

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDING
CASE NO. 09-MED-09-850**

TEAMSTERS LOCAL UNION NO. 957, Union

and

WRIGHT STATE UNIVERSITY, Employer.

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

John F. Lenehan

Issued August 23, 2010

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REPORT AND RECOMMENDATIONS

I Background

The Employer, Wright State University (University), is a public four-year state supported institution of higher education established in 1967. It has an enrollment of more than 18, 500 undergraduate, graduate and professional students on two campuses. The University offers undergraduate and graduate degrees, including medical degrees through its College of Medicine.

The Union, Teamsters Local Union 957, represents all full-time and regularly scheduled part-time (benefit eligible) employees employed by Wright State University in the bargaining unit generally described as a “maintenance” bargaining unit. There are approximately 48 classifications in the “maintenance” bargaining unit, including: Automotive Service Technicians, Carpenters, Custodial Service Workers, Drivers, Delivery Workers, Fire Safety Technicians’, Electricians, Building and Grounds and Maintenance Wreckers, Grounds Maintenance Workers, Housing Maintenance Workers, HVAC Technician, Locksmiths, Maintenance Workers, Materials Handlers, Painters, Parking Attendants, Plumbers, Press Operators, Printing Technician, Project Workers, Sign Maker, Shipping and Receiving Workers, Stationary Engineers, Water Treatment Facility Operators and Vending Route Drivers. There are approximately 153 members in the bargaining unit.

Teamsters Local 957 has been the bargaining representative since 1994 and has negotiated five prior collective bargaining agreements with the University. Prior to 1994, this bargaining unit was represented by Teamsters Local 450 which negotiated three agreements with the University.

The University also has a contract with the AAUP representing the faculty at the University. The WSU/AAUP contract expires on or about June 30, 2011. The University also has a contract with the FOP Ohio Labor Council for the University police officers and a contract with the FOP for a dispatcher bargaining unit, both of which expire on June 30, 2011.

The most recent contract between Local 957 and the University expired November 30, 2009. The parties reached a tentative agreement to cover the period from November 30, 2009 through August 31, 2012, on January 26, 2010. The Tentative Agreement covered various provisions under the following Articles:

Article 1	General Provisions
Article 8	Seniority, Layoff, Recall
Article 9	Hours of Work
Article 12	Miscellaneous
Article 14	Leaves
Article 15	Holidays
Article 17	Employee Benefits
Article 18	University Provided Clothing
Article 19	Drug Testing Free Workplace
Article 21	Wages
Article 22	Duration
Memorandum of Understanding	Re: Grant Funded Bargaining Unit Positions
Memorandum of Understanding	Re: Design/Implementation of Union "bug"

After the parties reached a tentative agreement, the Union held a meeting and submitted the agreement to its membership for ratification. The Tentative Agreement was rejected by the membership. The parties extended the Collective Bargaining Agreement that expired November 30, 2009, to February 28, 2010 for the purpose of facilitating the bargaining process. The State Employment Relations Board provided the services of Mediator John Gray. A mediation meeting was held on February 12, 2010. Unfortunately the parties were not able to come to a new Agreement.

The undersigned was appointed as a Fact Finder under the rules of the State Employment Relations Board. A fact finding hearing was held on July 27, 2010, at the Wright State University Student Union. The parties agreed to an extension for filing the Fact Finding Report until August 23, 2010.

The parties submitted the following as the unresolved issues:

Article 12 – Miscellaneous	Working Out of Classification
Article 12 – Miscellaneous	Parking Rate
Article 17 – Employee Benefits	Tuition Remission
Article 19 – Drug Testing	Reasonable Suspicion
Article 21- Wages	Effective Date
	% Increase
	Shift Differential
	Wage Rates
	Appendix A

At the commencement of the Fact Finding Hearing an effort was made to mediate the unresolved issues, which was unsuccessful.

II Criteria

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties ;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taking into consideration.

