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**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NO. 11-MED-05- 0858**

**AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,
CENTRAL STATE UNIVERSITY CHAPTER
and
CENTRAL STATE UNIVERSITY**

FACT FINDING REPORT

**Submitted by John F. Lenehan
April 27, 2012**

TO:

VIA E-MAIL

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FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On February 27, 2012, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of American Association of University Professors, Central State Chapter and Central State University (11-MED-05-0858). The parties mutually agreed to extend the filing of the fact finding report until, April 27, 2012, as provided under the Ohio Administrative Code, Section 4117-9-05 (G). A Fact Finding Hearing was held on April 13, 2012, 10:00 A.M. in The Wesley Room of Central State University's Library, Wilberforce, Ohio. Present for and on behalf of the AAUP-CSU/AAUP were: Donald Mooney, Attorney and Counsel; Becky Ertel, AAUP Chief Negotiator/Associate Professor; Dr. Dave Rubin, AAUP Negotiating Team Member/Emeritus Professor of Biology; Cadance Lowell, President of AAPU Central State Chapter; and, Patricia Johnson Dalzine, Professor of Social Work. Present for and on behalf of Central State University were: Laura Wilson, General Counsel; Dr. Juliette Bell, Central State University Provost and Vice President of Academic Affairs; Dr. Willie Houston, Jr., Associate Vice President for Academic Affairs; Kimberly Manigult, Central State University's Director of Human Resources; and, Dr. Lovette Chinwah, Interim Dean, College of Humanities, Arts and Social Sciences.

During the Fact Finding Hearing an unsuccessful effort was made to mediate the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on April 27, 2012.

A. Description of the Bargaining Unit

The parties are the American Association of University Professors, Central State University Chapter (AAUP or Association) and Central State University (University or Administration). There are approximately one hundred and seventeen (117) employees

in the Bargaining Unit consisting of all full-time faculty members who hold the unqualified rank of Instructor, Assistant Professor, Associate Professor or Professor and for whom instruction and/or professional library work comprise at least 50% of their workload. The unit was certified by SERB in Case No. 84- VR- 04-0314 in 1985.

Central State University is a four- year state university located in Wilberforce, Ohio. In the fall 2011, the University enrolled approximately 2500 full-time students. It is the only publicly supported Black College or University in the State of Ohio. Its mission is: “to academically prepare students with diverse backgrounds and educational needs for leadership and service in an increasingly complex and rapidly changing world”. As an open access institution, the University places special emphasis on programs for pupils who enter with academic deficiencies.

The University prides itself on academic excellence and is recognized by the State of Ohio as a Center of Excellence in Emerging Technology, Fine and Performing Arts and Cultural and Societal Transformation. It houses one of two undergraduate water resource management programs in the country and is one of twenty-three universities in the nation with and ABET (Accreditation Board for Engineering and Technology) accredited program in Manufacturing Engineering. The University’s College of Education is NCATE certified and offers both Baccalaureate and Master Degrees with an emphasis on urban education. The University provides the aforementioned degrees and other degrees in a values based environment focused on excellence in teaching and learning, research and service.

History of Bargaining

The parties have had a collective bargaining relationship since 1985. The current collective bargaining agreement (“Agreement”) was scheduled to expire on August 31, 2011 but was extended ending the resolution of fact-finding. The parties have met approximately nineteen (19) times and have had three (3) mediation sessions. Although they have been able to resolve most issues, three (3) issues or four (4) sections of the contract remain unresolved, specifically Article 10.2, 12.2, 13.2 and 13.3. The crux of each of these issues is shared governance and the proper role of the faculty.

II CRITERIA

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

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

III ISSUES

Issue 1

ARTICLE 10.2 GOVERNANCE OF THE UNIVERSITY

CURRENT LANGUAGE

- 10.2 The Administration recognizes the faculty of the University, vesting in it, subject to recommendations from the Department Chairpersons, Deans of the various colleges and the Provost and Vice President for Academic Affairs and approved by the Board of Trustees, the power to make its own regulations governing the admission and exclusion of students, the courses of instruction to be offered, grading policy, recommendations for degrees, honors, and prizes and other fundamental areas of curriculum and such other matters that may be within its jurisdiction. The faculty will also have the right to input significantly in the

responsibilities for program development, program review, and college reorganization. In any conflict between the University Faculty Handbook and this Agreement, this Agreement will be controlling. The principles of joint effort and shared responsibility are illustrated, but not limited, by the provisions below.

