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STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING	:	SERB Case Number: <del>11-MED-102604</del>
	:	<b>11-MED-04-0604</b>
BETWEEN	:	
	:	
<b>YOUNGSTOWN STATE UNIVERSITY,</b>	:	Bargaining Unit: Full-Time YSU Faculty
	:	
Employer	:	
	:	
AND THE	:	Dates of Hearing: July 18, 22, and 28, 2011
	:	
<b>YOUNGSTOWN STATE UNIVERSITY</b>	:	
<b>CHAPTER OF THE OHIO</b>	:	
<b>EDUCATION ASSOCIATION,</b>	:	Howard D. Silver
	:	Fact Finder
	:	
Union	:	

FACT FINDER'S REPORT AND RECOMMENDED LANGUAGE

APPEARANCES

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This matter came on for fact-finding hearing at 10:00 a.m. on July 18, 2011 in the Williamson College of Business Administration, Youngstown State University, One University Plaza, Youngstown, Ohio 44555. The hearing continued on a second day, July 22, 2011, and concluded on a third day, July 28, 2011. At the hearing, both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions.

This fact-finding process has proceeded under the authority of Ohio Revised Code section 4117.14 and in accordance with rules adopted by the Ohio State Employment Relations Board, including Ohio Administrative Code rule 4117-9-05.

#### RECOMMENDATION OF ALL TENTATIVELY AGREED ARTICLES

The fact finder recommends all of the Articles tentatively agreed by the parties for inclusion in their successor collective bargaining agreement. The Articles tentatively agreed for inclusion in the parties' successor Agreement are as follows:

Article 1 - Preamble

Article 2 – Recognition and Scope of Unit

Article 3 – Term of Agreement

Article 5 – Insurance Benefits – Sections 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9, 5.11, and 5.12

Article 6 – Sabbaticals and Faculty Improvement Leaves

Article 8 – Grievance Procedure

Article 9 – The Academic Environment

Article 10 – Tenure

Article 11 – Non-Reappointment of Non-Tenured Faculty

Article 12 – Corrective Action and Termination for Cause

Article 13 – Retrenchment of Faculty

Article 14 – Faculty Evaluation

Article 15 – Promotion in Faculty Rank

Article 16 – Workload Activities

Article 17 – Personnel Files

Article 18 – Academic Freedom

Article 20 - Students

Article 21 – Retained Rights

Article 22 – Association Rights

Article 23 – Dues Deduction and Fair Share Fee

Article 24 – Administration-Association Relations

Article 25 – Separability

Article 26 – Academic Workplace Environment, with exception of Parking

Article 27 – Faculty Development and Research

Article 28 – Teaching Rights and Responsibilities

Article 29 – Miscellaneous

Article 30 – Types and Duration of Contracts

Article 31 – Distance Learning

Appendix A – Definitions

Appendix B – Retrenchment Matrix

Appendix C – Faculty Tasks, Duties, and Assignments

Appendix D – Allocation of Intellectual Property Rights (deleted, moved to Article 27)

## UNRESOLVED ARTICLES

The Articles that remain unresolved between the parties are as follows:

### Article 4 – Section 4.1 – Salary Minima for Rank

- Section 4.2a – Salary Increases
- Section 4.2d – Market-Based Salary Equity Adjustments (delete, add Internal Department Equity Adjustment)
- Section 4.3 – Promotion
- Section 4.5 – Summer Assignments

### Article 5 – Section 5.1 – Summary of Coverage

- Section 5.1a – Premium Sharing
- 5.1b – Office Visit Co-Pay
- 5.5 – Prescription Coverage
- Coordination of Spousal Benefits

### Article 7 – Section 7.2.2 - Consecutive vs. Concurrent FMLA – Maternity Leave

- Section 7.2.3 – Consecutive vs. Concurrent FMLA – Parental Leave
- Section 7.2.4 – Consecutive vs. Concurrent FMLA – Professional Leave with Pay
- Section 7.3.2(c) – Payment of Employee Contribution During Leave for Extended Illness or Disability

