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**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**AFSCME LOCAL 153**

**AND**

**KENT STATE UNIVERSITY**

**SERB CASE # 11-MED-06-0915**

**Robert G. Stein, Fact-finder**

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## INTRODUCTION

The parties to this matter are AFSCME Local 153 (hereinafter "Union" or "Local") and Kent State University (hereinafter "University", "Employer", "KSU"). The Employer is located in northeast Ohio. The bargaining unit is comprised of approximately three hundred and seventy eight (378) employees who work in a variety of departments (maintenance, custodial, clerical, parking, and food service) in the University. These employees provide vital services to the faculty, students, employees, and other individuals who are connected to the University. The fact finder first attempted to resolve the issues through mediation and was able to make incremental progress in resolving some issues. And in spite of measurable progress being made, the local Union leadership refused to continue to participate in further mediation efforts, in favor of formal fact finding. Mediation is a voluntary process and if one party simply does not want to participate then the fact finder must proceed with his statutory responsibilities. A fact finding hearing was held on Monday, January 23, 2012.

**General/State/Local Economic Overview:** Cautious optimism appears to be an apt characterization of the state of the current national and international economy that by virtue of world interdependence can be impacted by the economy of a small European country located several thousands of miles away. The economy in Ohio continues to show some signs of improvement from a very severe national recession that remains subject to the financial health of the United States and other countries, particularly those who are currently facing considerable debt in Europe. It remains to be seen if the recent resolution in Greece, will hold and if others such as Portugal or Spain will continue to plague the financial markets. But that is just one set of worries; others include a housing market that is just showing signs of recovery, and rising gasoline prices fueled once again by unrest in countries several thousand miles east of the United States. Just a few months ago, substantial swings in the stock market on a weekly and sometime daily basis were commonplace. For the last several weeks it appears the national economy has become somewhat more stable and the wild swings seem to have evened out since the beginning of 2012. Yet, what Americans have experienced from 2008 until the present has left a lasting impression about the uncertainty and fragility of the future.

The national unemployment rate is currently 8.3%, which has helped to create shoots of optimism among people hopeful for better times. The facts indicate that Ohio is in a very slow recovery that is still plagued by a lack of jobs that pay a living wage. Moreover, there are countless numbers of unemployed people who have, for the time being, stopped looking for work and are not counted among the unemployed. Hopefully, they will reenter the job market and find meaningful employment. Foreclosures continue to rise as we enter 2012. Several months ago what has been called the great recession was declared to be officially ended. Yet, for people in Ohio who are unemployed, underemployed, have experienced dramatic declines in their home values, face foreclosure, have given back benefits and paid days, have foregone wage increases for years, and have been laid off, such declarations ring hollow. The impact of the recession upon Ohio's revenue stream is plain, and employers in the public sector are feeling the effects of the state of Ohio significantly reducing its financial support to local

governments. However, it took a while for management and labor in the public sector to experience the effects of a dramatic decline in what were formerly dependable revenue streams, and to come to terms with the new reality.

All the news is not negative; there are pockets of recovery and some employers are doing well in the aftermath of the recession. Detroit seems to be on a comeback, and that is particularly good news for neighboring Ohio. And, there are states that are weathering the recession much better than Ohio. Fortunately, the University has experienced steady growth in student enrollment, research, and other academic pursuits. By many accounts Kent State is growing in prominence both in Ohio and nationally. The leadership of the University deserves credit for this remarkable run during most difficult times. Yet, it would be short sighted to only take a cursory view of the University. Building academic programs and physical plant is what is visible and often what must be done just to remain competitive. However, that does not mean a seemingly successful organization does not have challenges. The University has experienced both favorable and unfavorable financial news in recent years that includes a rising student enrollment offset by substantial decline in state funding, and increasing capital costs. Many members of the bargaining unit understand firsthand what some of the financial cutbacks have meant in terms of limitations on what needs to be done to maintain buildings and provided services to students and others. In addition to concluding Kent State is a premier academic institution, the facts presented in this case also indicate the University faces serious financial trials. Cuts in state funding have and will continue to affect revenue and have already led to sober decision making regarding operational costs. In the future, Ohio high schools are projected to graduate fewer students and if the economy continues to improve, that improvement may ironically translate into fewer students enrolling at KSU, meaning less revenue. Student aid is declining and students are being assessed higher interest on their loans, making it more difficult to attend and complete college. These factors, along with many others, contribute to the complexity of operating a large university in a sound financial manner.