III Findings and Recommendations

Issue #1

Working Out of Classification

The Tentative Agreement reached by the parties as of January 26, 2010, proposed a change in the language of Article 12, Section 4 of the Collective Bargaining Agreement, which terminated November 30, 2009. The intent, apparently, was to clarify when and how an employee would be compensated when working outside his/her classification. At that time the parties tentatively agreed to the following language.

Bargaining unit employees are considered to be working 'out-of-class' when they are assigned by the University to perform the duties of a job specification that pays a higher job rate than the employee's current job. A bargaining unit employee that is deemed by the University to be working 'out-of-class' for a period of more than two (2) hours shall be paid an additional five percent (5.0%) of his/her hourly job rate, or the job rate of the higher classification, whichever is greater.

A bargaining unit employee is not considered to be working out-of-class if he/she meets any one of the criteria below:

- The 'out-of-class duties were not assigned by the University and the employee voluntarily requested the work or assumed the duties.
- The employee is performing his/her normal, regularly scheduled duties.
- The employee is performing the prescribed duties while on a training assignment, in an apprenticeship or other training classification, or is performing duties different from regular duties due to an injury, and illness, or participation in transitional duty.

If an employee is temporarily assigned to a lower job classification, the employee shall continue to receive the employee's regular rate of pay during such assignment, except that this provision does not cover an employee who is demoted by the University.

Union's Position

According to the position statement filed by the Union, the tentative agreement reached on January 26, 2010, was rejected by the bargaining unit members. One of the stated reasons was the proposed change and addition to Section 4 working out of classification. Specifically, the language proposed by the University that was not acceptable to Local 957 was the provision that reads as follows:

"A bargaining unit member is not considered to be working 'out-of class' if he/she meets any one of the criteria below:

. . .

The employee is performing his/her normal, regularly scheduled duties.

. . .

It is the Union's position that this exclusion is overly broad. It would prevent bargaining unit members from being considered to be working out of classification. Many of the positions within a job series have overlapping duties and responsibilities. The Union through its counsel argued that the determination of whether or not an employee should receive higher pay should be determined by the responsibility for performing those duties, not whether the duties were actually performed that day.

The Union submits that its proposal of January 12, 2010 is more consistent with how working out of classification is applied in other industries and should be adopted by the Fact Finder. That proposal reads as follows:

Bargaining unit employees are considered to be working 'out-of-class' when they are assigned by the University to perform the duties of a job specification that pays a higher job rate than the employee's current job. A bargaining unit employee that is deemed by the University to be working 'out-of-class' for a period of more than two (2) hours shall be paid an additional five percent (5.0%) of his/her hourly job rate, or the job rate of the higher classification, whichever is greater.

A bargaining unit employee is not considered to be working out-of-class if he/she meets any one of the criteria below:

- The 'out-of-class' duties were not assigned by the University and the employee voluntarily requested the work or assumed the duties.
- The employee is performing the prescribed duties while on a training assignment, in an apprenticeship or other training classification, or is performing duties different from regular duties due to an injury, and illness, or participation in transitional duty.

If an employee is in a classification that has a limited number of employees (defined as three (3) or less) in that classification that creates a hardship on the employee, i.e., unable to take a vacation or compensatory time off due to others in the class being off then that employee shall receive the highest rate in that classification, unless the employee is already in the highest rate, in that case the employee shall receive an additional five (5%) percent pay for that day or days.

If an employee is in a classification that has both lead and non lead employees and the lead employee is off work for the day or days then one of the non lead employees shall be paid the higher rate of the lead employee for the time of the absence from work.

If an employee is temporarily assigned to a lower job classification, the employee shall continue to receive the employee's regular rate of pay during such assignment, except that this provision does not cover an employee who is demoted by the University.

Employer's Position

The University argues that the concept of paying wages on a higher scale to employees who are assigned duties of a greater responsibility has been a cornerstone of the wage provisions for the bargaining unit for a significant period of time. Further, the University believes that it is incorrect to argue a definition of 'out-of-class' that leans upon doing your own job and getting paid for a higher paying job which happens to contain the same or similar duties to what is found within your current assignment. The employer believes that the clarifying language it has proposed as set forth in the Tentative Agreement reached on January 26, 2010 should minimize employee confusion over the issue.

