cost of the plan. The proposed AFSCME health care plan duplicates existing coverage, and if it is required, it would weaken the University's bargaining leverage in dealing with insurance companies. Moreover, the present coverage is comprehensive, and there is no need to expand the coverage.

Fact-Finder Recommendation and Rationale:

My review of the Employer's documentation convinces me that the University's plan is about as advantageous to employees as possible, in the current health care insurance climate. It was a mistake for the University to shut the Union out of the planning process, but the committee has come up with a good approach, well-founded on facts provided by an outside consultant. The AFSCME Care Plan would be a good alternative if the Employer had a small number of employees, and was unable to negotiate a favorable insurance package because it lacked the leverage of a large group. The University's plan needs the full participation of the bargaining unit, in order to have the best chance to succeed.

It is hereby recommended that the existing language of the recently expired collective bargaining agreement should remain, except the last sentence of the second paragraph should be omitted.

Issue 7: Article 36, Sick Leave

The recently expired collective bargaining agreement provided that employees earn 4.6 hours of sick leave for each 80 hours worked, without a limit on the number of hours

accumulated. To use sick leave, employees must furnish a signed statement, which on occasion may have to be a doctor's certification. Sick leave may be approved for: illness or injury of the employee or an immediate family member; death of a member of the employee's immediate family; medical, dental, or optical examination or treatment of the employee or immediate family member; exposure to a contagious disease which may jeopardize the employee's health or that of others if the employee is on the job; and pregnancy and/or childbirth, and related conditions. Fraudulent application for sick leave may result in discipline and loss of pay. The immediate family is defined. Sick leave for a death in the immediate family, or for the care of the employee's wife and family during the post-natal period, will not exceed five working days. Employees retiring after ten years or more with the State or a political subdivision thereof may elect to be paid one fourth of the unused sick leave credit, based on current pay rate, up to a maximum one-fourth of 120 days. The employee's sick leave balance appears on each paycheck. Part-time employees accrue sick leave on a prorated basis.

Union Position:

The Employee Organization proposed to add a sentence to section C, which refers to the requirement that employees submit a signed statement to justify sick leave, and that on occasions a doctor's certification may be required. The proposed new language is:

In the event the employee provides a doctor's certification, sick leave taken will not be counted as an occurrence under the University's sick leave policy.

The Union criticized the Employer's policy of disciplining employees on the basis of the number of sick leave occurrences which are taken; sick leave is an earned benefit, and employees should not be punished for using it for legitimate illnesses.

The Union also proposed to delete the reference to death of a member of the employee's immediate family as a reason for using sick leave. In its place, the Union proposed a new section, to read as follows:

Employees will be entitled to take up to five (5) days of paid bereavement leave for a death in the immediate family that is not charged to sick leave.

Further, the Union proposed to expand the subsection listing "pregnancy and/or childbirth, and related conditions" as a reason for taking sick leave, by adding the phrase, "or a member of the employee's immediate family." This reflects changing family life, in which members of an extended family may live under one roof, and it is more common

for family members to attend the birth of a child or grandchild. It would also allow an employee to care for a family member for childbirth-related conditions.

Finally, the Union proposed to change the section of the contract which allows retiring employees to cash in a maximum of one-fourth of 120 days of unused accrued sick leave (i.e., 30 days), and increase the amount to a maximum of one-half of 120 days (i.e., 60 days). The Union argued that the unused sick leave was earned by an employee who saved the Employer the expense of compensating the employee for time off and the effort of covering the employee's duties during the absence. Loyal and faithful service should not be punished by the loss of three-fourths of the employee's sick leave.

Management Position:

The Employer opposes the proposed changes, and proposes to continue the current language, which sets forth an extremely generous sick leave benefit.

Findings of Fact:

The **Union** contended that employees should not be penalized for using sick leave for legitimate purposes, but the Employer inhibits legitimate use of sick leave by its requirement that a doctor's certification be presented. Employees would like to be present at the birth of their child or grandchild, and should be able to use sick leave for this purpose. On the other hand, bereavement leave should be a separate matter, and should not be deducted from an employee's sick leave balance. The proposal for cashing out unused sick leave upon retirement is the same as in the Ohio University collective bargaining agreement. The contract with the Employer is now at the State minimum, and other employers consent to a more generous benefit.