### Article 19 – Section 19.2 – Sick Leave Conversion to Article 16, Section 16.2

### Article 19 – Section 19.6 – to Article 16, Section 16.6, ETS: Duration, Pay, and Duties

### Article 23 – Academic Workplace Environment – Section 23.5 - Parking

## FINDINGS OF FACT

1. The parties to this fact-finding process, Youngstown State University, Youngstown, Ohio, the Employer, and the Youngstown State University Chapter of the Ohio Education Association, the Union, engaged in good faith bargaining in 2011 about a successor collective bargaining agreement.
2. The most recent (current) collective bargaining agreement between the parties is effective through August 17, 2011.
3. This fact-finding procedure addresses a bargaining unit comprised of full-time faculty employed by Youngstown State University, a bargaining unit of about 428.
4. Youngstown State University in Youngstown, Ohio is a public employer pursuant to Ohio Revised Code section 4117.01(B).
5. The Union is the exclusive representative of the bargaining unit pursuant to Ohio Revised Code sections 4117.01(E) and 4117.05.

## DISCUSSION AND RECOMMENDED LANGUAGE

### Article 4 – Salaries, Salary Increments, and Rates of Pay

Both parties have suggested changes to the language of Article 4 within the collective bargaining agreement now in effect between Youngstown State University, the Employer, and the Youngstown State University Chapter of the Ohio Education Association, the Union. The parties' current Agreement is in effect from August 18, 2008 through August 17, 2011. Article 3 of the parties' current Agreement, in section 3.2, provides that on or before January 15, 2011,

either party may notify the other that it wishes to renew or modify the Agreement, in which case the parties shall meet no later than March 1, 2011 to negotiate a successor Agreement.

The changes to the language of Article 4 proposed by each of the parties affects directly the operational costs required of the Employer during the term of the parties' successor three-year Agreement. The costs attributable to changes proposed in such areas as salary minima by rank, salary increases, internal department equity adjustments, promotions, and summer assignments (a decrease in summer instruction compensation proposed by the Employer), in conjunction with other costs proposed by the parties for the successor Agreement to be apportioned between bargaining unit members and the Employer, raise a fundamental issue underlying these and other monetary proposals - the public employer's ability to fund and administer that which has been proposed. This consideration is made mandatory by Ohio Revised Code section 4117.14(G)(7)(c) and Ohio Administrative Code rule 4117-9-05(K)(3). An ability to fund the costs proposed is considered among a variety of variables, including revenue from tuition and fees, revenue from state of Ohio funding, operating expenses, and capital expense requirements.

Determining the present financial circumstance of the Employer, Youngstown State University, calls for a consideration of audited financial statements covering fiscal years 2006 through 2010, and demands a consideration of the budgets projected by the Employer for each of the three years of the successor Agreement. Also considered are local, regional, state, and national economic trends, complicated by the uncertainty arising from future ballot initiatives that will determine collective bargaining rights and public health care coverage in Ohio, but only after the fact-finding procedure herein has concluded. The outcomes of these important electoral events cannot be known at this time and the inability to know the future serves to increase

uncertainty in planning for the three years of the successor Agreement, (presumably) from mid-August, 2011 through mid-August, 2014.

The fact finder has been blessed with very expert witnesses who testified about the past, present, and future financial circumstances of Youngstown State University, in particular, how those financial circumstances relate to the reductions in operating expenses proposed by the Employer and the increases in operating expenses proposed by the Union. These witnesses were entirely credible, very persuasive in their opinions expressed at the hearing, and their testimony has been accorded substantial weight by the fact finder in reaching his conclusions in this proceeding.

