

**State of Ohio**

**State Employment Relations Board**

**In the Matter of Fact Finding**

	:	SERB Case Number: 11-MED-02-0118
Between:	:	
	:	
Cincinnati State Technical and	:	
Community College,	:	Date of Hearing: August 29, 2011
Cincinnati, Ohio	:	Date of Report: September 12, 2011
Employer	:	
	:	
And:	:	Felicia Bernardini, Fact Finder
	:	
Cincinnati State American	:	
Association of University Professors	:	
Union	:	

**Fact Finder Report and Recommendation**

**Appearances:**

**For Cincinnati State Technical and Community College**

James K.L. Lawrence, Esq., Frost Brown Todd, LLC, Fact Finding Spokesperson

Eugene L. Breyer, Jr., Director of Human Resources

Michael Geoghegan, Vice President, Finance

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**For Cincinnati State American Association of University Professors**

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## **Introduction**

### Case Background

Felicia Bernardini was selected by the parties to serve as Fact Finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on July 26, 2011 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Cincinnati State Technical and Community College (hereafter referred to as the “Employer” or the “College”) and the Cincinnati State American Association of University Professors (hereafter referred to as the “Union” or “AAUP”).

Prior to the hearing, the parties engaged in contract negotiations on a dozen or more scheduled dates between May 16, 2011 and August 13, 2011. With the assistance of Dan Judy, FMCS Mediator, the parties resolved some issues, however were unable to resolve all issues and come to a final agreement. Six contract articles remain open encompassing some 27 unresolved issues. The current contract expires at midnight on September 5, 2011. A hearing was scheduled for Monday, August 29, 2011. Both parties timely filed the required pre-hearing statements.

The day of the hearing, the Fact Finder proposed mediation of the outstanding issues prior to moving to the evidentiary hearing. Having worked with an FMCS mediator for several sessions prior to the hearing, the parties respectfully declined the offer to mediate and proceeded to hearing.

Jim Lawrence, represented the Employer.

Don Mooney, represented the Union.

### Issues

The remaining open contract articles addressed by both parties at the hearing are as follows:

Article 7: Selection & Appointment Procedures

Article 8: Compensation

Article 9: Workload

Article 10: Electronically Purveyed Methods of Instruction

Article 11: Benefits

Article 12: Severance of Employment Contract

Appendix 4: MOU: Area Chair Workload, Attachment 1

### General Background Information

Cincinnati State Technical and Community College is a public, two-year college under the authority of the Ohio Board of Regents. A nine member Board of Trustees governs the College.

The College's main campus is located at 3520 Central Parkway in Cincinnati, Ohio. The College offers more than 100 associate's degree programs, majors, and certificate programs in: business, technology, health, public safety, humanities, and science. Approximately 20,000 students enroll annually. There are approximately 180 full-time and 480 part-time teaching faculty.

The bargaining unit was certified in 1985. Cincinnati State AAUP was elected as the exclusive bargaining agent in 1989. The first contract was effective in 1990. There have been a series of successor, three-year agreements through the current contract, which expires on September 5, 2011. There are approximately 200 bargaining unit members. Unit members are primarily instructional personnel, however there are a few non-instructional unit members including for example, librarians, program coordinators, and advisors.

Cincinnati State will shift to a semester calendar in Fall 2012, in response to the Ohio Board of Regents' Strategic Plan for Higher Education, which calls for a common academic calendar across all of Ohio's public higher education institutions. Currently the College operates on a unique schedule of five nine-week terms, and will switch to a schedule of three 15-week semesters in the second year of the three-year collective bargaining agreement currently at fact finding.

## **Positions, Discussion and Recommendations**

At the hearing the parties agreed to present each unresolved proposal in numeric order based upon the number of the contract article. Therefore the format of this report will follow the same progression. On an issue-by-issue basis, the position of each party is briefly summarized, position summaries are followed by a brief analysis and discussion, which is followed by the recommendation of the Fact Finder.

In analyzing the positions of the parties and making recommendations the Fact Finder is guided by available, relevant evidence and the criteria set forth in Ohio Revised Code 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). 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;
- (c). The interests 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;

- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### 1. Article 7: Selection and Appointment Procedures

#### *Union Position*

The Union seeks to retain its current contract language.

#### *Employer Position*

The College proposes six substantive changes to current contract language. 1.) Introduction of timelines to ensure the hiring process is completed in 60 days from the time a vacant position is approved to fill, coupled with a default procedure providing for hiring manager unilateral action should the existing contractual procedure take longer than any given specified timeline. 2.) Deletion of non-bargaining unit administrative positions from the procedure set forth in the collective bargaining agreement, except to allow the Faculty Senate to appoint search committee representative in the case of Academic Deans and the College President. 3.) Authorization for the hiring manager to require the selection committee to include among its recommended candidates, specified, minimally-qualified candidates of the hiring manager's choosing. 4.) Insertion of new language that would define a quorum for selection committee action. 5.) Deletion of the requirement that an internal search be done prior to an external search. 6.) Deletion of contract language referencing the hire of adjunct faculty.