UNIVERSITY'S POSITION

The University has proposed that the foregoing language of Article 10.2 be changed to read as follows:

10.2 **By state law, governance of the University is vested in the Board of Trustees.** The Administration recognizes the faculty of the University, vesting in it, subject to recommendations from the Department Chairpersons, Deans of the various colleges and the Provost and Vice President for Academic Affairs and **approval** by the Board of Trustees, the power to make its own regulations governing the admission and exclusion of students **to course[sic] and programs**, the courses of instruction to be offered, grading policy, recommendations for degrees, honors, and prizes and other fundamental areas of curriculum and such other matters that may be within its jurisdiction, **and the power to make its own recommendations to the Board of Trustees regarding the admission and exclusion of students to the University.** The faculty will also have the right to input significantly in the responsibilities for program development, program review, and college reorganization. In any conflict between the University Faculty Handbook and this Agreement, this Agreement will be controlling. The principles of joint effort and shared responsibility are illustrated, but not limited, by the provisions below. (Changes are in bold type.)

According to the University there is no dispute as to the proposed addition of the first sentence to this article. The dispute is over whether the term regulations as used in the current agreement applies to the admission of students to the university or is limited to courses and programs. The University argues that contrary to the position of the AAUP, the current language should be interpreted to apply only to admission to courses and programs because all the items referred to in the questioned sentence relate to curricular matters, not to the admission to the University. In addition, the University argues that allowing the regulation of the admission of students to the University by the faculty is contrary to law, specifically Ohio Revised Code Sections 3343.05 and 4117.08. Such authority, it claims, is exclusively that of the Board of Trustees and cannot be delegated to the faculty. The Association's interpretation of this article encroaches upon the inherent right of management under the collective bargaining law.

Finally, the University argues that the Chancellor's report identifies as one of the strengths of Central State is the fact that it graduates a much higher number of economically disadvantaged, and as a result academically underprepared, students than all other publically funded schools in Ohio. Referred to as "rising achievers" by the Chancellor's Report, the Chancellor has called on the University to evaluate this group of students and identify common attributes of those who succeed. Once the cohort is defined, the University will be required to develop performance metrics based upon the success of this cohort. Since the Chancellor's plan is related to the funding of the University, the success with this cohort will impact future funding. If the faculty creates regulations which later contradict the findings and initiatives of the Chancellor's Plan, the University could lose the supplemental funding which would cripple the University's ability to operate.

Therefore, it is the University's position that the current language of Article 10.02 should be changed to read as it has proposed.

AAUP'S POSITION

The AAUP's position is that the current language, which has not changed since 1985, can and should remain in the contract. The current language provides the University ample authority through recommendations of the Department Chairs, Deans, Provosts and Vice President, and approval by the Board of Trustees of any action taken by the faculty, including the power "to make its own regulations governing the admission and exclusion of students". There has never been a conflict between AAUP, the faculty generally and the University over the exercise of faculty power with respect to admission standards. The faculty has been cooperative rather than disruptive regarding admissions to the University, individual departments, programs or areas of study.

Although according to AAUP, the University's proposal would unnecessarily dilute the faculty's traditional roles, AAUP proposed language that was essentially the same as the University's proposal. The acceptance of the AAUP's proposal was based upon the University withdrawing its remaining proposals on Articles 12 and 13. This was rejected by the University.

FINDING AND OPINION

If there has been no dispute or issue concerning the current language of Article 10.2 for twenty-seven years, why create one now? Under normal circumstances a negotiator would not raise the issue or the possibility of a remote future dispute by making a proposed language change. Unfortunately, neither the times nor the circumstances are normal. The University is in a position that it must be able to demonstrate that it has the flexibility to deal with future changes and requirements that may be imposed by the State of Ohio. Although a strong argument has been made that it has the flexibility and the control required by Ohio law, the language of Article 10.02 is somewhat ambiguous and an issue could be made as to the degree of control the University has over admission of students.