While the witnesses presented by the parties on the financial condition of Youngstown State University were entirely credible, each witness focused on a different aspect of the Employer's financial circumstance. Not surprisingly, the Employer, who is responsible for funding and operating the University over the three years of the successor Agreement, looks forward, and makes decisions based on the assets available for operations and capital development, and meeting the increasing costs of operating a large, distinguished, expanding, metropolitan university. The Employer presented the budget for the first fiscal year of the successor Agreement and presented projected annual budgets for the second and third years of the successor Agreement.

Just as understandably, the Union does not rely on the budgetary decisions of the Employer but looks at what can be known reliably about the financial circumstance of Youngstown State University. In this regard the Union refers to audited financial statements that present the audited assets and liabilities of Youngstown State University over the past five years,

a description that has been confirmed as accurate by an independent auditor. These audited financial statements do not present projections about the future.

Without entering too deeply into the thicket of the financial history of Youngstown State University and the variables affecting the university's budget for the next three fiscal years, the fact finder simply finds that the financial situation of the Employer is stable, and with one notable exception, this stability has been attained through the application of generally accepted principles of financial and operational management.<sup>1</sup> The University not only maintains a learned and diverse full-time faculty numbering over 425, it is a major employer in a city that has struggled economically. Youngstown State University is developing property within the city of Youngstown with the intention of enhancing the University experience while encouraging private development in the areas developed by the University.

The audited financial statements of Youngstown State University show a public employer with annual operating expenses exceeding 200 million dollars. See also Union Exhibit 15, page 1. These financial statements show a public employer who adapted to a substantial lowering of state of Ohio annual funds, a reduction of eight million dollars in 2010, through a one time application of ARRA (American Recovery and Reinvestment Act) federal stimulus money in the amount of 6.7 million dollars. With what remained of the state funds received by the University in 2010, the total federal/state funding was slightly more than what had been the state of Ohio's funding amount in 2009. The University's operating budget was maintained in 2010 but only through the one time infusion of ARRA federal money. This money is not available to Youngstown State University in the coming fiscal year, nor is such money expected either from the federal government or the state government in the amount received in 2010 during the three

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<sup>1</sup> The exception is the failure to maintain a health care costs reserve. The absence of such a reserve puts at risk both parties.

years of the successor Agreement. This presents an expected substantial decline in state funding, requiring the University, as a community, to bear a greater burden in providing the resources necessary to operate this expanding institution of higher learning.

The University has responded to the expected drop in public funding by encouraging enrollment such that an expected increase of at least one percent is expected (budgeted for) in the first year of the successor Agreement, and a 3.5% increase in student tuition and fees has been ordered. These increased costs imposed upon students are necessary if University operations are to continue at present levels.

Because the fact finder believes that local, regional, and state economies are still recovering from a deep recession, and because Youngstown State University faces a 1.67 million dollar operating deficit in the coming year, the fact finder is inclined to tread lightly among long-standing circumstances between the parties. The fact finder requires substantial grounds for recommending alterations to current contract language proposed by either party. The fact finder finds the present stable financial circumstance of Youngstown State University to be of great value to all, and considering the downturn in state funding and the increased burdens required of students in tuition and fees, the fact finder is persuaded that incremental changes at this time are preferred. Only when there are clear and convincing reasons to alter what has been a very effective and collegial working relationship between the parties is a change to be recommended.

The fact finder notes that the bargaining unit members in this case operate in a role that is different to that which they are accustomed in their academic lives, where greater control in matters of policy is exercised.

In the case herein the bargaining unit members operate in the role of employees, and the division between what is within the control of the Employer and what is within the control of the

Union applies. The argument from the Union to the effect that University accounts could be managed differently so as to provide more than enough money to cover the increased costs proposed by the Union presents a policy position that is clearly reasonable but emanates from a party that exercises no control over decision-making about expending the resources of the University, a management prerogative reserved to the Employer.