#### *Discussion and Recommendation*

Introducing and sustaining efficiency in an organization's hiring procedure is a constant source of challenge for human resources professionals. It is particularly problematic in the public sector where, complex and lengthy procedures dictate every transaction step from the time a position hits the organizational radar as a vacuum to the moment a person arrives to fill it. The College argues that on average it takes 113 days to fill a vacancy using the current contract procedure. Some hires have taken as long as 161 days. The College acknowledges that this is a college-wide problem and not unique to the selection and hire faculty. The loss of good candidates

to other more nimble employers is a regrettable result of a hiring process that takes months. When it comes to hiring, shorter is better as long as due diligence is maintained. A default procedure that places vast independent authority with a hiring manager, such as that found in the third paragraph of the Colleges' proposed Procedure A, would be unique in the public sector. Such a procedure paired with the College's proposal to allow a hiring manager to insist on the inclusion of a particular candidate(s) would dramatically impede the function of due diligence. The Fact Finder shares the Union's concern that such authority would be used too liberally and not only sideline the faculty's role in selection procedures, but could open the College to considerable liability.

Without inserting language that defines a quorum, it is within the parties' ability to mutually agree to keep a hiring process moving in a timely manner despite the absence of one or more committee members. Similarly, when there is a reason to begin development of an external candidate pool concurrent with considering internal candidates, the parties can do so by mutual consent. Witness testimony at the fact finding hearing suggests that the parties have on occasion used both of these approaches to move the hiring process along. There is no need to change current contract language. The will of the parties can accomplish the desired outcome.

The Fact Finder is sympathetic to the College's concern regarding the inclusion of non-bargaining unit positions in the detailed selection procedures set forth in the contract. It is one thing for faculty to have considerable say in the selection and appointment of bargaining unit positions. In this matter, higher education is different than other employers. It is an entirely different thing to make non-bargaining unit administrative positions subject to a detailed procedure set forth in a collective bargaining agreement. Upon review of other faculty collective bargaining agreements available on SERB's website, the Fact Finder found none that include such an involved and detailed procedure for bargaining unit exempt positions. More common is the type of provision found in Section I, providing for general participation in the search process for the College President. In this Section the College proposes to expand the language to include Academic Deans. Also by comparison, the contract language of Section J regarding adjunct faculty (also, non-bargaining unit positions) provides that the selection of adjuncts be made with advice from the academic division to which the adjunct will be assigned. To the Fact Finder, the language of Section J strikes a reasonable balance between the bargaining unit's legitimate interests in the selection of fellow instructional staff and the legitimate bounds of a collective bargaining agreement.

### **Recommendation**

The statutory criteria require that the Fact Finder consider comparable public jurisdictions and the bargaining history of the parties when making a recommendation. In light of these

considerations the Fact Finder recommends that Article 7: Selection and Appointment Procedures be changed only in that Academic Administrators are removed from procedures in Sections B-H and Academic Deans are included in Section I. All other College proposals are rejected and the Union's position that current contract language be maintained is accepted. Relevant contract provisions shall read in part as follows:

A. Definitions

(# 2 - delete)

**B. Approval Process for New and Vacant Bargaining Unit Positions**

4. Failed Search – (delete reference to academic administrator)

**C. Search Process for Bargaining Unit Positions**

1. Appointing the Screening Committee

(b. delete)

D. (no change)

**E. Internal review of Responses for Bargaining Unit Positions**

**F. Internal Interview Process for Bargaining Unit Positions**

**G. Subsequent Interview Process for Bargaining Unit Positions**

**H. Making the Offer for Bargaining Unit Positions**

**I. Selection and Appointment of the College President and Academic Deans**

1. (no change)

2. **When the Board of Trustees conducts a search for a new College President, the Faculty Senate shall be permitted to appoint faculty members to participate in the search process.**

3. **When the Administration conducts a search for an Academic Dean, the Faculty Senate shall be permitted to appoint faculty members to participate in the search process.**

J. (no change)

2. Article 8: Compensation

*Union Position*

The Union seeks across-the-board cost of living increases for unit members according to the following schedule.

3.5% effective early Fall term 2011 (retroactive as need be)

3.0% effective early Fall term 2012

3.0% effective early Fall term 2013

The Union seeks to maintain its current contract language pertaining to longevity increases at intervals established at 8, 10, 15, 20, and 25 years of service. The Union is also seeking to raise the overload rate in the second and third years of the contract to \$856 per workload unit. The Union proposes that the table in Section E showing starting salaries for new faculty, increase in accordance with the Union's proposed across the board cost of living increases in Section A – a past practice of the parties. The Union asserts that the College's finances are stable. Furthermore, the College recently settled a labor contract with SEIU that provides for across the board raises of 2.75% this year and again next year. The contract does not include a step-based salary schedule that would offer unit members automatic increases, therefore across the board raises are the Union's only vehicle for keeping up with increases in the cost of living.

