

STATE EMPLOYMENT  
RELATIONS BOARD  
2005 AUG -4 A D 32

IN THE MATTER OF FACTFINDING

BEFORE

NORMAN R. HARLAN, FACTFINDER

STATE OF OHIO - STATE EMPLOYMENT RELATIONS BOARD (SERB)

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YOUNGSTOWN STATE UNIVERSITY ASSOCIATION OF CLASSIFIED EMPLOYEES (ACE) - CASE NO. 05-MED-04-0494  
- HEARING: JULY 28, 2005  
AND - REPORT: AUGUST 3, 2005

YOUNGSTOWN STATE UNIVERSITY

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APPEARANCES

UNION

GARY CARLISLE, OHIO EDUCATION ASSOCIATION (OEA), CONSULTANT  
CHRISTINE DOMHOFF, PRESIDENT, YSU-ACE  
IVAN MALDONADO, VICE PRESIDENT  
BERNIE HAMROCK, EXECUTIVE COMMITTEE  
HOSE RIVERA, UNION MEMBER  
JOE IACCOCCI, UNION MEMBER  
PAUL PAVLICH, GRIEVANCE OFFICER  
WILLA MATTERN, EXECUTIVE COMMITTEE  
DR. VERN HAYNES  
TOM KING  
RICHARD HIDIG

EMPLOYER

JAMES P. WILKINS, KASTNER, WESTMAN & WILKINS, LLC, COUNSEL  
TED KAZAGLIES, COUNSEL  
HUGH L. CHATMAN, EXECUTIVE DIRECTOR, HUMAN RESOURCES/labor relations  
STEVE LUCIUJANSKY, MANAGER, LABOR RELATIONS  
JOHN HYDEN, EXECUTIVE DIRECTOR, FACILITIES  
K.J. SANTRUM, EXECUTIVE DIRECTOR, STUDENTS  
JEFF TAYLOR, DIRECTOR OF BUDGET

## BACKGROUND

Youngstown State University (YSU) is located in northeastern Ohio in the City of Youngstown. The City is about 70 miles south-southeast of Cleveland. Current enrollment is about 11,000. YSU offers a variety of degree programs. The current budget is \$131,000,000 (one hundred thirty one million) dollars.

The University employs about four hundred (400) service employees. The Association was certified by SERB in April, 1985. The Parties have bargained collectively for some twenty (20) years. The bargaining unit includes "all regular full-time, permanent part-time and intermittent classified civil service employees of the University."

The current COLLECTIVE BARGAINING AGREEMENT (CBA) covers the period August 15, 2002 - August 15, 2005. During June and July of this year the Parties met about ten times. They also met with a mediator July 25, 2005. After this session fifteen (15) unresolved issues remained. The Parties tentatively agree (TA'd) to retain current language in Articles 1, 4, 5, 6, 7, 8, 13, 16, 18, 19, 20, 23, 24, 25, 26, and 31.

SERB appointed a Factfinder under Section 4117.14 of the OHIO REVISED CODE (ORC). On a date unknown to the Undersigned the Factfinder withdrew from the Case. Dale A. Zimmer Administrator, Bureau of Mediation, called the Undersigned's office and left a message on-or-about July 18, 2005, on my recorder. After a few days of calling back and forth the appointment was accepted. The Parties were contacted and the Hearing was set for Thursday, July 28, 2005 at

the Holiday Inn in Boardman, Ohio. Mr. Zimmer explained that he had talked with the Parties and they agreed that under the circumstances they did not expect a detailed Report. They agreed they would accept a very brief response to their proposals, as brief as "Yes" and "No." The Factfinder talked with the Parties on July 25th or 26th. The Hearing arrangements were confirmed. In consideration of the Parties situation and in consideration for their agreeing to accept abbreviated explanations of the reasoning for recommendations the Factfinder advised the Parties he would overnight the Report August 4, 2005, even though under the CODE the Report is not due until August 11, 2005. (See Administrator Zimmer's letter of July 28, 2005 to the Factfinder).