The fact finder notes that under the parties' current collective bargaining agreement, bargaining unit members received annual salary increases of 6.1% in 2009, 3.5% in 2010, and 3.8% in 2011. There is no evidence in the record of a reduction in staff, hours, or pay suffered by bargaining unit members during the term of the current Agreement, from August 18, 2008 through August 17, 2011. The pay raises received during these years stand in contrast to the experience of many workers in the public sector who during this period were laid off or agreed to give back work through furlough days and/or agreed to shoulder increased expenses to reduce employer costs.

The Union rightfully points out that the wage increases that occurred during a major recession resulted from negotiations that occurred in early 2008, at a time when the coming recession had not been projected.

A similar uncertainty exists now as to the economic condition of the University, its surrounding community, and the state of Ohio over the three years of the parties' successor Agreement. The fact finder adopts a conservative approach amid such speculation, believing that what is being experienced now and has been experienced over the past year is likely to continue at least over the next two years, without dramatic increases or decreases in the resources available to the University or in the expenses required by the University to operate at present levels.

With the above as background, the fact finder turns to the proposals of the parties.

The Union proposes a change to Article 4, section 4.1-Salary Minima for Ranks. This Article provides that there are four ranks among full-time teaching faculty - professor, associate professor, assistant professor, and instructor. For each rank a salary minimum is presented for a nine-month contract. The Union proposes that these salary minima by rank be increased by one percent in the second and third years of the successor Agreement.

The Employer opposes the suggested increases in salary minima by rank.

The fact finder notes that a professor's minimum salary in the 2008-2009 nine-month school year was \$71,330; for the 2009-2010 nine-month school year the minimum moved to \$73,470; and for the 2010-2011 nine-month school year the minimum moved to \$75,674. The increase in salary minima by rank from 2008-2009 to 2009-2010 was three percent; the increase from 2009-2010 to 2010-2011 was three percent.

The full-time faculty members who make up the faculty bargaining unit at Youngstown State University earn their salaries and deserve more. The issue in this case is not how much the fact finder would like to pay the faculty but how much is available for these payments and whether there are resources and grounds to increase the present level of this compensation. The fact finder sees no reason to decrease the salary minima for the ranks of the full-time faculty and the fact finder finds no reason to increase the most recent salary minima, the salary minima presented in the parties' current collective bargaining agreement for the 2010-2011 school year for professor, associate professor, assistant professor, and instructor. The fact finder recommends that the salary minima for ranks remain unchanged for the three years of the parties' successor Agreement.

As to salary increases proposed by the Union and opposed by the Employer, the Union proposes for the three years of the successor Agreement zero, one percent, and two percent increases in salaries among the bargaining unit members, with a five hundred dollar payment with the one percent salary increase during the second year of the successor Agreement, and a five hundred dollar payment with the two percent salary increase in the third year of the successor Agreement.

The fact finder recommends the percentage salary increases proposed by the Union for the three years of the successor Agreement but without the \$500 lump sum payments proposed by the Union and without the rank increases proposed for the first year of the successor Agreement. The zero pay raise for the first year of the successor Agreement reflects the bargaining unit's intention to do its part in meeting an operating deficit. The one and two percent annual increases during the second and third years of the successor Agreement are modest, and at these levels fundable and reasonable.

The fact finder acknowledges the increased costs recommended by the fact finder for the salary increases during the latter two years of the successor Agreement. The fact finder, however, does not recommend the language proposed by the Union for a market-based salary equity adjustment, nor does the fact finder recommend an increase in the value of promotions under the collective bargaining agreement as proposed by the Union, nor does the fact finder recommend increases in longevity, whether in rank or at the University. The fact finder does not recommend the changes proposed by the Union to the STRS pick-up language in Article 4, section 4.2, and does not recommend new payments in departmental and college travel expenses.

As to compensation for teaching during the summer, three months of instruction outside of the nine-month teaching contract for the regular school year, the faculty has been paid under a

formula that multiplies .0375 times the number of credit hours taught during the summer session times the base salary of the faculty member. The Employer has recommended that this formula's .0375 multiplier be reduced to .0225, a reduction of forty percent. The Employer argues that the Youngstown State University faculty who teach during the summer are paid at a much higher rate than is paid by other colleges and universities in the region.