#### *Employer Position*

The College offers no pay raises during the term of the contract. The College also proposes eliminating the longevity increases at 8 and 25 years of service. Furthermore, the College seeks to reduce the overload rate in the first year of the contract to \$400 per workload unit and to set the overload rate at \$600 per workload unit in years two and three of the contract. The College asserts that there is simply no money for raises. The personnel and operating budgets have been cut in FY12 by 3.75% (\$2.9 million) in order to begin to address a \$38 million backlog in deferred maintenance. Furthermore, flat enrollment and a reduction in state funding have put the College in the position of having to reduce costs, not simply maintain at the current level. Personnel savings are necessary and only those personnel expenses previously agreed to are included in the budget.

#### *Discussion and Recommendation*

The College's finances are complex. As a state supported institution the College is subject to a variety of constraints and mandates that figure into its definition of financial well-being. The College is ending a State-mandated tuition freeze and projects a 3.5% increase in tuition in both FY12 and FY13. Enrollment is expected to remain flat for the next several fiscal years. The enrollment surge in FY10 is attributed to the surge in unemployment in 2009. As unemployment has settled into a high stable trend, enrollment has settled in correspondingly. Tuition accounts for 57% of the College's revenue. As long as enrollment does not drop precipitously, revenue from tuition may increase slightly, but will essentially remain flat. Stable tuition revenue is offset by a 4.63%

decline in state funding. State funding makes up 37% of the College's revenue. The remaining 6% of revenue comes from other sources such as grants and service fees.

In addition to a typical balance sheet of revenues and expenses, a SB6 composite score measures the College's financial outlook. The SB6 score is a Legislative device used to compare the relative financial health of the State's universities and colleges. The key benchmark on the composite score is 1.75, the statutory threshold for "financial watch." How far above (or below) this threshold an institution scores, is directly related to a combination of ratios involving expenses, debt and revenue against net assets. There are multiple moving parts in a SB6 composite score, and the degree to which the College is willing to tolerate uncertainty from year-to-year drives the assumptions the College uses in setting its target composite score. The College has set its target SB6 score at a minimum of 3.0 for the foreseeable future.

Further impacting the College's immediate financial picture is a decision to begin addressing the College's deferred maintenance needs. Facilities studies in both 2008 and 2011 have lead the College to allocate \$3.5 million of FY12 operating funds to a special plant fund. To achieve this level of fund transfer the College reduced its personnel and operating budget. Looking forward, the College has a multi-year plan to allocate \$4 million, annually through FY17, into deferred maintenance expenses.

Reductions in state funding and flat enrollment present budgeting challenges for the College. However, much of the College's immediate budget constraint is of its own making. Certainly the College has a fiduciary responsibility to balance the needs of its physical assets with the needs of its workforce. When, and at what level, the College decides to tackle deferred maintenance is an internal choice, not an externally imposed mandate. The College has determined to begin its deferred maintenance long-term plan in FY12; some self-imposed belt-tightening to fund the plan is understandable. As of June the College's \$3.5 million allocation for deferred maintenance is a fixed constraint for FY12 – it remains an aspirational target for FY13-FY17. The College can adjust that target slightly in each of the next four years as it works toward its goal while accommodating other fixed costs. The same is true of the SB6 score. Setting the College's score at 3.0 for planning purposes is a target, not a fixed constraint.

The salary data show that fulltime faculty salaries at Cincinnati State are among the top in the State's two-year college sector. Reducing the field of comparables to the College's peer group of community colleges in large metro areas, salaries appear to be average. The data also show that fulltime faculty at Cincinnati State have a heavy workload when compared to other two-year colleges. Among its peer group it has the highest number of instructional days. The College also has

a unique five-term year resulting in four grading cycles annually, as opposed to three in a traditional four-quarter calendar or two in a semester calendar. The current average salary suggests that historically some consideration has been given to the heavy workload as well as perhaps the local labor market. However, faculty salaries are not the highest among similarly situated community colleges and do not appear to be outliers in the labor market. This being so, three years of no increases will likely lead faculty salaries to fall behind the labor market, ensuring that a future adjustment will be necessary, deserved and costly to fund.

In its compensation proposal, the Union is not seeking a costly labor market adjustment. The proposal for across the board raises is to keep pace with the rising cost of living. The Union states that during the unit's history, it has never received across the board raises below 3% per year. That being so and using CPI as a surrogate for inflation, in the past decade the Union has received across the board raises that somewhat outpace inflation, according to the Bureau of Labor Statistics Data presented in AAUP Exhibit 2. Regardless, the cost of living does continue to rise and without step increases the unit relies on annual cost of living adjustments to keep pace.