To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many county, city, and township public employees in and outside of Ohio have and continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. State employees recently agreed to a second three (3) year contract that once again contains no wage increases. When dealing with concessionary bargaining, evenhandedness of sacrifice takes on even greater significance than it does in more normal times where needed market based equity adjustments can be reasonably addressed as a customary subject of negotiations. The critical and central factor during times of economic hardship is authenticity. If sacrifice is called for by employees and managers alike, then it must be based upon reality and not hyperbole.

## **CRITERIA**

### OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

**Current Language (see CBA)**

**ARTICLE 1  
RECOGNITION AND DEFINITIONS**

- A. *The University recognizes the Union as the sole and exclusive bargaining agent for the appropriate bargaining unit defined below for the purpose of collective bargaining for wages, hours, terms and other conditions of employment:*

*INCLUDED: All classified operating personnel at the University's Kent, Ohio, campus in the following classifications within those departments specified parenthetically below:*

*Automotive Mechanic  
Automotive Maintenance Crew Leader  
Baker  
Bowling Lane Technician  
Bus Mechanic  
Carpenter  
Cook I  
Cook II  
Copy Center Operator  
Custodial Worker  
Custodial Work Crew Leader  
Delivery Worker  
Electrician  
Energy Management Technician  
Equipment Operator I  
Equipment Operator II  
Equipment Mechanic  
Food Service Worker I  
Food Service Worker II  
Glazier  
Groundskeeper  
Groundskeeper Crew Leader  
HVAC Technician  
Laborer  
Locksmith  
Machinist  
Maintenance Repair Worker  
Mason  
Mechanical Stores Clerk  
Painter  
Paint Shop Crew Leader  
Parking Facility Attendant  
Plasterer  
Plumber  
Power Plant Maintenance Crew Leader*

*Power Plant Helper  
Power Plant Repair Worker  
Recreation Facilities Worker  
Routemarker  
Sales Clerk  
Sign Painter  
Sign Worker  
Stationary Engineer  
Steam Fitter  
Storekeeper I  
Storekeeper II  
Stores Clerk  
Venue Catering Worker  
Water Treatment Plant Worker  
Welder*

*(Airport, Athletics, Transportation Services, Receiving and Distribution, Custodial Services, Golf Course, Grounds, Power Plant, Recreational Services, Exercise, Leisure and Sport, Ice Arena, Dining Services, Kent Student Center, Mail Service, Maintenance Department, Parking Services, Publications and Printing, Refuse Removal, Residence Halls Custodial and Maintenance, and University Bookstore)*

EXCLUDED: All students, intermittent, casual and temporary employees, management-level employees, supervisors, confidential employees, faculty members and other professional employees, technical employees, administrative employees, office clerical employees, regional campus employees, employees of the University Police Department, including firefighters, and all other employees.

- B. For purposes of this Agreement, a supervisor is defined as an employee who has authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct, or to adjust grievances, or to effectively recommend any such action if it is in connection with the foregoing and the exercise is not of a merely routine clerical nature but requires the use of independent judgment.

**Employer's Position.** New positions included by tentative agreement of the parties are: ACPM Specialist, Maintenance Facilities Worker, Routemarker Crew Leader, Pool Technician, and Stores Clerk II. Eliminated positions: Bus Mechanic. Also terms Mail Service and Residence Halls Maintenance have been added to the last paragraph in Section A. The Employer rejects the need to place limitations on student personnel and temporary personnel and argues it has increased the size of the bargaining unit and not diminished it.

**Union's Position.** In addition to what has been agreed upon in negotiations and fact finder supervised mediation, the Union proposes to modify Article 1 as follows:

**Add New Section 1 c: Any Temporary Employee that works more than seven hundred and fifty (750) hours will automatically become full-time bargaining unit members.**