It is the Fact Finder's opinion that the University's position should be sustained regarding this Article of the Collective Bargaining Agreement. The language proposed by the University should be adopted.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that Article 10.2 as proposed by the University be adopted and incorporated into the Agreement. Article 10.2 should read as follows:

ARTICLE 10.2 GOVERNANCE OF THE UNIVERSITY

- 10.2 By state law, governance of the University is vested in the Board of Trustees.** The Administration recognizes the faculty of the University, vesting in it, subject to recommendations from the Department Chairpersons, Deans of the various colleges and the Provost and Vice President for Academic Affairs and **approval** by the Board of Trustees, the power to make its own regulations governing the admission and exclusion of students **to courses and programs**, the courses of instruction to be offered, grading policy, recommendations for degrees, honors, and prizes and other fundamental areas of curriculum and such other matters that

may be within its jurisdiction, **and the power to make its own recommendations to the Board of Trustees regarding the admission and exclusion of students to the University.** The faculty will also have the right to input significantly in the responsibilities for program development, program review, and college reorganization. In any conflict between the University Faculty Handbook and this Agreement, this Agreement will be controlling. The principles of joint effort and shared responsibility are illustrated, but not limited, by the provisions below. (Changes are in bold type.)

Issue 2

ARTICLE 12 THE ACADEMIC DEPARTMENT

CURRENT LANGUAGE

- 12.2** Collegial Rights and Responsibilities: These matters are the prerogative of the fulltime faculty in the department and in these matters the Department Chairperson will function as a co-equal faculty member. Any recommendation regarding these matters will be based on procedures developed democratically by the faculty of the department.
- a) recommendations on curricular matters such as curriculum revision, requirements for major and minor, and program development; the University Senate will have the prerogative for University-wide curricular matters;
 - b) recommendations on rotational system for summer teaching, overload teaching, and teaching in associated programs such as CSU-Dayton where such teaching earns extra compensation;
 - c) evaluation of the academic goals and progress of the department;
 - d) recommendation on recruitment and selection of department personnel;
 - e) recommendations on tenure, promotion and non-reappointment;
 - f) recommendations of Faculty Improvement Leaves; and
 - g) recommendations on appointment of area coordinators in those departments where the Administration determines that size necessitates some division of responsibilities among programs within those departments. Any evaluation of area coordinators, in that position, will be separate from their evaluation as faculty members as described in Article 20.

12.3 Chairperson Responsibilities: The Chairperson shall report to the Dean who may assign any appropriate duties to the Chairperson. Additionally, the Chairperson, after consultation with the members of the department, is responsible for the administration of the following items:

- a) recommendations on library acquisitions for the department;
- b) faculty teaching schedules;
- c) distribution of department travel funds;
- d) department budget requests; and
- e) assignment of faculty to offices.

UNIVERSITY'S POSITION

The University has proposed to change the foregoing language of Article 12.2 and 12.3 to read as follows:

PROPOSAL A

12.2 Collegial Rights and Responsibilities: These matters are the prerogative of the fulltime faculty in the department ~~and in these matters the Department Chairperson will function as a co-equal faculty member.~~ **under the guidance of the Department Chairperson.-The Department Chair shall serve in the role of “primus inter pares” or “first among equals. As such, any recommendation regarding these matters will be based on procedures developed democratically by the faculty of the department. The Department Chairperson will be responsible for implementing or passing on the recommendations made pursuant to this section. If the Department Chairperson disagrees with the recommendations of the department, he/she may note the disagreement on the recommendation.**

- a) recommendations on curricular matters such as curriculum revision, requirements for major and minor, and program development; the University Senate will have the prerogative for University-wide curricular matters;
- b) recommendations on rotational system for summer teaching, overload teaching, and teaching in associated programs such as CSU-Dayton where such teaching earns extra compensation;

- c) evaluation of the academic goals and progress of the department;
- d) recommendation on recruitment and selection of department personnel;
- e) recommendations on tenure, promotion and non-reappointment;
- f) recommendations of Faculty Improvement Leaves; and
- g) recommendations on appointment of area coordinators in those departments where the Administration determines that size necessitates some division of responsibilities among programs within those departments. Any evaluation of area coordinators, in that position, will be separate from their evaluation as faculty members as described in Article 20.