Asking faculty to support the College's strategic plan regarding deferred maintenance is understandable. Asking them to forego cost of living increases for three years to fund it is another matter. Given the immediate FY12 budget constraints; the unit's slightly above inflation raises in 2008-2010; and the statutory criteria concerning comparables and the Employer's ability to pay, the Fact Finder recommends no increase in the first year of the contract and modest across the board raises in the second and third years to keep pace with projected inflation. In keeping with the past practice of the parties, the Fact Finder also recommends raising the minimum salary for new faculty in Article 8, Section E to reflect across the board raises in the second and third years of the contract.

The College's proposal to eliminate longevity increases at 8 and 25 years of service is a cost savings proposal driven by the budget circumstances of FY12. The parties, as tradeoffs for other economic provisions, negotiated the series of longevity increases provided in the contract. Presumably the structure of the longevity benefit is related to the past elimination of step increases. Changing this key economic benefit without the dynamic of a negotiated tradeoff would undermine the collective bargaining history of the parties. With consideration to the statutory criteria, the Fact Finder recommends retaining current language in Article 8, Section C: Longevity.

Unlike overtime pay, the overload rate is not formula-based. It is a fixed rate established by the parties. Additionally, the College does not require faculty to work overload units as other Employers can require overtime of their employees. When faculty members work overload it is because they have chosen to do so. Both parties propose raising the rate in the second year of the

contract, the College proposes setting the rate at \$600 per workload unit, the Union proposes setting it at \$856 per workload unit. Overload is a significant cost item for the College. Given the cost of other proposals in this report, the Fact Finder is mindful of the Employer's ability to finance the full package of recommendations. Further, overload essentially operates on an "internal labor market" basis. If the rate is attractive, fulltime faculty will accept the additional work; if it is not the work is available to adjuncts. If there are insufficient adjuncts to staff the overload units, the College may find it needs to raise the overload rate to attract fulltime faculty members. For these reasons, the Fact Finder recommends accepting the College's proposal and increasing the overload rate to \$600 per workload unit effective in the second year of the contract.

### **Recommendation**

The Fact Finder recommends: 1.) No across the board raise in the first year of the contract, a 2.75% raise in the second year of the contract and a 2.75% raise in the third year of the contract. 2.) No change in longevity, retain current language. 3.) No change in the overload rate in the first year of the contract. In the second year of the contract the overload rate shall increase to \$600 per workload unit. 4.) Increase new faculty minimum rates by 2.75% in both the second and third years of the contract. Relevant contract provisions shall read in part as follows:

#### Article 8: Compensation

##### A. Current Faculty Members

1. **There shall be no salary increase in the 2011-12 academic year.**
2. **Effective with the beginning of the Fall semester 2012 the base salary of all bargaining unit members shall be increased by two and three quarter percent (2.75%).**
3. **Effective with the beginning of the Fall semester 2013 the base salary of all bargaining unit members shall be increased by two and three quarter percent (2.75%).**
4. (delete)

##### B. (no change)

##### C. (no change)

##### D. Overload, Professors Emeriti, and Retirees

(first paragraph no change)

**Effective with the Fall semester 2012 the overload rate shall be \$600 per workload unit.**

E. New Faculty Members

2011-12 (no change)

2012-13 recalculate table with a 2.75% increase

2013-14 recalculate table with a 2.75% increase

F. (no change)

G. (no change)

3. Article 9: Workload

*Union Position*

1.) The Union seeks to maintain current language in Section A: Work Days, throughout the three-year term of the contract. 2.) The Union proposes that Section B: Workload Units, be maintained as current language in the first year of the contract and in years two and three of the contract be changed to reflect a work year of 180 days and 16 work units per semester capped at a 30 work unit maximum delivered in two semesters. 3.) The Union proposes that Section C: Course Maximums, be maintained as current language in the first year of the contract and in years two and three of the contract be changed to reflect a course maximum of nine sections per year. 4.) The Union proposes in Section G: Workload Unit Assignment, Subparagraph 5, to reduce the workload units pertaining to the Workforce Development Center to 20 per year, in years two and three of the contract. 5.) Section K: Cooperative Education Coordinators, the Union proposes to maintain current language in the first year of the contract and in years two and three of the contract update the language by changing all “term” references to “semester” and referencing 30 workload units in the final sentence. Except as noted above, the AAUP seeks to maintain current language in all other provisions of Article 9: Workload.

In the second year of the contract the academic year will change from terms to semesters. The Union looks to this change as the appropriate time to normalize the faculty’s workload and bring it into alignment with that of other semester-based schools.

*Employer Position*

The College proposes 1.) increasing the number of work days to 220 in Section A, effective for all three years of the contract. 2.) Section B: Workload Units, the College proposes establishing a work year of 180 days and 41 workload units per year, effective for the second and third years of the contract. 3.) Eliminating Section C: Course Maximums, effective for the full term of the contract. 4.)