**UNRESOLVED ISSUES AND**  
**RECOMMENDATIONS**

ARTICLE 2 - SCOPE OF UNIT

- 2.1 - No Change.
- 2.2 - No change.

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ARTICLE 3 - PAY

- 3.1 A) Effective August 16, 2005 the base rate and subsequent steps of each classified civil service position held by bargaining unit members will be increased by Two (2.0) percent.  
  
Effective August 16, 2006.....the increase will be Two and one-half (2.50) percent.  
  
Effective August 16, 2007 .....the increase will be Truee (3.0) percent.

3.1 B) Enrollment Incentive

Delete Subsections 1, 2, 3, and 4.

Reason: The language is clear and unambiguous.  
Each Subsection states in pertinent part:  
"Full-time bargaining unit members  
employed.....will receive a one-time  
enrollment incentive bonus..."

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3.2 A) Change the percentage increase to 2.5 percent as  
stated in 3.1 A), effective August 16, 2006

B) Enrollment Incentive

Delete Subsections 1, 2, 3 and 4.

Reason: Same as above in 3.1 B), 1, 2, 3, and 4.

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3.3 A) Change the percentage increase to 3.0 percent as  
stated in 3.1 A), effective August 16, 2007.

B) Enrollment Incentive

Delete Subsections 1, 2, 3, and 4.

Reason: Same as above in 3.1 B), 1, 2, 3, and 4.

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3.4 A), B) and C): Longevity Pay

No change.

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3.5 No change.

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3.6 Bilingual Pay Supplement - No change.

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3.7 Holiday Pay - No Change.

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3.8 Emergency Closings - No Change.

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3.9 PERS Salary Reduction Pick-Up - No Change

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ARTICLE 9 - GRIEVANCE PROCEDURE

No changes except those TA'd by the Parties.

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ARTICLE 10 - WORK SCHEDULES

No change.

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ARTICLE 11 - HOLIDAYS

No change.

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ARTICLE 12 - OVERTIME

No Change.

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ARTICLE 14 - VACANCIES, TRANSFERS and PROMOTIONS

14.9 Add to the current language:

"Any bargaining unit member promoted may request to voluntarily return to his/her former classification during the first fifteen (15) working days of his/her probationary period. A bargaining unit member who is laterally transferred or voluntarily demoted may request to voluntarily return to his/her former classification during the first fifteen (15) working days of his/her new appointment. IN the case of promotion Management may decline to consider such a request if the job has been filled. In the case of lateral transfer or voluntary demotion Management may honor the request, business conditions permitting.

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ARTICLE 17 - VACATION - No Change.

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ARTICLE 21 - RETIREMENT - No Change.

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ARTICLE 22 - INSURANCE BENEFITS

22.1 - Health Care Advisory Task Force

No Change.

22.2 Delete: "During the term of this Agreement, the premium for all group insurance benefits for active employees will be paid by the University."

Insert: "All employees hired after the ratification of the AGREEMENT will pay five (5) percent of the premium for all group insurance benefits during the term of the AGREEMENT.

"Employees on the active payroll prior to August 16, 2005 will pay no premium for all group insurance benefits for the first two (2) years of the AGREEMENT. During the third year of the AGREEMENT all active employees will pay five (5) percent of the group insurance premium."

Reasons: a. Prior to being hired new employees will be aware that will be required to pay the five (5) percent. Consequently they have no basis to contend that they are taking a pay cut. In addition, this will enable the University to receive a modest amount toward the current premium cost which is in excess of \$12,000 per employee per year. Further,

this does not affect the wages and/or total compensation of the employees active before August 16, 2005.

- b. Delaying the five (5) percent share of the premium cost for employees active prior to August 16, 2005 until the third year of the AGREEMENT has no immediate financial impact upon these employees. Secondly, the premium cost may be tax deductible, allowing the employee to recoup part of the cost. Thirdly, the **current premium cost of close to \$1,100 (one thousand and one hundred dollars per month per employee)** is a red flag to Management and the Union. Fourthly, the Factfinder has never been exposed to a total compensation package matching that found in the current AGREEMENT. As noted by the Factfinder during the Hearing, the total package, including Wages, matches and in many cases exceeds compensation paid in the organized private sector. He also commented that the Union negotiated a remarkable CONTRACT, in his reference to the 2002-2005 LABOR AGREEMENT.