**Discussion.** The parties reached tentative agreement prior to fact finding on much of this article, including the addition of new classifications and updating department designations. The Union is proposing to a new Section 1 C that address limitations on the employment of temporary employees. The evidence in the record indicates the bargaining unit has grown and has not been diminished by having temporary employees. Many temporary employees have found their first employment with the University, and subsequently moved into full time bargaining unit employment. It is also very typical for a university to provide employment opportunities in this manner. It gives both the employee and the employer a chance to evaluate one another to see if continued employment on a more permanent basis is a good fit. According to Employer Ex. 5, from 2007 to 2011 the bargaining unit increased from 281 members to 368 members, which is a 31% increase in four years. One would be hard pressed to find this type of growth among other unionized bargaining units in Ohio and in the country,

where unionized workers have shrunk in bargaining unit size and as a percentage of the workforce. The growth of the bargaining unit was not refuted by the Union, and severely undermines its argument regarding temporary employees. While I understand from the facts that sometimes temporary is rather permanent in duration, unless specific harm can be demonstrated to the bargaining unit, the evidence does not support a departure from the parties' long standing understanding regarding this issue.

## **Recommendation**

### **ARTICLE 1 RECOGNITION AND DEFINITIONS**

- A. The University recognizes the Union as the sole and exclusive bargaining agent for the appropriate bargaining unit defined below for the purpose of collective bargaining for wages, hours, terms and other conditions of employment:

INCLUDED: All classified operating personnel at the University's Kent, Ohio, campus in the following classifications within those departments specified parenthetically below:

Automotive Mechanic  
Automotive Maintenance Crew Leader  
Baker  
Bowling Lane Technician  
Carpenter  
Cook I  
Cook II  
Copy Center Operator  
Custodial Worker  
Custodial Work Crew Leader  
Delivery Worker  
Electrician  
Energy Management Technician  
Equipment Operator I  
Equipment Operator II  
Equipment Mechanic  
Food Service Worker I  
Food Service Worker II  
Glazier  
Groundskeeper  
Groundskeeper Crew Leader  
HVAC Technician  
Laborer  
Locksmith

Machinist  
Maintenance Repair Worker  
Mason  
Mechanical Stores Clerk  
Painter  
Paint Shop Crew Leader  
Parking Facility Attendant  
Plasterer  
Plumber  
Power Plant Maintenance Crew Leader  
Power Plant Helper  
Power Plant Repair Worker  
Recreation Facilities Worker  
Routemarker  
Sales Clerk  
Sign Painter  
Sign Worker  
Stationary Engineer  
Steam Fitter  
Storekeeper I  
Storekeeper II  
Stores Clerk  
Venue Catering Worker  
Water Treatment Plant Worker  
Welder  
**APCM Specialist**  
**Maintenance Facilities Worker**  
**Routemarker Crew Leader**  
**Pool Technician**  
**Stores Clerk II**

(Airport, Athletics, Transportation Services, Receiving and Distribution, Custodial Services, Golf Course, Grounds, Power Plant, Recreational Services, Exercise, Leisure and Sport, Ice Arena, Dining Services, Kent Student Center, Maintenance Department, **University Facilities Management**, Parking Services, Publications and Printing, Refuse Removal, Residence Halls Custodial, and University Bookstore)

EXCLUDED: All students, intermittent, casual and temporary employees, management-level employees, supervisors, confidential employees, faculty members and other professional employees, technical employees, administrative employees, office clerical employees, regional campus employees, employees of the University Police Department, including firefighters, and all other employees.

- B. For purposes of this Agreement, a supervisor is defined as an employee who has authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct, or to adjust grievances, or to effectively recommend any such action if it is in connection with the foregoing and the exercise is not of a merely routine clerical nature but requires the use of independent judgment.

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

**Issue 2 Article 8, Employee Grievance Procedure**

**Current Language (see CBA)**

**ARTICLE 8  
EMPLOYEE GRIEVANCE PROCEDURE**

- A. *Grievance: A grievance is defined as a disagreement, arising under and during the term of this Agreement, concerning the interpretation and application of the provisions of this Agreement.*
- B. *Group Grievance: In the event that employees have a group grievance, the Chief Steward shall submit the grievance on behalf of all named and similarly affected employees at the Second Step of the grievance procedure. A group grievance shall be only one in which the fact questions and the provisions of the Agreement alleged to be violated are the same as they relate to all affected employees within a single department.*
- C. *Policy Grievance: A policy grievance is a grievance filed by the Union relating to a single common issue or event covered by this Agreement. The grievance form shall set forth the details of the grievance, i.e. the facts upon which it is based, the section and/or Article(s) allegedly being violated, the approximate time of occurrence and the relief or remedy requested. Such grievances may be presented at Step 3 of the Grievance Procedure.*
- D. *Informal Grievance Procedure: An aggrieved employee should promptly notify his immediate supervisor that he/she has a grievance. The employee will then discuss the matter directly with the immediate supervisor in an attempt to resolve the matter informally.*
- E. *Formal Grievance Procedure:*
1. *Step One*
    - a. *If the aggrieved employee does not receive a satisfactory verbal answer, or does not receive any answer at the Informal Step within three (3) working days following the day of oral presentation, the aggrieved employee may reduce the grievance to writing and submit it to his/her immediate supervisor.*