12.3 Chairperson Responsibilities: The Chairperson shall report to the Dean who may assign any appropriate duties to the Chairperson. Additionally, the Chairperson, after consultation with the members of the department, is responsible for the administration of the following items:

- a) recommendations on library acquisitions for the department;
- b) faculty teaching schedules;
- c) distribution of department travel funds;
- d) department budget requests; and
- e) assignment of faculty offices;
- f) evaluation of non-tenured and tenured faculty consistent with Article 20.3;**
- g) supervision of departmental staff; and**
- h) distribution of departmental scholarship funds.**

PROPOSAL B

12.2 Collegial Rights and Responsibilities: These matters are the prerogative of the fulltime faculty in the department ~~and in these matters the Department Chairperson will function as a co-equal faculty member.~~ **under the guidance of**

the Department Chairperson.–The Department Chair shall serve as a co-equal faculty member with an equal vote in the matters listed below in 12.2 (a)-(g). Any recommendation regarding these matters will be based on procedures developed democratically by the faculty of the department. **The Department Chairperson will be responsible for implementing or passing on the recommendation of the department, he/she may note the Department Chairperson disagrees with the recommendation of the department, he/she may note the disagreement on the recommendation, but shall not change the recommendation of the department.** (Changes in bold type)

- a) recommendations on curricular matters such as curriculum revision, requirements for major and minor, and program development; the University Senate will have the prerogative for University-wide curricular matters;
- b) recommendations on rotational system for summer teaching, overload teaching, and teaching in associated programs such as CSU-Dayton where such teaching earns extra compensation;
- c) evaluation of the academic goals and progress of the department;
- d) recommendation on recruitment and selection of department personnel;
- e) recommendations on tenure, promotion and non-reappointment;
- f) recommendations of Faculty Improvement Leaves; and
- g) recommendations on appointment of area coordinators in those departments where the Administration determines that size necessitates some division of responsibilities among programs within those departments. Any evaluation of area coordinators, in that position, will be separate from their evaluation as faculty members as described in Article 20.

12.3 (Same as changes in Proposal A above) **Add: With regards to the above matters listed in 12.3(a) –(h), as well as other administrative matters, the Department Chair serves in an administrative capacity rather than as a co-equal faculty member.**

The Administration states that there are two unresolved issues in 12.2. Both issues are in the first paragraph. First, the Administration is opposed to the use of the term “co-equal” as contrary to the intent of O.R.C. 4117.01 (F). Second the Administration proposes an addition to the end of the paragraph which would permit a Department Chair to note his/her disagreement with recommendations of the department

as the Department is responsible for submitting the recommendation under his/her signature.

As to the first issue, the Administration would prefer its Proposal A. The reason given is that Department Chairs are statutory supervisors under O.R. C. 4117.01 (F) (3) and if the faculty is co-equal to the supervisor, the result would be that the entire faculty would be supervisors, and thus, excluded from bargaining under the Act. This, according to the Administration is contrary to the clear purpose of the Act. Thus, the removal of the term co-equal and replacing it with the wording, “first among equals” would be a more accurate description and would comply with the spirit of the law.

The University’s Proposal B was an alternative submitted in an attempt to reach a resolution. Although the Administration does not believe that it has the clarity of its Proposal A, it does clarify and delineate the respective areas in which the Department Chair is more an equal faculty member than a supervisor. This proposal does not, according to the University, eliminate the issue with the term “co-equal”, but does delineate the actual duties clearly enough to prevent distorting the intent of the Act.

The second issue under Article 12, Section 12.2 is the Department Chairperson’s being able to note his or her disagreement with the recommendation of the department. The Administration argues that this is vital due to the fact that many discrimination laws impute liability on the supervisor for discriminatory actions taken by the supervisor, e.g., FMLA, O.R.C. 4112.99. According to the Administration if the department makes a recommendation which is later determined to be discriminatory, the Chair could face liability for conduct which she or he did not agree with when it occurred as it is only the Department Chair whose name is on the recommendation. An example given by the Administration was the situation where a department recommends against tenure for a professor based on a spotty attendance history and it turns out that all the absences were FMLA covered absences. In such a case, the Chairperson could face liability for the recommendation, according to the Administration.

Originally, the Administration proposed that the Chairperson be permitted to make a separate recommendation if he or she did not agree with the departmental recommendation. The AAUP, however, expressed concern that a separate

recommendation afforded significant additional authority to the Chair not initially envisioned by this section.