Finding and Recommendation

Based upon the proposals of the parties, their position statements and the evidence introduced at the hearing, the Union's position is more persuasive. As stated in the University's position on this issue, the idea of paying more to employees who are assigned duties of greater responsibility has been the cornerstone of the wage provisions for a long time. Apparently, the parties had an issue that they believed needed to be clarified. Although the parties reached a tentative agreement, the Union membership had a concern that the provision excluding employees performing their normal regularly scheduled duties would result in their never being considered working out of classification. The membership's concern appears to be valid. Since many positions within a job series would include similar duties, it would be normal for an employee assigned to perform the duties of a higher paying job specification to be performing his normally regularly scheduled duties at the same time.

To retain the language excluding an employee performing his/her normal, regularly scheduled duties could result in the provision for higher pay for working out of classification being meaningless.* Therefore, it is recommended that this language be deleted and the remainder of the language set for in the Tentative Agreement reached on January 26, be adopted. The provision for working out of classification under Article 12 Section 4, in accordance with this recommendation would read as follows:

Bargaining unit employees are considered to be working 'out-of-class' when they are assigned by the University to perform the duties of a job specification that pays a higher job rate than the employee's current job. A bargaining unit employee that is deemed by the University to be working 'out-of-class' for a period of more than two (2) hours shall be paid an additional five percent (5.0%) of his/her hourly job rate, or the job rate of the higher classification, whichever is greater.

A bargaining unit employee is not considered to be working out-of-class if he/she meets any one of the criteria below:

- The 'out-of-class duties were not assigned by the University and the employee voluntarily requested the work or assumed the duties.
- The employee is performing the prescribed duties while on a training assignment, in an apprenticeship or other training classification, or is

performing duties different from regular duties due to an injury, and illness, or participation in transitional duty.

If an employee is temporarily assigned to a lower job classification, the employee shall continue to receive the employee's regular rate of pay during such assignment, except that this provision does not cover an employee who is demoted by the University.

Issue #2

Parking

The Tentative Agreement of January 26, 2010, provided that Article 12, Section 13 be changed to increase the cap on parking rates for employees in the bargaining unit from \$125.00 per year to \$180.00. No single annual increase would be greater than \$32.50. That provision under the tentative agreement read as follows:

Article 12, Section 13. Parking. Bargaining unit employees shall pay for parking at the same rates as other University classified employees; however, in no event shall bargaining unit employees pay more than one- hundred eighty dollars (\$180) per year for parking during the life of this Agreement. Additionally, no single annual increase in the parking rate shall be greater than \$32.50 for the duration of this agreement.

Employer's Position

The recently expired bargaining agreement provided that employees in the bargaining unit pay for parking at the same rates as other classified employees and established a 'cap' of \$125.00. The Tentative Agreement of January 26, 2010 raised the 'cap' over the life of the agreement to \$180.00, with no single contract year to exceed \$32.50. The reason for this increase is the shortage of adequate parking now and in the future. According to the Employer, a reasonable growth in parking needs is anticipated with attendant capital cost to be paid by users as a necessary parallel. The University as a land -locked campus will have to expand vertically and build parking garage facilities in the future. It believes that all users should be treated the same and should pay the same amount for parking. The testimony of Emily Hamman, Labor Relations Manager and the Chief Spokesperson for Management at

negotiations, testified that the parking cap was increased a few years ago from \$90 to \$110. The University wanted to keep increasing the cap to allow for capital improvements. Ms. Hamman testified that at the current rate it is desirable to increase it \$10 to \$15 per year.

Union's Position

The Union's proposal is to maintain the current cap on annual parking fees at 125.00. According to the Union, the increase proposed by the University equals \$55 over a three year period, or an average of over \$18 per year, or almost 15% per year. The University has not provided to the Union and its members any rational basis for any increase at this time, certainly not the increase being requested.