- b. *A grievance must be submitted in writing within ten (10) working days of the occurrence of the condition(s) giving rise to the grievance, or ten (10) working days of the date it is reasonable to assume that the employee(s) should reasonably have become aware of the conditions giving rise to the grievance, whichever is later, in order for the matter to be considered a grievance under this Agreement.*
- c. *The grievance shall be submitted on forms provided by the Union dated and signed by the aggrieved employee(s) and his/her Steward and shall set forth the facts, dates, and provisions of the Agreement that are alleged to have been violated and the remedy desired. At the time the grievance is received, the supervisor shall sign and date the original form and provide two copies of the signed form to the grievant. If requested by either party, a meeting will be scheduled between the supervisor, grievant and his/her area Steward. If the grievant is a Steward, he/she may have the Union President or Chief Steward attend the meeting.*
- d. *In the event the supervisor does not answer the grievance within ten (10) working days, the grievance may be appealed to the next higher step of this grievance procedure within five (5) working days after the expiration of the ten (10) day time limit.*
- e. *In the event the answer of the supervisor is unacceptable to the grievant, the grievance may be appealed to the next higher step of this grievance procedure. Any grievance not appealed within five (5) working days after receipt of such answer shall be considered withdrawn and shall not be subject to further appeal and/or review.*

2. *Step Two*

- a. *If the grievant is not satisfied with the disposition of the grievance at Step One, the grievant may appeal the grievance to the appropriate department head within five (5) working days after the date of the answer. Such appeal shall be in writing as in Step One.*
- b. *Within ten (10) working days after receipt of such request for appeal, the department head or his designee shall hold a meeting with the grievant and the Union President, Chief Steward or Steward, in an attempt to resolve the alleged grievance. Only persons directly related to the grievance shall be present at the meeting. The grievant may be represented by the Union. Representatives of the University and the Union shall not exceed four (4) in number respectively (including the grievant and the immediate supervisor).*
- c. *Within five (5) working days following conclusion of such meeting(s), the department head or his designee shall provide the grievant, the Union President and the Chief Steward with a written disposition of the grievance.*

3. *Step Three*

- a. *If the Union is not satisfied with the disposition of the grievance at Step Two, the Union may appeal the grievance to the appropriate administrator in charge of Employee/Labor Relations or their designee within five (5) working days after the date of the answer. Such appeal shall be in writing.*
- b. *Within ten (10) working days after receipt of such request for appeal, the appropriate administrator in charge of Employee/Labor Relations or their designee shall hold a meeting with the grievant, a representative of Ohio Council 8 and, if available, the Union*

*President and Chief Steward, in an attempt to resolve the alleged grievance. Such meeting shall be scheduled between the appropriate administrator in charge of Employee/Labor Relations or their designee and the Regional Director or his designee. Only persons directly related to the grievance shall be present at the meeting. Representatives of the University and the Union shall not exceed four (4) in number respectively (including the grievant and supervisor). Three (3) of the Union representatives including the grievant may be active employees or Ohio Council 8 representatives.*

- c. Within five (5) working days following conclusion of such meeting(s) the appropriate administrator in charge of Employee/Labor Relations or their designee shall provide the grievant, Ohio Council 8, Union President and the Chief Steward with a written disposition of the grievance.*
- d. Any grievance not appealed within twenty (20) working days after such answer shall be considered settled on the basis of the written answer of the appropriate administrator in charge of Employee/Labor Relations or their designee and shall not be subject to further appeal and/or review.*

**4. Step Four**

*In the event of an unsatisfactory decision or no decision in Step Three, the Union may submit the grievance to arbitration within twenty (20) working days after receipt of the Step Three answer. Written notice to the appropriate administrator in charge of Employee/Labor Relations or their designee shall constitute request for arbitration.*