UNION'S POSITION

The AAUP believes there is no reason to change the *status quo*. The University, according to the AAUP, has the authority to reject Department recommendations on such matters as tenure, promotion, and non-reappointment. In addition, the Chairperson has significant administrative responsibilities which require “only consultation with the members of the Department,” all of which are set forth in Section 12.3. The AAUP concludes that the University has articulated no significant reason justifying its proposed dilution of the powers of Departments Faculty in the academic realm, and the resulting increase in the authority of the Department Chair.

FINDING AND OPINION

The University's rationale for deleting the word “co-equal” and replacing it with the phrase “*primus inter pares*” or “first among equals” in Section 12.2 is not persuasive. Contrary to the University's argument that if the faculty is co-equal to the supervisor it will result in all faculty being supervisors, O.R.C.4117.01(F)(3) specifically exempts the faculty from supervisory status when participating in the type of activities listed in Section 12.2 (a)-(g), i.e., decisions with respect to courses, curriculum, personnel, or other matters of academic policy. Thus, it is the opinion of the Fact Finder that the term “co-equal” remain in the Collective Bargaining Agreement.

Likewise the University's rationale for either the Department Chair filing a Separate disagreement with the department's recommendation or noting his/her disagreement on the recommendation is not convincing. The University claims that such a provision is vital due to the fact that many discrimination laws impute liability on

supervisors for discriminatory action taken by the supervisor. Article 6 of the Collective Bargaining Agreement prohibits discrimination. Should a Chairperson believe the faculty is discriminating, he or she can seek the advice of the University's Counsel, and if Counsel is of the opinion discrimination and/or liability may occur, he or she can inform the Chair of the necessary steps to avoid same.

The example proffered by the University where the department recommends against tenure for a professor based on a spotty attendance history and it turns out that all of the absences were FMLA covered absences, is unlikely. First, the University would have at least constructive knowledge of the nature of the absences. Second, inquiry would be made of the candidate. Third, based upon the testimony of Dr. Dave Rubin and Article 6 of the CBA, the process for granting tenure requires everyone involved in the process to sign the recommendation. Should anyone have a dissenting opinion such is to be in writing. The tenure and promotion process already provides for a dissenting opinion.

Thus, based upon the evidence submitted, both documentary and testimonial, there is no basis for providing for the Chairperson either filing or noting his or her dissent to faculty recommendations under Section 12.2.

The parties appear to be in agreement as to items a) through h) under Section 12.3. The University's proposal on Section 12.3 has merit. That proposal reads as follows: "With regards to the above matters listed in 12.3 (a)-(h) as well as other administrative matters, the Department Chair serves in an administrative capacity rather than a co-equal faculty." This language, along with a specific reference in 12.2 to the recommendations made as to those items where the chair and faculty are co-equals, will clarify the areas of responsibilities between the Chairpersons and faculty.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that Article 12, Sections 12.2 and 12.3 should read as follows and be incorporated into this agreement.

ARTICLE 12 THE ACADEMIC DEPARTMENT

12.2 Collegial Rights and Responsibilities: These matters are the prerogative of the fulltime faculty in the department **under the guidance of the Department Chairperson. The Department Chair shall serve as a co-equal faculty member with an equal vote in the matters listed below in 12.2 (a)-(g).** Any recommendation regarding these matters will be based on procedures developed democratically by the faculty of the department. **The Department Chairperson will be responsible for implementing or passing on the recommendation of the department.**

- a) recommendations on curricular matters such as curriculum revision, requirements for major and minor, and program development; the University Senate will have the prerogative for University-wide curricular matters;
- b) recommendations on rotational system for summer teaching, overload teaching, and teaching in associated programs such as CSU-Dayton where such teaching earns extra compensation;
- c) evaluation of the academic goals and progress of the department;
- d) recommendation on recruitment and selection of department personnel;
- e) recommendations on tenure, promotion and non-reappointment;
- f) recommendations of Faculty Improvement Leaves; and
- g) recommendations on appointment of area coordinators in those departments where the Administration determines that size necessitates some division of responsibilities among programs within those departments. Any evaluation of area coordinators, in that position, will be separate from their evaluation as faculty members as described in Article 20.