Finding and Recommendation

While the University's request for an increase under the circumstances appears reasonable in that it must provide for additional capital improvements in the future, the increase does seem excessive. Instead of costs being allocated over three years, it will now be two years because of the delay in reaching agreement. Thus, it is recommended that the increase in the cap be restricted to \$150.00 for the life of the new agreement, i.e., through August 31, 2012. Article 12 Section 13 would read as follows:

Article 12, Section 13. Parking. Bargaining unit employees shall pay for parking at the same rates as other University classified employees; however, in no event shall bargaining unit employees pay more than one- hundred fifty dollars (\$150) per year for parking during the life of this Agreement.

Issue # 3 Tuition Remission

There does not appear to have been any discussion of this issue as part of the negotiations in reaching the Tentative Agreement. The TA dated January 26, 2010 indicates that this provision should remain the same, i.e., current contract language. Apparently, this issue was not raised until the ratification vote. Under the provisions of the Agreement that expired November 30, 2009, bargaining unit employees received the same tuition remission benefits as

those received by other classified University employees. The Union is now seeking additional benefits by adding the following language to this Article.

Additionally bargaining unit members shall receive a tuition remission for courses completed at Technical Colleges (e.g., RETS, ITT) for courses taken that would enhance the employees' ability to promote through the job classifications attached hereto.

Union's Position

Even though the current collective bargaining agreement provides employees the same tuition remission as other classified employees of the University, it does not provide them the job related educational opportunities that are available at technical schools. Thus, the Union has proposed that technical schools be included in the tuition remission program at the University. It maintains that expanding the type of institutions where job related educational opportunities can be accessed would make the University's tuition remission program a benefit to bargaining unit employees and to the University.

Employer's Position

Bargaining unit employees currently enjoy tuition remission benefits that are the same as other classified employees, beginning on the first day of employment, employees are eligible for the equivalent of eight (8) credit hours of tuition free instruction. Dependents of the employees are eligible for an eighty percent (80%) reduction in tuition for an unlimited number of credit hours, also effective with the first day of service by the employee. The need for expansion of the program to provide for remission of tuition costs at Technical Schools is beyond what is appropriate and the legal authority of the University. According to statements made at the Fact Finding Hearing the University does provide and/or pay for any additional technical training required by bargaining unit personnel. The University believes that the current benefit is more than generous to its entire workforce community, including members of the Teamster's Bargaining Unit and does not believe expansion is appropriate at the time.

Finding and Recommendation

Based upon the fact that this issue was not part of the original negotiations, that the benefit is the same for other classified employees, that there is a question of the legal authority for the University to enter into and bind other institutions on this type of remission agreement, that the tuition remission benefits are generous, that needed job training is provided and/or paid for, and the absence of comparable evidence that these benefits are provided other public universities, this proposal is not justified and should be denied. Therefore, it is recommended that there be no change in the contract language and that it remain the same as that set forth in the Agreement that expired on November 30, 2009.

Issue #4

Drug Testing

The current contract language as set forth in the Agreement that expired on November 30, 2009 provides:

Section 1. Drug Testing. The bargaining unit will accept drug testing on the same terms and conditions established for all non-represented University employees.

In the Tentative Agreement of January 26, 2010, the parties changed the title of Article 19 from “Drug Testing” to “Drug Free Workplace” and added the following language:

Section 2. Background. The Drug-Free Work Place Act of 1988 and the Drug –Free Schools and Communities Act Amendment of 1989 require all federal contractors, federal grant recipients, and recipients of any federal funds whatsoever to implement a comprehensive substance and alcohol abuse policy. Wright State University shall comply with all provisions of these Acts. The Wright State University Policy of a Drug – Free Campus shall apply to the entire University community including bargaining unit employees.