The **Employer** views this article as a matter of attendance control. A doctor's slip is too easy to obtain, already, and the Ohio Revised Code provides for it. Expanding paid time off defeats the purpose of attendance control. The existing language provides sick leave for childbirth by the employee's spouse, and the Union's attempt to extend the category to the immediate family, with the University paying for it, goes beyond the concept of sick leave. The bereavement benefit is provided by statute; it is quite adequate. The Employer's policy permits conversion of unused sick leave to personal leave. The contract permits the conversion of a certain amount of unused sick leave upon

retirement, and it is not necessary to increase that amount; unused sick leave is not intended to be a supplement to retirement payments.

Fact-Finder Recommendation and Rationale:

This is a relatively comprehensive sick leave article, and there was no evidence that it is inadequate for employees' needs. Where the parties have agreed upon a benefit in the past, and they do not mutually agree to change the terms of that agreement, I believe that a fact finder should not recommend the change unless there has been a showing that the change is sorely needed. Therefore, I hereby recommend that the language of Article 36 remain the same in the parties' new collective bargaining agreement.

Issue 8: Article 58, Termination

The previous Agreement was effective July 1, 2000 through June 30, 2002, and would have continued for additional periods of twelve months unless terminated by written notice by either party upon the other, no less than sixty days prior to June 30, 2003.

Union Position:

The Union proposed that the new agreement should become effective as of September 1, 2003 and remain in effect through August 31, 2006. It should continue in effect for periods of twelve months unless terminated by either party's written notice, mailed no less than 60 days before August 31, 2006 or any subsequent August 31. The Union proposes to merely insert new dates into the current contract language.

Management Position:

The University agreed to a three-year contract, expiring June 30, 2006, but prefers to make the agreement effective retroactively to July 1, 2003.

Findings of Fact:

The **Union** asserts that the Employer has consented to make any wage increase effective as of June 21, 2003, so there is no need to make the contract retroactive. The Union's proposal of an effective date of September 1 is simply a convenient date which should be very near the date on which the parties should approve the new Agreement.

The **Employer** contended that the contract dates should coincide with the dates on which wages are adjusted. The Employer opposes making the expiration date three years from the date of execution because, for the last nine or ten years, the parties' contract

terms have run from July 1 to June 30, to coincide with the University's fiscal year. Traditionally, employee wage reviews occur July 1, and the contract termination date should coincide with that. Moreover, it is more convenient to conduct bargaining for a subsequent contract during the summer months.

The Union responded that it makes more sense to bargain after the fiscal year begins, and the amount of the budget is certain. The Employer pointed out that the General Assembly is on a two year budget cycle.

Fact-Finder Recommendation and Rationale:

The Union has presented no problem with the dates of the recently expired contract. Given a lack of agreement to change the dates previously agreed upon by these parties, I am reluctant to tinker with them when it is not necessary to do so. Therefore, I recommend that, in their new Agreement, the parties should modify the language of Article 58 of the recently expired contract only to the extent of changing only the years, to make the effective date July 1, 2003 and the expiration date June 30, 2006, with the deadline for notifying the other party of the intent to negotiate a new contract occurring no less than 60 days prior to June 30, 2006, or any subsequent 30th day of June.

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Fact Finders Report regarding the findings of fact and recommendations on the unresolved issues has been hand delivered on this date to Union's representative, Robert Turner; and that a true copy has been sent by overnight mail carrier to the Employer's Representative, William C. Moul, Attorney, at Thompson Hine LLP, 10 West Broad Street, Columbus, Ohio 43215-3435.

A copy of the report has been sent by regular U.S. Postal Service mail to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213.

Issued at Loveland, Ohio this fifteenth day of August, 2003.


James L. Ferree, Fact Finder