12.3 Chairperson Responsibilities: The Chairperson shall report to the Dean who may assign any appropriate duties to the Chairperson. Additionally, the Chairperson, after consultation with the members of the department, is responsible for the administration of the following items:

- a) recommendations on library acquisitions for the department;
- b) faculty teaching schedules;
- c) distribution of department travel funds;
- d) department budget requests; and
- e) assignment of faculty offices;

- f) evaluation of non-tenured and tenured faculty consistent with Article 20.3;
- g) supervision of departmental staff; and
- h) Distribution of departmental scholarship funds.

With regards to the above matters listed in 12.3(a) – (h), as well as other administrative matters, the Department Chair serves in an administrative capacity rather than as a co-equal faculty member.

Issue 3

ARTICLE 13 THE FACULTY PERSONNEL POLICIES: APPOINTMENT, REAPPOINTMENT, NON-REAPPOINTMENT AND TENURE

CURRENT LANGUAGE

- 13.2 Initial Appointment to the Faculty: The appointment of a full-time faculty member to an academic unit will be based upon a recommendation initiated by the Department Chairperson in consultation with the faculty of the department.
- 13.3 In the case of the initial appointment of a person to an administrative position by the Administration, any appointment to faculty status will be referred to the department by the Dean of the College or higher administrative officer and will be based upon the recommendation of the Department Chair person in consultation with the faculty of the department.

UNIVERSITY'S POSITION

The University has made the following proposals regarding Sections 13.2 and 13.3.

PROPOSAL A

- 13.2 Initial Appointment to the Faculty: The appointment of a full-time faculty member to an academic unit will be ~~based upon~~ **made after consideration of** a recommendation initiated by the Department Chairperson in consultation with the faculty of the department.

- 13.3 In the case of the initial appointment of a person to an administrative position by the Administration, any appointment to faculty status will be referred to the department by the Dean of the College or higher administrative officer and will be ~~based upon~~ **made after consideration** of the recommendation of the Department Chair person in consultation with the faculty of the department. (Changes in bold type)

PROPOSAL B

- 13.2 Initial Appointment to the Faculty:** The appointment of a full-time faculty member to an academic unit will be based upon a recommendation initiated by the Department Chairperson in consultation with the faculty of the department. **Nothing in this section shall be construed as requiring the Administration to follow the recommendation of the department.**

- 13.3 In the case of the initial appointment of a person to an administrative position by the Administration, any appointment to faculty status will be referred to the department by the Dean of the College or higher administrative officer and will be based upon the recommendation of the Department Chair person in consultation with the faculty of the department. . **Nothing in this section shall be construed as requiring the Administration to follow the recommendation of the department.**

The Administration interprets the foregoing language of the current CBA to mean that the recommendation of the department must be considered when making an appointment to a faculty position. The faculty, however, states the Administration, interprets the section to grant them ultimate veto power on all faculty appointments. The faculty does concede that they cannot force an appointment to the faculty over the objection of the Administration, but asserts that the Administration is unable to make an appointment which the faculty objects to, or which changes the recommendation of the faculty in any way. The Administration makes reference to a pending grievance involving whether or not the appointment of a professor to a tenure track position was properly processed and based upon the recommendation of the faculty.

According to the Administration the faculty's interpretation is contrary to Ohio law. O.R.C. states: "The Board of Trustees of Central State University shall elect, fix the compensation of, and have the right to remove the president, who shall be the chief executive officer of the university, and elect, fix the compensation of, and remove such number of professors, teachers, and other employees as is necessary." This code section

according to the Administration vests hiring authority in the Board of Trustees and prohibits delegation of that authority.

In addition, the Administration argues, the absolute veto authority asserted by the AAUP is contrary to O.R.C. 4117 in two respects. First, such would put the faculty at the level of supervisors under O.R.C. 4117.01 (F). Second, it would be in direct violation of the management rights provisions of O.R.C. 4117.08 (C) (2) which specifically includes hiring decisions.

Finally, the Administration argues that the AAUP's interpretation is contrary to the contract. Article 52 of the CBA in pertinent part reads: "The Administration, directly or acting through its duly constituted authorities, retains and reserves exclusively to itself all powers conferred upon it and vested in it by the laws and constitutions of the State of Ohio and of the United States." Thus, the ability to appoint professors is expressly conferred upon the Board by the State of Ohio and nothing in the contract can be read to contradict those powers granted to the Board by the State, and expressly reserved by this section.