Section 3. Resources. Resource information (booklets, brochures, pamphlets, videos, CD-Roms, etc.) regarding health and safety concerns from substance abuse and

information regarding the availability of and/or referral to community –based approved substance abuse counseling and rehabilitation services are available through a variety of university and community based services, including:

- Student Life: Alcohol and Other Drug Programs
- Center for Psychological Services
- Office of Human Resources
- Community Network
- Faculty and Staff Assistance Program (FSAP)

Wright State University offers a Faculty & Staff Assistance Program (FSAP) to assist employees with a full range of personal issues including substance abuse problems. When these problems exceed the ability of the FSAP to rehabilitate, employees can utilize health care benefits to which they are entitled. Each of these sources can evaluate an employee’s case and determine the appropriate level and type of treatment that is necessary. Employees are strongly encouraged to utilize these rehabilitative programs.

The University wants to implement “Reasonable Suspicion” Drug Testing. The Union is opposed to changing the current language.

Employer’s Position

The University believes that the inclusion of ‘Reasonable Suspicion” Drug Testing is a vital tool in discouraging substance abuse in the workplace. It offered evidence that during the past thirty-six (36) months, the Employer has identified eight (8) documented instances of substance abuse with five (5) of those instances involving members of the Local 957 Teamster Bargaining Unit. Of those five (5) instances, all individuals were disciplined under the terms of the Collective Bargaining Agreement and four (4) of the five (5) utilized the Employee Assistance Program. The success rate for those employees who sought assistance is sixty (60%) percent. As of the date of this hearing two other bargaining units have contract language which provides for “Reasonable Suspicion” Testing for its members. The University believes that now is the time for Local 957 to accept its role in recognizing and providing for the establishment of this valuable tool. The safety of fellow employees, students, and campus shareholders is vital to the success of Wright State University. The University reasserts its position that inclusion of

“Reasonable Suspicion” Drug Testing for members of this bargaining unit is reasonable and necessary.

Union’s Position

The current collective bargaining agreement requires bargaining unit employees to accept drug testing on the same terms and conditions as non-represented University employees. The Union proposed to keep the language the same in the new collective bargaining agreement. The University proposed a comprehensive drug treatment policy that is not consistent with its current policy for non-represented University employees. The Union maintains that the current contract language should be maintained since the university has not changed the drug testing policy for non-represented University employees.

Finding and Recommendation

The evidence is not sufficiently compelling to recommend that the “Reasonable Suspicion” Drug Testing Program proposed by the University be incorporated into the parties’ new collective bargaining agreement. While the testimony and evidence submitted by the University is relevant and material, it is not compelling enough to impose a drug testing program on this bargaining unit where it does not exist for other non-represented employees. The evidence clearly establishes that the current program, involving the EAP and regular disciplinary methods, works. The parties did not incorporate any drug testing protocol involving “reasonable suspicion” into the tentative agreement of January 26, 2009. The fact that two other bargaining units have agreed to reasonable suspicion drug testing is not convincing. Those units involved the Fraternal Order of Police (FOP) and safety sensitive positions.

Public employees have a degree of constitutional protection under the Fourth and Fourteenth Amendments against the government from taking not-consented-to searches and seizures, absent individualized suspicion of wrong doing. The taking of a urine or blood sample for analysis constitutes a search and seizure because the tests invade reasonable expectations of privacy. The searches must be reasonable under the circumstances. To determine this, the interest of the government must be balanced against the privacy interest of the employee. Although the Supreme Court has found that the government's special needs may outweigh the employee's privacy interest, particularly when safety sensitive positions are at issue that is not the case here. See *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 130 LRRM 2857 (1989) and *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989).

The parties could agree to reasonable suspicion testing. However, the reasons for recommending that such be incorporated into a new agreement are not sufficiently compelling here. Therefore, it is recommended that the contract language either remain the same as it was in the Agreement that expired November 30, 2009, i.e., no change to Section 1 of Article 19, or that the parties adopt the language of the Tentative Agreement reached on January 26, 2009, which would read:

Section 1. Drug Testing. The bargaining unit will accept drug testing on the same terms and conditions established for all non-represented University employees.