Section G: Workload Unit Assignment, Subparagraphs 4 and 4a effective in year one of the contract the College proposes to eliminate base workload units for certain clinical or practicum responsibilities, and instead provide .33 units per student enrolled. In the same section, in years two and three of the contract, the College proposes reducing the amount to .22 units per student enrolled. 5.) The College proposes eliminating Section G, Subparagraph 5, pertaining to the Workforce Development Center, effective for the full term of the contract. 6.) The College proposes eliminating Section H: Requests for Overload, effective for the full term of the contract. 7.) Section J: Program Chair Duties, the College proposes for the full term of the contract to reduce the base units to two, add an additional unit each time a 40 FTE enrollment threshold is crossed, and eliminate additional units pertaining to “options” and “majors” within a program. In related Appendix 4, Attachment 1, the College proposes in years two and three of the contract to reduce the base units to two per semester for Area Chair responsibilities. 8.) Section K: Cooperative Education Coordinators, effective in year one of the contract the College proposes increasing the work days per year to 220, eliminating other provisions of the section and inserting language that allows the College to assign teaching or other duties if placements for the prior term were under 35. In years two and three of the contract the College proposes raising the placement threshold to 45 as the trigger for assignment of other duties. Except as noted above, the College agrees to maintain current language in all other provisions of Article 9: Workload.

The College’s proposal for Article 9 is to ensure that the academic calendar transition from terms to semesters in the second year of the contract is “cost neutral” for the College. Changes to contract sections that provide work units for various assignments are proposed as small cost savings measures and, in the view of the College, reflect how these work assignments have changed over the years.

#### *Discussion and Recommendation*

The College faces a major organizational change in the second year of this contract when the academic year changes from five nine-week terms to three 15-week semesters. Currently instructional faculty work four of five terms in an academic year. When the change occurs instructional faculty will work two of three semesters in an academic year. All unit members currently work 180 days per year. Instructional faculty work their 180 days within the structure of four academic terms. Non-instructional unit members work their 180 days on a flexible schedule across the calendar year. In addition to work days the bargaining unit’s work is measured in “units” which in some sense equate to instructional contact hours. Currently, the contract establishes the

workload as 16 units per term and 62 units in a four-term academic year. How this workload is converted to semester equivalents is the crux of the dispute. The Union seeks to seize this opportunity to normalize its workload as the College normalizes its academic calendar with other two-year colleges. If other institutions are converting terms and workloads to a standard two semesters and about 30 workload units, why not Cincinnati State? The College argues that the best conversion ratio is that of two-thirds. Two-thirds is the conversion ratio arrived at by the program areas for converting academic course credits from terms to semesters. Two-thirds is the conversion ratio in weeks when converting from 45 instructional weeks in terms to 30 instruction weeks in semesters. To remain a financially viable institution, the workload units must convert at the two-thirds ratio as well. Two-thirds of 62 equals 41. 11 annual units separate the parties. In instructional terms approximately 6 units per semester, or roughly 6 contact hours per semester, which translates to teaching about 2 classes more per semester than faculty are currently teaching (using 3-hour classes as typical).

One further way of comparing proposals and the status quo is to look at the amount of instructional hours delivered. The status quo equates to approximately 16 contact hours per week for 36 annual weeks of instruction yielding 576 instructional hours per year. The Union's proposal equates to approximately 15 contact hours per week for 30 annual weeks of instruction yielding 450 instructional hours per year. The College's proposal equates to approximately 20 contact hours per week for 30 annual weeks of instruction yielding 600 instructional hours per year.

Both parties make valid points about the term-to-semester conversion. It seems apparent that the faculty at Cincinnati State are working a heavier load and delivering more credit hours than counterparts at other two-year colleges. Past efforts to negotiate a reduction in that load have been met with opposition due to the financial impact on the College. A two-unit reduction from 64 to 62 is the sum total of their efforts over 22 years. However, in recognition of the higher workload, faculty have higher salaries than many of the other two-year colleges. Although as noted above, Cincinnati State salaries are not the highest in the State and are average when compared to colleges in other large metro areas. It is also apparent that dropping the faculty workload to 30 units per year puts an undue financial burden on the College. The balance of courses/sections not included in the fulltime faculty workload becomes costly overload units; alternatively the College would need to hire more adjuncts or more fulltime faculty. Realistically as the College says, a combination of the three – overload, adjuncts and fulltime faculty – would be required, costing the College as much as several million dollars beyond the current budget.

The statutory criteria require the Fact Finder to consider comparables. In the past there have been more differences than similarities across the state-supported two-year colleges; comparables were hard to find. Looking forward, because academic schedules and calendars are being normalized to semesters, comparables will be more readily available. This being the case, when semesters are implemented, the parties will have a different collective bargaining landscape. Article 9: Workload, may not be the impenetrable contract provision it once was. At this juncture, it is appropriate to give some consideration to the State's efforts to standardize across all two-year colleges and apply the principle of comparables. Term-to-semester conversion data is available from only half of the two-year colleges. To-date, the data show that most colleges will use 30 contact hours (i.e., "units") as their annual workload. However, even with normalizing the college calendar to semesters, there is no established standard for the workload. The range of workloads is as low as 24 and as high as 32. In addition to comparables, the Fact Finder must also consider the Employer's ability to pay. The Union has not actually disputed that their proposal results in additional costs for the College, only that the figures used by the College are exaggerated and overstate the costs.