The faculty has proposed a reduction in the .0375 multiplier to .0360, a reduction of four percent.

The hearing record presents clear and convincing evidence showing that summer school instruction at Youngstown State University produces revenues to the benefit of the University in excess of what is required to be expended in compensating the summer faculty and providing the facilities used in the provision of summer instruction. Youngstown State University faculty members who teach during the summer session are paid more than other similarly situated faculty members at colleges and universities in the region who teach during the summer. The compensation formula for summer teaching at Youngstown State University has been in place at its present level for more than three decades.

The fact finder understands that reducing by 40% the compensation paid to the faculty who teach during the summer session would reduce costs to the University and would increase the resources that are secured by the University through summer instruction. The fact finder, however, does not find sufficient grounds to recommend a reduction in compensation of that size for summer instruction engaged in by seventy percent of the faculty and paid the same way for more than thirty years. The fact finder recommends that summer assignments be changed as proposed by the Union, with the .0375 multiplier reduced to .0360.

Recommended Language

Article 4 – Salaries, Salary Increases, and Rates of Pay

Section 4.1 – **Salary Minima for Ranks:** There shall be four (4) ranks among the full-time teaching faculty. For the life of the 2011-2014 Agreement, each rank shall have a salary minimum for 9-month contracts as follows:

Professor – \$ 75,674

Associate Professor – \$ 64,215

Assistant Professor – \$ 51,238

Instructor – \$ 38,689

Section 4.2a – **Salary Increases:** Each continuing member of the bargaining unit shall receive a salary increase for the second and third academic years within the term of this Agreement.

For the 2012-2013 academic year, the increase shall be the following:

- (a) 1.0% of the 2011-2012 base salary

For the 2013-2014 academic year, the increase shall be the following:

- (b) 2.0% of the 2012-2013 base salary.

Salary increases are subject to the salary minima provided by Article 4.1.

Section 4.2b – **STRS “Salary Reduction Pick-Up”** – Retain current language.

Section 4.2c – **Alternative Retirement Program (ARP)** - Retain current language.

Section 4.2d – **Market-Based Salary Equity Adjustments/Internal Department Equity Adjustments** – Not recommended

Section 4.3 – **Promotion:** During the term of this Agreement, each person who is promoted in academic rank shall receive a salary increase as follows:

For promotion from Assistant Professor to Associate Professor: \$3600

For promotion from Associate Professor to Professor: \$5100

Section 4.4 – **Distinguished Professorship Awards** - Retain current language.

Section 4.5 – **Summer Assignments** – Retain current language except change .0375 multiplier (found in two places in Section 4.5) to .0360.

Sections 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, and 4.12 – Retain current language.

#### Article 5 – Insurance Benefits

Both parties have presented proposals that would alter Article 5, an Article that addresses health insurance coverage and benefits, and apportions between the parties, the Employer and the bargaining unit members who avail themselves of single or family health care coverage, the costs necessary to providing health care insurance coverage to bargaining unit members and their families.

The two proposals presented by the parties for Article 5 are not identical but they are not greatly dissimilar. The Employer proposes a single PPO plan, SuperMed Plus – Option 1, and would require a bargaining unit member to bear fifteen percent of the monthly health care coverage premium and increased costs for prescription drugs.

The Union proposes using SuperMed Plus-Option 2. While there are differences in the prescription drug coverage and slight differences in co-pays, the differences between the two proposals are not great. Perhaps the biggest difference is the wellness programming proposed by the Union.

All of the staff of the University, exempt and non-exempt, are to be covered in one pool for health care insurance coverage, a circumstance that allows risks to be spread among a larger

group of people and offers economies of scale. There is value in administering a larger pool of coverage and the University's plan in this regard is favored.