Section 2. Background. The Drug-Free Work Place Act of 1988 and the Drug –Free Schools and Communities Act Amendment of 1989 require all federal contractors, federal grant recipients, and recipients of any federal funds whatsoever to implement a comprehensive substance and alcohol abuse policy. Wright State University shall comply with all provisions of these Acts. The Wright State University Policy of a Drug – Free Campus shall apply to the entire University community including bargaining unit employees.

Section 3. Resources. Resource information (booklets, brochures, pamphlets, videos, CD-Roms, etc.) regarding health and safety concerns from substance abuse and information regarding the availability of and/or referral to community –based approved substance abuse counseling and rehabilitation services are available through a variety of university and community based services, including:

- Student Life: Alcohol and Other Drug Programs
- Center for Psychological Services
- Office of Human Resources

- Community Network
- Faculty and Staff Assistance Program (FSAP)

Wright State University offers a Faculty & Staff Assistance Program (FSAP) to assist employees with a full range of personal issues including substance abuse problems. When these problems exceed the ability of the FSAP to rehabilitate, employees can utilize health care benefits to which they are entitled. Each of these sources can evaluate an employee's case and determine the appropriate level and type of treatment that is necessary. Employees are strongly encouraged to utilize these rehabilitative programs.

Issue #5
Wages

The Tentative Agreement of January 26, 2010, provided for wage increases of 2% in the base hourly rate. All job rates were to be increased by 2%. All bargaining unit employees in paid status as of the ratification date of the new agreement were to receive \$200.00 on March 12, 2010 paycheck. Under the provisions of the T.A. there were to be no changes in the wage structure or the shift differential of thirty-five cents (\$.35) per hour. The following is the Tentative Agreement on Article 21, Wages.

Section 1. Across the Board Increase. Effective the first full pay period after the ratification date of this agreement, all bargaining unit employees will receive a 2% increase in their hourly rate. Additionally, all job rates will increase 2% as shown in Exhibit A. All bargaining unit employees in a paid status as of the ratification date of this agreement shall receive \$200.00 on the March 12, 2010 paycheck.

For the remainder of the term of this agreement, all bargaining unit employees shall receive pay increases in accordance with the annual increases provided for other non-represented University staff, exempt and/or non-exempt. These increases will be effective as of the same date as that of the non-represented University staff. Additionally, all job rates will increase by the same amount and a new Exhibit A will be forwarded to the Union.

Section 2. Wage Structure *Current Contract Language*

Section 3. Shift Differential. The shift differential of thirty-five cents (\$.35) per hour will be paid to employees who are scheduled to work the second or third shift and to employees who are regularly scheduled to work weekend duty for all those hours worked on second or third shift or weekend duty. **Individual department/work group**

managers with assistance from the Department of Human Resources, will determine specific times that shift differential is applicable for that particular department/work group. The University will meet and discuss these times with the Union and will communicate those times to all affected bargaining unit employees within thirty (30) days of the ratification of this agreement.

Changes to the times that shift differential is applicable for a particular department /work group shall not be allowed more than once every twelve (12) months.

Section 4. Apprenticeship Program. During the term of this agreement, the University and the Union agree to discuss a documented training/progression schedule for job classifications covered by this agreement.

The foregoing provisions of the TA were rejected by the Union. The Union is now seeking a 3% pay increase on the base hourly rate for each year of the new agreement. The Employer is offering a 2% change in job rates and a 2 % raise effective the first pay after the ratification date, coupled with a \$500.00 lump sum payment to reflect back payment to November 30, 2010. The Union is also seeking to change the shift differential from thirty-five cents (\$.35) per hour 4%.

Union Position

Section 1. Across the Board Increases

The bargaining unit employees represented by the Union received their last in increase of thirty cents per hour, effective November 30, 2008. For some bargaining unit employees (those earning \$15.00 per hour or less) the thirty cents per hour increase was 2% or greater. For bargaining unit employees earning more than \$15.00 per hour, the thirty cents per hour increase was less than 2 %. The University's non-bargaining unit employees, classified and unclassified, received a 2% on January 1, 2010 and 2.5% on July 1, 2010.