AAUP'S POSITION

The AAUP's states that the University has provided no credible rationale for its proposal to substitute the phrase "made after consideration of" in place of "based upon" before "a recommendation initiated by the Department Chair person in consultation with the faculty of the Department." The current contract language has served the University and Faculty well. Nearly identical language appeared in Article 11, Section 11.01 of the 1985-88 contract. The University's proposed change effectively dilutes the power of the members of an academic department to have an initiating role in appointments, whether for full-time faculty, or administrators receiving faculty titles in their departments. The AAUP offered the following amendment to Section 13.2 in an effort to bridge the differences between the parties.

The Administration is not required to hire as a full-time faculty member an individual recommended by the Department Faculty; however, neither can the Administration hire as a full-time faculty member an individual who has not been recommended by the Department Faculty.

FINDING AND OPINION

Since 1985, a Department's Faculty has participated in the hiring process of full-time professors as provided by the Collective Bargaining Agreement. During that time there was one grievance and arbitration decision relating to whether or not the process was followed. That arbitration decision was offered into evidence by the AAPU and subsequently withdrawn after objection by the Administration. The arbitration did not deal with the faculty making a recommendation not to hire an applicant to a full-time professor's position.

At this time, there is a grievance pending as to whether or not the faculty was asked to make a recommendation as to a tenure tract position for an administrative employee. This grievance like the previous grievance involves the question of whether or not the Administration correctly went through the process, not the substance of the recommendation.

The crux of this dispute is the extent the faculty should participate in the governance of the University by making recommendations in the hiring of full-time professors. The AAUP in its pre-hearing statement makes reference to the AAUP Red Book, which is recognized in Article 4 of the CBA. Central to the AAUP's Redbook is its "Statement on Governance", which asserts two general conclusions regarding collaboration between faculty and university administrators in the academic realm:

- (1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components, and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand, as developed hereinafter.

The Red Book also contains provisions with reference to the faculty's role. The

following statement is of relevance here.

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. (Underlining added for emphasis)

Contrary to the University's position, the current provisions of the Sections 13.2 and 13.3 do not violate Ohio law by an unlawful delegation of authority. The Administration has the ultimate authority in deciding whether to hire a full-time professor. The recommendation of the faculty for hiring a full-time professor is a condition precedent or a qualification for employment, the same as a degree or certain experience would be. It is the faculty of a department that can best determine the qualifications of an applicant in a particular field.

It is the Fact finder's opinion, based upon the CBA, that the University would have authority to ignore a faculty recommendation not to hire a full-time professor in order to comply with Federal and/or State Law and Regulations, or due to truly exigent circumstances. Thus, for the reasons stated above, there is no reason to change the language of the agreement as proposed by the University. However, with the best of intentions to clarify the situation, the Fact Finder would recommend that language be added to 13.2 and 13.3 to allow the University to ignore the faculty's recommendation not to hire a full-time professor in order to comply with Federal and/or State law and Regulations.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that Article 13, Sections 13.2 and 13.3 should read as follows and be incorporated into the agreement.

**ARTICLE 13 THE FACULTY PERSONNEL POLICIES: APPOINTMENT,
REAPPOINTMENT, NON-REAPPOINTMENT AND TENURE**

- 13.2 Initial Appointment to the Faculty: The appointment of a full-time faculty member to an academic unit will be based upon a recommendation initiated by the Department Chairperson in consultation with the faculty of the department. **The Administration is not required to hire as a full-time faculty member an individual recommended by the Department Faculty, and it may ignore the Department Faculty recommendation not to hire a full-time faculty member in order to comply with Federal and/or State law and/or Regulations.**
- 13.3 In the case of the initial appointment of a person to an administrative position by the Administration, any appointment to faculty status will be referred to the department by the Dean of the College or higher administrative officer and will be based upon the recommendation of the Department Chair person in consultation with the faculty of the department. **The Administration may ignore the Department Faculty recommendation in order to comply with Federal and/or State law and/or Regulations.**

IV

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted April 13, 2012. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan _____
John F. Lenehan
Fact Finder

April 27, 2012

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 27th day of April, 2012, to the persons named below.

VIA E-MAIL

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