The fact finder recommends the Employer's proposal on health care insurance coverage, including the language proposed by the Employer in Summary of Coverage in section 5.1, premium sharing at 15% in section 5.1a, office visit co-pays as described in section 5.1b, and prescription drug coverage as described in section 5.5.

The fact finder is cognizant of the increased costs to bargaining unit members recommended herein and understands that any increased financial burden is difficult. The fact finder, however, views health care coverage as an essential benefit that has become a very expensive benefit that continues to increase in cost substantially annually. Bargaining unit members who avail themselves of health care coverage under their collective bargaining agreement are being asked, reasonably, to shoulder more of the costs necessary to providing this very valuable and increasingly costly coverage for bargaining unit members and their families.

The fact finder reminds the bargaining unit members that health care costs have been increasing annually by double digits for years, and what had been, in the 1980s, a relatively small cost item has become a cost item that consumes an increasing portion of a public employer's operating budget. The significantly higher premiums to be paid for health insurance coverage require an increase in the burden to be carried by employees in paying for this coverage. Eighty-five percent of these large and yearly increases in monthly premiums are still to be paid by the Employer. The fact finder finds such an arrangement reasonable, fair, necessary, and proportionate to what other employees in the public sector are expected to contribute for their health care coverage.

An issue raised by the Employer addresses how spouses of bargaining unit employees are treated when the spouses have access to a different health care coverage plan. It appeared at the hearing that both parties desired a coordination of benefits among qualifying spouses of bargaining unit members who have access to alternative health care coverage. The fact finder favors such an approach but does not make a formal recommendation of such a change. This reluctance on the part of the fact finder is grounded in the history of language on spousal benefits between the parties. The parties agreed to “loose” language in 2006 but removed this language from the parties’ current Agreement. Now spousal benefits language is proposed for inclusion in the parties’ successor Agreement. See Employer’s Exhibit Z-9. The fact finder believes this case to be sufficiently complicated without adding to the mix the language to be used in the coordination of spousal benefits. The fact finder believes that such a coordination of benefits can be achieved through a process that respects all parties and the fact finder believes that such a provision would benefit both parties to this fact finding. The fact finder, however, leaves to the parties the language they can agree to in this regard. The fact finder does not recommend language in this regard so as to allow an acceptance of the language recommended by the fact finder without requiring an agreement on the language recommended by the fact finder as to the coordination of spousal benefits.

The fact finder does recommend the retention of the language of Article 5, section 5.10, the language that establishes a health care advisory task force. If solutions to the very high costs of health care coverage are to be found, they will be discovered through the cooperative efforts of the parties

Recommended Language

Article 5 – Insurance Benefits

Section 5.1 – **Summary of Coverage** – [Language necessary to describe Employer’s proposal on health care coverage, SuperMed Plus – Option 1.]

Section 5.1a – **Premium Sharing**: For the duration of the Agreement, members of the bargaining unit who choose to enroll in one of the health insurance plans offered by the University will contribute 15% of the monthly premiums for a family plan or 15% of the monthly premiums for a single plan as health insurance premium sharing.

Section 5.1b – **Office Visit Co-Pay**: For the duration of the Agreement, the co-pay for office visits will be \$15.00 per visit. Office visits exempt from co-pay shall remain exempt for the duration of the Agreement.

Sections 5.2, 5.3, and 5.4 – Tentatively agreed.

Section 5.5 – **Prescription Coverage**: Effective January 1, 2011, the University will maintain a prescription drug program, subject to the following:

1. For retail generic drugs, the employee’s co-payment shall be \$10.00 for a thirty-day supply.
2. For retail brand-named formulary drugs, the employee’s co-payment shall be \$20.00 for a thirty-day supply.
3. For retail brand-named non-formulary drugs, the employee’s co-payment shall be \$40.00 for a thirty-day supply.
4. For mail order generic drugs, the employee’s co-payment shall be \$20.00 for a ninety-day supply.
5. For mail order brand-named formulary drugs, the employee’s co-payment shall be \$40.00 for a ninety-day supply.
6. For mail order brand named non-formulary drugs, the employee’s co-payment payment shall be \$60.00 for a ninety-day supply.