The bargaining unit employees represented by AAUP received a 2.5% across the board increase effective September 1, 2009, plus potential merit increases from a pool equal to 1.5% of the 2008-09 base salaries, and plus a potential market adjustment equal to 1.5% of the total base salaries for the 2008-09 academic year. For 2010, the AAUP bargaining unit employees

received a 2% across the board increase plus the same potential merit increase and market adjustment as in the prior year. (A copy of this contract was submitted at the hearing.)

The FOP represents two bargaining units at the University – a bargaining unit of sergeants and a bargaining unit of officers and “dispatchers”. Both groups have contracts that are effective July 1, 2008 through June 30, 2011. For the 2009 to 2010 and 2010 to 2011 fiscal years, the bargaining units represented by the FOP received increases of 3% across the board each year. (Copies of the wage provisions of these contracts were submitted at the hearing)

The Union has proposed a 3% across the board increases for each year of the collective bargaining agreement, with the first year being effective November 30, 2009. Consistent with the desires of the University, the Union proposed that the second and third year increases be effective on September 1, 2010 and September 1, 2011.

Retroactivity for the first year is also an issue by the University. The University has offered a lump sum payment to partially offset the lack of an increase from the expiration date of the prior contract. While the Union was willing to consider the lump sum payment in an effort to obtain a complete resolution, the membership rejected the effort and the lack of full retroactivity was one of the reasons for the rejection.

Section 2 . Shift Differential

The parties also have differences on the amount of the shift differential. The Union has proposed to change the method to calculate the shift differential from a straight hourly rate of currently thirty-five cents to four percent (4%) of the employees’ hourly rate. The union has also proposed to change the language of this section so that all employees working hours other than first shift are eligible for the shift differential rather than only those bargaining unit employees “regularly” scheduled to work the second or third shift. The University has proposed the current contract language for shift differential.

Employer's Position

Section 1. Across the Board Increases

The University has proposed a modest increase in wages to be effective back to November 30, 2009 comparable to that already received by other non-represented employees of similar classification. Historically, the Teamster BU has received raises virtually identical to those received by other non-represented employees. Specifically, for the first year of the agreement the employer has proposed a 2.0% change in job raises and 2% raise effective first pay after the ratification date and coupled with a \$500.00 lump sum payment to reflect back payment to November 30, 2009. In the second and third year the employer has proposed a "ME TOO" provision so that the Union would remain in the same relative wage position that it enjoys today. The Union believes that it must have a 3% raise in each year of the contract, a position the employer believes is unsupported in any way by data that focuses on any number of areas including pay increases within the surrounding community. Furthermore, Ohio's difficult budget situation warrants that Universities exercise extreme caution.

Shift Differential

The Union has proposed to change the method for calculating the differential from a straight hourly rate of thirty-five cents to (four percent 4 % of the employees' hourly rate. The Union has also proposed to change the language of this section so that all employees working hours other than first and second shift are eligible for the shift differential rather than only those bargaining unit employees "regularly" scheduled to work the second or third shift. The University has proposed the current contract language for shift differential.

Finding and Recommendation

Evidence was submitted as to the financial condition of the University and its ability to grant pay increases. The lengthy testimony and power point presentation by Keith Ralston, Vice President of Budget and Planning for the University gave an overview of the University's

fiscal condition and future budget problems. The Union submitted the State Audit Report for the Fiscal Year Ended June 30, 2009.

According to Mr. Ralston, while the University is fiscally sound, the future is uncertain and challenging. The current challenges include substantially decreased State funding. The Audit Report indicated a decrease of approximately three million dollars from June 30, 2008 to June 30, 2009. This decrease was a result of investment losses in the worst market since the Depression. However, investment returns have rebounded since June, 2009. Also, it was brought out by the Union that the Universities received some increase in State funding. Also, the University recently announced an increase in tuition to 3.5%, which together with continued increases in enrollment, will help the University maintain its increase in net assets even if there is a reduction in state funding in the next state budget.