The Union cannot expect to transition from the highest workload in the two-year college sector to parity in one fell swoop. Faculty must acknowledge the cost of such a dramatic change. With consideration to both statutory criteria, in the key provision of Article 9, Section B: Workload Units, the Fact Finder recommends maintaining the current workload provision in the first year of the contract. In years two and three of the contract when the College transitions to semesters, the Fact Finder recommends a workload of 36 units over the full three-semester academic year. 36 units approximate the current instructional hours delivered by faculty. 36 units significantly reduces the College's projections of additional costs resulting from the conversion. 36 units will add one or two courses annually to a fulltime teaching schedule. However, faculty will have reduced grading cycles with a semester calendar; faculty will have fewer instructional days (150) within the same number of compensated days (180) allowing formerly uncompensated administrative work to be done during contract work days; and faculty members often voluntarily pick up additional courses as overload, suggesting that an additional course or section in a semester will not be entirely unmanageable.

Both parties propose that instructional staff work 180 days in all three years of the contract irrespective of the term-to-semester change. For approximately 20 non-instructional unit members, working as counselors, academic advisors, librarians and in other non-instructional assignments, the College seeks to increase the number of work days to 220 in a calendar year. The College draws a parallel with a separate AAUP unit at the College where members work 220 days per year and who apparently earn salaries 3.2% higher than those of this unit. The College would adjust the salaries of

the 20 (or so) affected members in this unit by 3.2% as part of its proposal to add 40 work days to their schedule. The two bargaining units are separate for reasons established in the unit certification process. It seems unlikely that the 3.2% salary difference in the other unit is the sum total of the equity tradeoffs it has made in its bargaining history. To suggest that applying that 3.2% factor to a small group of 20 members in this bargaining unit gives equitable consideration for a significant increase in the workdays is unreasonable. The Fact Finder recommends retaining current language in Article 9, Section A: Work Days.

The College seeks to eliminate Article 9, Section C: Course Maximums. The College observes that introduction of the language has not actually reduced the number of courses that faculty teach, simply ensured that the College pays the overload rate for courses faculty have shown a willingness to teach. The Union seeks to retain current language noting the strain on faculty members who teach three-hour courses. On this matter, the Fact Finder gives consideration to the bargaining history of the parties and recommends retaining the language and adjusting the course maximum to accommodate the workload unit recommendation above. Whether the contract section will continue to add value with this adjustment remains to be seen.

On the remaining College proposals in Article 9: Workload, the Fact Finder defers to the bargaining history of the parties. These contract provisions providing additional compensable units for various work assignments have been negotiated between the parties based on bargaining evidence and/or tradeoffs. Therefore, to undo these provisions bargaining is the best avenue. If the change to semesters brings change to the fundamental structure of these jobs and assignments let the parties bring that evidence to the bargaining table. The Fact Finder recommends retaining current language in all other sections of Article 9: Workload and Appendix 4, Attachment 1. except for Section G: Workload Unit Assignment, subparagraph 5. The Fact Finder recommends adopting the Union's proposal, and in Section K: Cooperative Education Coordinators, subparagraph 1 the Fact Finder recommends that the 180 work days be worked over the full academic year.

### **Recommendation**

The statutory criteria require that the Fact Finder be guided by past contracts of the parties and their bargaining history, available comparables, and the Employer's ability to finance provisions of the contract. In light of these requirements the Fact Finder makes the following recommendations. 1.) Retain current language in Section 1, Work Days. 2.) Set workload units at thirty-six (36) units in a 180-workday academic year, effective Fall of the 2012-13 academic year. 3.) Set course maximums at six (6) in a semester, effective Fall of the 2012-13 academic year. 4.) Reduce

workforce development units to twenty (20) in Section G, subparagraph 5, for the full term of the contract. 5.) Establish 180 work days in Section K over the academic year rather than specified semesters. 6.) Retain current language in all other sections of Article 9: Workload. Relevant contract language shall read in part as follows:

Article 9: Workload

A. no change

B. Workload Units

(Retain current paragraph for year one of the contract and add the following paragraph.)

**Effective Fall of the 2012-13 academic year, the workload for each member of the bargaining unit whose work is measured in units shall not exceed a maximum of thirty-six (36) distributed over 180 workdays in an academic year unless agreed upon by the faculty member. Compensation for units which cause the faculty member's load to exceed thirty-six (36) units per year shall be paid at the end of the academic year provided such units have not been previously paid as overload.**

C. Course Maximums

(Retain current paragraph for year one of the contract and add the following paragraph.)

**For faculty members whose workload is based on course counts, the maximum number of courses that any instructor may be assigned shall be six (6) per semester. If a faculty member agrees to assume additional faculty responsibilities over and above the six courses, those courses (or those units above six courses) shall be compensated as overload, such compensation to be due and payable within the semester in which it was incurred.**

D. No change

E. No change

F. No change

G. Workload Unit Assignment

1 – 4 no change

5. In recognition of work performed by fulltime faculty concerning curricula, for credit course offerings, and other matters related to the College's Workforce Development Center, the College will assign **twenty (20)** workload units per year. The Faculty Senate and the Executive Director of the Workforce Development Center shall collaborate in the assignment of these units.