Sections 5.6, 5.7, 5.8, 5.9, 5.11, and 5.12 – Tentatively agreed.

Section 5.10 – Retain current language.

## Article 7 – Leaves

In addition to sabbaticals and faculty improvement leaves that are addressed in Article 6, an Article tentatively agreed by the parties, in Article 7, bargaining unit members are granted sick leave, maternity leave, parental leave, family and medical leave (FML), leave for extended illness or disability, legal leave, military leave, professional leave, exchange professor leave, political leave, and Association leave in accordance with the provisions of this Article.

The Union proposes the retention of the language of Article 7 unchanged in the parties' successor Agreement.

The Employer has proposed new language for Article 7, in sections 7.2.2, 7.2.3, and 7.2.4, sections that address, respectively, maternity leave, parental leave, and professional leave with pay. In each case, under current contract language, FMLA leave may be used consecutively with other leaves. The Employer proposes adding language that would make FMLA leave usage concurrent with the use of other leave and thereby reduce administrative requirements and costs while still providing all leave benefits guaranteed to bargaining unit members.

The fact finder finds nothing illogical or mistaken in the arguments put forward by the Employer in support of making FMLA leave concurrent rather than consecutive with other leave usage. The Employer pointed out at the hearing that such an arrangement is legal and argued that FMLA leave is intended for workers who have no access to leave otherwise, and was not intended to provide additional leave to workers who have a substantial paid leave benefit package.

Because of uncertainty facing both parties as to the economic and financial circumstances to be faced during the three years of the parties' successor Agreement, stasis, maintenance of an equilibrium, a preservation of the *status quo*, especially a *status quo* that has continued over the

years, is preferred to changes that are not supported by clear and convincing, even compelling, evidence. The bargaining unit has enjoyed not only a paid leave package as expressed in Articles 6 and 7, but for many years has had access to FMLA leave in a consecutive manner rather than a concurrent manner. Because the bargaining unit members are being asked to make concessions in other areas, for example, health care coverage, and because the fact finder finds less than clear and convincing evidence to change this agreed, long-term past practice, the fact finder is not persuaded to recommend the changes proposed by the Employer as to FMLA leave.

As to disability leave, addressed in Article 7, section 7.3.2(c), the current language requires the University to pay the employee's contributions for health, life, and other insurance benefits. The Employer seeks a change such that the employee would pay the employee's contributions, leaving the Employer's contributions to be paid by the Employer. This is a reasonable and necessary change, and the fact finder recommends this change in the parties' successor Agreement.

The fact finder otherwise recommends the retention of current language in Article 7.

Recommended Language:

Article 7 - Leaves

Sections 7.1 and 7.2 - Retain current language.

Section 7.3 – **Unpaid Leaves** - Retain current language except Section 7.3.2(c) which is recommended as follows:

- (c) **Insurance and Retirement:** While a faculty member is on an approved leave of this type, the employee's share of health, life, and other insurance benefits shall be paid by the employee, and the retirement contribution shall be paid as follows:
  - i. The employer's share shall be paid by the University.
  - ii. The employee's share shall be paid by the employee.

## Article 16 – Retirement

The fact finder's conservative approach to changes in the parties' current contractual relationship extends to sick leave conversion expressed in Article 16, Retirement, section 16.2, and also to Article 16, Section 16.6, ETS: Duration, Pay, and Duties. The fact finder is not persuaded that either of these areas, sick leave conversion upon retirement, fifty-two days, or the duration, pay, and duties of ETS faculty need to be changed at this time. This language has served the parties well during the three years of the current Agreement and there is no indication that the language as presently constituted will serve the parties less well during the term of the successor Agreement.

## Recommended Language

### Article 16 – Retirement

Sections 16.1 – 16.9 – Retain Current language.