Based upon the testimony of the University's Vice President of Budget and Planning, and the financial statements submitted at the hearing, the University can afford the pay increases proposed by Union, at least for the fiscal year July 1, 2010 through June 30, 2011. The subsequent fiscal year is not as certain. As to whether the proposed wages can be justified is another matter.

An examination of the wage increases granted to the regular teaching staff (AAUP) and those employees represented by the FOP would indicate that 3% would be a justified wage increase. However, the non-represented group of employees which the University is claiming sets the standard for this bargaining unit is 2% and 2.5%. The University at this time is only offering 2%.

The University also submitted as exhibits the wage settlements from other state universities, viz., Ohio State, Miami University, University of Cincinnati, and Ohio University. While these were somewhat informative, they cannot be given, in this case, the same weight as the settlements with the other bargaining units and compensation granted to the non-represented employees.

Therefore, in view of the foregoing, it is recommended that for the period from November 30, 2009 through August 31, 2010 a 2% increase in the hourly rate be granted and commencing September 1, 2010, an additional 3% increase be granted. Also, it is

recommended that for the remainder of the term of this agreement, all bargaining unit employees shall receive pay increases in accordance with the annual increases granted other non-represented University Staff, exempt or non-exempt. In lieu of any retroactive pay for the period from December 1, 2009 through August 31, 2010, all bargaining unit employees in a paid status as of the date of ratification will receive \$500.00 on the pay check for the next full pay period subsequent to ratification.

As to the proposed change in the Shift Differential, the Union has not submitted sufficient evidence to justify changing from a cents per hour basis to a percentage basis. Therefore, it is recommended that there be no change in the \$.35 shift differential. It is, also, recommended that that the language added to Section 3. Shift Differential concerning determining the times, and when, the shift differential will be paid, and Section 4 be incorporated into the agreement. Pursuant to this recommendation the proposed language of Article 21, would read as follows.

Section 1. Across the Board Increase . Effective the first full pay period after the ratification date of this agreement, all bargaining unit employees in a paid status as of the date of ratification will receive a 2% increase in their hourly rate (for the period from November 30, 2009 through August 31 2010) . In addition, effective September 1, 2010, all job rates will increase 3% as shown in Exhibit A. In lieu of any retroactive pay for the period from November 30, 2009 through August 31, 2010 all bargaining unit employees in a paid status as of the ratification date of this agreement shall receive \$500.00 on the pay check for the next full pay period subsequent to ratification.

For the remainder of the term of this agreement, all bargaining unit employees shall receive pay increases in accordance with the annual increases provided for other non-represented University staff, exempt and/or non-exempt. These increases will be effective as of the same date as that of the non-represented University staff. Additionally, all job rates will increase by the same amount and a new Exhibit A will be forwarded to the Union.

Section 2. Wage Structure *Current Contract Language*

Section 3. Shift Differential. The shift differential of thirty-five cents (\$.35) per hour will be paid to employees who are scheduled to work the second or third shift and to employees who are regularly scheduled to work weekend duty for all those hours

worked on second or third shift or weekend duty. **Individual department/work group managers with assistance from the Department of Human Resources, will determine specific times that shift differential is applicable for that particular department/work group. The University will meet and discuss these times with the Union and will communicate those times to all affected bargaining unit employees within thirty (30) days of the ratification of this agreement.**

Changes to the times that shift differential is applicable for a particular department/work group shall not be allowed more than once every twelve (12) months.

Section 4. Apprenticeship Program. During the term of this agreement, the University and the Union agree to discuss a documented training/progression schedule for job classifications covered by this agreement.

IV Certification

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted July 27, 2010. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

John F. Lenehan
Fact Finder

V Proof of Service

This fact-finding report was electronically transmitted this 23rd day of August, 2010, to the persons named below.

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