H. No change

I. No change

J. No change

K. Cooperative Education Coordinators

1. Cooperative Education Coordinators will work 180 days during four of the five academic terms in **the 2011-12 academic year. Effective Fall of the 2012-13 academic year Cooperative Education Coordinators will work 180 days over the full academic year.**

Said days to be arranged by the Dean in consultation with the faculty member. Workdays may be assigned between **terms/semesters**, and time off provided during **terms/semesters**. To identify their **time** “off,” cooperative education coordinators shall consult with their Deans or Dean’s designee by June 1 of each year, as provided in Paragraph F of this Article.

Appendix 4, Attachment 1 – no change

#### 4. Article 10: Electronically Purveyed Methods of Instruction

##### *Union Position*

The Union seeks to retain the Article on the grounds that it continues to be relevant and is of benefit to its members.

##### *Employer Position*

The Employer proposes deleting the entire article on the grounds that its intended purpose – an incentive to faculty to support the Colleges’ goal to provide more distance learning opportunities for students – is no longer relevant. Distance learning and the use of EPMI are, *de rigueur*. The provisions of the Article actually act as a disincentive for the College to work with faculty on developing EPMI because less expensive alternatives can be purchased from vendors.

##### *Discussion and Recommendation*

The College acknowledges that this proposed change is not about cost savings. The College provided witness testimony indicating that currently this is not a large cost item for the College, although it could grow in the future. The Union opposes elimination of the article because it provides copyright, intellectual property rights and royalty protections for its members.

The language of this article was bargained several contracts ago. The workload units that were originally included were eliminated in a successor agreement. The contract language that remains is descriptive but not constraining and establishes property rights that are of benefit to unit

members without being costly to the College. Presumably when the College purchases EPMI courses on the open market, vendors have considered the value of their property rights in the pricing of, and/or licensing agreements for, their products. To this Fact Finder, it seems appropriate for faculty to have some similar consideration. If the provisions of the Article are to change, it is best handled in negotiations where the parties can fully explore the ramifications.

### **Recommendation**

With consideration given to the bargaining history of the parties and past agreements, the Fact Finder recommends retaining current language in Article 10: Electronically Purveyed Methods of Instruction.

#### 5. Article 11: Benefits

##### *Union Position*

The Union seeks to retain current language throughout the Article. Specifically, the Union proposes that the current level of premium sharing between the parties established in Section F: Health Insurance, Prescription Drug Plan, Dental Plan, Short-Term Disability Plan and Vision-Care Plan, be maintained for all three years of the contract.

##### *Employer Position*

The College has multiple proposals pertaining to Article 11: Benefits, Section F: Health Insurance, Prescription Drug Plan, Dental Plan, Short-Term Disability Plan and Vision-Care Plan.

- 1.) The College seeks to delete the reference to a specific health insurance provider and eliminate specific co-pay dollar amounts from the contract.
- 2.) Annually throughout the term of the contract, increase the premium sharing between the parties as follows: 90%/10% in year one, 88%/12% in year two, 86%/14% in year three.
- 3.) The College also seeks new language in this section that would establish an incentive for the parties to actively manage their health insurance inflation rate by establishing a 5% premium inflation threshold over which the parties would split the cost of any premium increase 50/50 until changes to the plan bring the costs back under the 5% threshold.
- 4.) The College proposes reducing health insurance bi-weekly waiver payments as follows: the single waiver is reduced to \$131.22, the family waiver is reduced to \$354.29, and the single in lieu of family waive is reduced to \$223.07.
- 5.) During the course of the fact finding hearing, the College withdrew its proposed Joint Benefits Committee language.

*Discussion and Recommendation*

The Union frames its proposal as one of equity. The AAUP acknowledges that premium sharing is to be expected given the trends in the health insurance market, but looks to be treated fairly within the College. The Union views its relative position in comparison to the recent provisions negotiated with SEIU and seeks to maintain parity with that unit. The Employer frames its proposal as one of necessary cost savings and easing the administrative burden of managing the college-wide benefits program. For the College, it is a significant challenge to maintain adequate negotiating leverage with insurance providers when tied to specific (and different) contract language in each of its collective bargaining agreements. Furthermore, with healthcare inflation trending higher than overall inflation for the past decade it is reasonable to expect premium sharing at the College to rise faster than 1% every three years.

The Fact Finder recognizes the importance of this key economic provision for both the College (i.e. the plan sponsor) and unit members (i.e., plan enrollees). The consequences can be quite serious for both if costs are not aggressively managed. It is critical for a plan sponsor to have adequate flexibility when crafting a benefit plan and when reviewing offers from vendors. Given that health insurance providers annually recalculate premiums based on claims experience, identifying a particular health insurance provider in the language of a three-year collective bargaining agreement can prevent a plan sponsor from finding a more competitive vendor.