The Factfinder is acutely aware of the importance of a comprehensive group insurance package. He has been paying the full cost of insurance for 25 years. When his health insurance premium was increased from \$600.00 per month to \$1,000.00 per month in 1999 he was forced to exercise his eligibility for health coverage with the Veterans' Administration and purchase a separate policy for his wife. Even a well managed Health insurance plan with favorable experience faces increased premiums. This is a fact facing both Management and the Union. It is also a fact when health insurance costs become prohibitive they adversely impact upon wages and other benefits.

No other changes are recommended for ARTICLE 22.

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ARTICLE 27 - MISCELLANEOUS - No change.

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ARTICLE 28 - INTERMITTENT EMPLOYEES - No Change.

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ARTICLE 29 - SENIORITY - No Change.

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ARTICLE 30 - TERM OF AGREEMENT

- 30.1 The Parties will establish the appropriate dates applicable to the Term of Agreement.
- 30.2 Adopt language proposed by the Union as shown on page 156 of its detailed Proposals, quoted below.

"Either party may notify the other not later than 90 days prior to the expiration of this Agreement that it desires to terminate or modify the Agreement. In this event, the parties will meet no later than May 1, 2008 to commence negotiations."

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ARTICLE 31 - STUDENT EMPLOYEES - No Change.

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SUMMARY

The withdrawal of the Factfinder appointed initially by SERB created a time situation for SERB, the Parties and the Factfinder. This is not intended to be a criticism of the Factfinder; i.e., this is simply what took place. The Parties were asked to leave their Position Papers at the front desk of the Hotel no later than 5:00 p.m. July 27th and they did so. The Factfinder waived the time requirement under the ORC to help the Union and Management. He drove from Columbus to Charleston, West Virginia on July 27th. He took care of some office business, got clean clothes and drove

to Boardman. He did as much preliminary work as time afforded.

At the onset of the Hearing he advised the Parties it is his practice as a service to them to tell them what his recommendations will be prior to closing the Hearing. After an 11-hour hearing, returning to the office, examining the full Record and getting some rest, he realized he had made a few comments which must be altered, particularly related to the Enrollment Incentive Language and Health Insurance. In both of these articles he indicated he would recommend no change.

The University argued strongly, and upon reflection properly so, that the Enrollment Incentive was a one-time commitment. The Union responded by stating this was not discussed during negotiations. Without taking an appropriate amount of time to examine the Language, the Factfinder gave a response consistent with the PAROL OR PAROLE EVIDENCE RULE. Simply defined, the RULE may be invoked if the language at issue is not clear, is ambiguous and may reasonably be open to more than one interpretation. Once the Factfinder studied the Enrollment Incentive language it became abundantly clear why Management persisted in discussing the Enrollment Incentive provisions. The language is open only to one interpretation; "it says what it says." The Employer is quite correct that the Enrollment Incentive language was inserted into the 2002-2005 AGREEMENT on an **ad hoc basis**. Based upon the clarity of the language, no other interpretation makes any sense.

The Undersigned indicated to the Parties he would not entertain any changes in the Health Insurance language of ARTICLE 22. This was due in part to the number of changes proposed by Manage-

ment and the Association. This statement proved to be premature once the Record as a whole was studied. This was the Factfinder's error. If time permitted it is probable some of the proposals by both Parties would be recommended. The University apparently recognized that a more thorough job could be done if more time was available to the Factfinder and it offered an extension. The Union reminded the Factfinder, and properly so, he had committed to issuing the Report on August 4th. It declined to agree to an extension, which it had the right to do, and did so without prejudice.

*Norman R. Harlan*

Norman R. Harlan, Factfinder

Steubenville, Ohio

August 3, 2005