## Article 23 – Academic Workplace Environment

Article 23 is presented in the Union's pre-hearing statement's list of Articles that had been tentatively agreed by the parties. The Union, at the hearing, presented evidence that Article 23 had been tentatively agreed by the parties on March 17, 2011.

The Employer does not dispute that Article 23 had been tentatively agreed by the parties on March 17, 2011. The Employer points out, however, that its tentative agreement to that Article had been withdrawn. The Employer now seeks a recommendation from the fact finder that parking that is otherwise provided free of charge to bargaining members by the University as expressed in Article 23, section 23.5, be deleted from the parties' successor Agreement as it is a benefit the University can no longer afford to provide.

The hearing record reflects that the University provides about \$531,000 in free parking annually, of which about \$212,000 in free parking is ascribable to faculty bargaining unit members. Summer school faculty also avail themselves of free parking provided by the Employer.

The fact finder believes that he has asked for sufficient sacrifice on the part of the bargaining unit in the recommendation of the health care coverage plan proposed by the Employer, in the very modest salary increases recommended, and the refusal by the fact finder to recommend a number of increases suggested by the Union, even in proposals that are modest in amount. The fact finder, at this time and in the context of these negotiations, intending to encourage the ratification of a successor Agreement, does not recommend a deletion of the parking benefit now enjoyed by the bargaining unit.

As to entering into a tentative agreement and then withdrawing that tentative agreement, the Employer reminds the fact finder that there is a reason it is called a “tentative” agreement as opposed to a “final” agreement. Tentative implies hesitancy, a lack of definiteness, a circumstance that does not allow full reliance.

The Union points out that bargaining requires confidence in promises made, even tentative promises made during the course of negotiations. To be required to keep in mind that a tentative agreement signed by both parties may not be relied upon vitiates the confidence and compromises necessary to reaching a final agreement.

The fact finder does not determine the parking issue on the basis of the tentative agreement that was entered into and then withdrawn. The fact finder recommends the retention of the parking benefit expressed in Article 23, section 23.5 on the merits of the entire package recommended by the fact finder in this case.

The fact finder does not recommend a change to fee remission language in Article 26, section 26.4

Recommended Language

**Article 23 – Academic Workplace Environment**

Sections 23.1 – 23.9 - Retain current language.

**Article 26 – Miscellaneous**

Sections 26.4 – **Fee Remission** – Retain current language.

The fact finder has considered the data presented by both parties as to institutions of higher learning that are claimed to be comparable to Youngstown State University. The parties do not agree on which institutions of higher learning are comparable to Youngstown State University, nor do the parties agree on the metrics to be applied in determining comparability.

The fact finder is not persuaded that the comparable data from either party adds great weight to the evidence of this proceeding. It is difficult to point to another institution of higher learning that actually compares to Youngstown State University. The fact finder has found that looking directly at the past, present, and projected future circumstances of Youngstown State University provides a clearer picture of the public employer, rather than an attempt to find analogs with which to compare the particular history and circumstance of Youngstown State University.

In making the recommendations presented in this report, the fact finder has considered the criteria presented by Ohio Revised Code section 4117.14(C)(4)(e) and section 4117-9-05(K) of the Ohio Administrative Code.

Finally, the fact finder reminds the parties that any mistakes in the language recommended by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

*Howard D. Silver*

Howard D. Silver  
Fact Finder

Columbus, Ohio  
August 9, 2011

Certificate of Filing and Service

I hereby certify that the foregoing Fact Finder's Report and Recommended Language in the Matter of Youngstown State University, Youngstown, Ohio and the Youngstown State University Chapter of the Ohio Education Association, SERB case number 11-MED-10-0604, was filed with the Ohio State Employment Relations Board and served upon the parties via electronic mail this 9<sup>th</sup> day of August, 2011. The Ohio State Employment Relations Board was served at [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us). The following were served electronically as representatives of the parties:

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