Both parties express interest in using the joint benefit committee structure for dealing with the complex issues of health insurance plan design. However, given current contract language there is little incentive for the Union to do so. Currently, all health insurance inflation is born by the College. The College's proposal to insert a form of inflation stop-gap language in the contract is one way to address the concern. However, the proposed language simply substitutes one type of administrative complexity for another. Such language would be unique among the Colleges' collective bargaining agreements and would allow the College to pass along inflationary costs to AAUP plan enrollees but not to plan enrollees in other units. As an internal comparable, the Fact Finder notes that the SEIU contract (the AAUP's point of reference for equity purposes) does not specify co-pay provisions. Aligning the AAUP contract with the SEIU contract in this respect would be a step closer to true comparability, rather than adopting a stop-gap provision that would amount to a step further into differentiation among the College's labor agreements. Adopting the College's proposal to eliminate references to a specific health insurance provider and specific co-pay amounts

is consistent with statutory criteria requiring the Fact Finder to consider both internal comparables and the Employer's ability to effectively administer collective bargaining provisions.

The fact that SB5 is looming on the horizon is no reason to increase the Union's premium share to 14% or 15% in one contract. If it comes, it comes; we need not rush it. However, a modest increase in the employee's contribution to the premium cost is not unreasonable. Any way you slice it, the College offers a very decent benefit: as compared to all public colleges and universities in Ohio, as compared to all Ohio community colleges, and as compared to its peer group of two-year community colleges in large metro areas. Again, the statutory criteria requiring that the Fact Finder consider comparables, both internal and external, leads the Fact Finder to believe that an increase in the premium share for the Union is appropriate.

As for opt-out waiver amounts, it makes sense to adjust them to ensure that they do not have an adverse impact on the College's risk pool. If they are too rich a benefit, healthier unit members will opt for the cash, leaving less healthy unit members to enroll in the College's plan, thereby driving up claims experience and in-turn premiums. Waiver amounts should be part and parcel of the work of a college-wide committee. Rather than changing them, by \$4 or \$5 for this unit alone (reflecting incremental change in the premium sharing percentage) they should be left as is until a serious analysis is done and data is available to judge whether the waivers serve their intended purpose and at what dollar amount they make the most sense. Setting these rates is as much a function of market value as it is the premium sharing structure.

### **Recommendation**

Given the complex nature of college-wide health insurance plan administration, the economic realities of the health insurance industry, and fact finding statutory criteria, the Fact Finder recommends the following: 1.) Increase the Union's share of the health insurance premium by 2% effective January 1, 2013. 2.) Waiver amounts shall remain at current levels. 3.) New language in Article 11(F)(1)(a) eliminating references to a particular vendor and eliminating specific co-pay dollar amounts is adopted from the College's proposal. 4.) All other proposed language changes concerning health insurance are rejected and current language will be maintained. Relevant contract language shall read in part as follows:

Article 11: Benefits

F. Health Insurance, Prescription Drug Plan, Dental Plan, Short-Term Disability Plan and Vision Care Plan

(opening paragraph, no change)

1. (no change)
  - a. **94% of the cost of the current health insurance plan, or a roughly comparable plan. 92% of the cost of the health insurance plan, effective January 1, 2013.**
  - b. – e. (no change)
- (no change through the remaining paragraphs of subsection 1)
2. Health and Wellness Program – (no change)
3. Open Enrollment – (no change)

#### 6. Article 12: Severance of Employment Contract

##### *Union Position*

The Union seeks to retain current language.

##### *Employer Position*

The College proposes in Section D: Reduction in Force, to eliminate subparagraph 1. Thereby allowing the College to layoff fulltime faculty and retain adjunct faculty. The College seeks this change to allow greater flexibility to staff a program area that may no longer warrant a fulltime faculty, or when an adjunct faculty member has specific skills or program knowledge not found in the fulltime faculty of the affected program area.

##### *Discussion and Recommendation*

The burden rests with the College to establish a truly compelling case to change reduction in force provisions of a collective bargaining agreement. There was very little information presented at fact finding to suggest that the College's need for this proposed change is great. Layoff should be a last resort for any employer. No doubt some small efficiencies could be achieved if fulltime faculty could be laid off and adjuncts retained in programs where enrollment is low. However, restructuring or consolidating low enrollment programs might also achieve efficiencies. These are the types of contract provisions that benefit from negotiated settlements allowing the parties to fully explore the upsides and downsides of how proposed language would be operationalized.

#### **Recommendation**

With consideration given to the bargaining history of the parties and past agreements, the Fact Finder recommends retaining current language in Article 12: Severance of Employment Relationship.

## Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the Fact Finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 12<sup>th</sup> day of September 2011.



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Felicia Bernardini,  
Fact Finder

## CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail and First Class USPS Mail on September 12, 2011 to:

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