- a. Grievance Mediation. All grievances which have been appealed to arbitration may be referred to mediation upon mutual agreement of the University and the Union in accordance with the procedures set forth in Appendix C.*
- b. Within sixty (60) days of submitting its request for arbitration (or thirty (30) days with regard to a discharge case), or from the date the mediation opinion is issued (whichever is applicable), the Union must request from the Federal Mediation and Conciliation Service a panel of seven (7) arbitrators from within Ohio. If the parties are unable to agree upon which of those seven nominees shall serve as arbitrator, then the arbitrator will be chosen by each party alternately striking names, beginning with the moving party, and the name remaining shall be the arbitrator. Either party shall have the option to completely reject one (1) panel of arbitrators provided by the FMCS and request another list. The hearing shall be conducted in accordance with the rules and regulations of the FMCS.*
- c. The arbitrator shall be requested to issue his/her decision within thirty (30) days after the conclusion of the testimony, argument, or submission of briefs. The decision of the arbitrator shall be final, conclusive and binding on the grievant(s) and all parties to this Agreement.*
- d. Fees and authorized expenses of the arbitrator shall be shared equally by the University and the Union. Verbatim transcripts of the proceedings may be secured by either party, in which case all expenses will be paid for by the requesting party.*
- e. The arbitrator shall have jurisdiction only over disputes arising out of grievances as to the interpretation and/or application of the provision(s) of this Agreement. In making the decision, the arbitrator shall have no authority to add to or subtract from or modify*

*in any way any provisions of this Agreement nor render a decision contrary to law nor shall he substitute his discretion for that of the University except to the extent modified by this Agreement nor impose on either party an obligation not specifically required by the express language of this Agreement.*

5. *Other Provisions*

- a. *Grievances shall be processed as rapidly as practicable. The number of working days (excluding holidays, Saturdays and Sundays) indicated at each level shall be considered as maximum and substantive and every effort shall be made to expedite the grievance process. Time limits in the steps may be shortened or extended by mutual written agreement of both parties.*
- b. *Failure of the grievant to appeal a decision within the specified time limits shall be deemed a withdrawal of the grievance and shall bar further action or appeal. Failure of the University to render a decision on a grievance within the specified time limits shall permit its appeal by the grievant to the next step.*
- c. *Steps of the grievance procedure may be waived in writing by mutual agreement of both parties.*
- d. *The parties agree to meet at least once every ninety (90) days at mutually agreeable times to discuss Step Three grievances and other matters of mutual interest.*
- e. *The Union may withdraw a grievance at any step of the grievance procedure.*
- f. *Prior to submission to arbitration pursuant to this article, the University and the Union will attempt to reduce to writing the issue or issues to be placed before the arbitrator. The arbitrator's decision shall address itself solely to the issue or issues presented and shall not impose upon either party any restriction or obligation pertaining to any matter raised in the dispute outside of the submitted issue or issues.*

**Union's Position.** The Union reached an understanding with the Employer during mediation to under Step 1 a. informal step of the Grievance Procedure to extend the time for a supervisor to provide a grievance answer from three (3) days to five (5) days. However, the Union is also proposing that failure of the Employer to meet time limits in responding to a grievance will result in the grievance being granted. The Union proposes the following modifications to Article 8 5. B.:

5. Other Provisions

- b. Failure of the grievant to appeal a decision within the specified time limits shall be deemed a withdrawal of the grievance and shall bar further action or appeal. Failure of the University to render a decision on a grievance shall **be resolved in favor of the grievant.**

**Employer's Position.** Other than agreeing to extend the time for a supervisor to respond in Article 8 E.1.A from three (3) to five (5) days, the Employer argues that the Union's proposal is not supported by substantial evidence of a failure to answer grievances. Furthermore, the Union's right of appeal is already preserved in the grievance procedure.

**Discussion.** All complaints formally filed through a grievance procedure should be treated with dignity even though a supervisor may feel it has no merit. The grievance process is a two way street that not only allows an employer insight into the efficacy of its policies, practices, and leadership, but it is an opportunity to communicate its reasoning to employees. If a supervisor(s) is abrogating his/her responsibility and role in the grievance process, the Union needs to not only raise this indignity with that supervisor or his superior, it needs to raise this issue with the University in a labor-management forum. While I understand the frustrations of an employee believing that his/her grievance is being ignored when it is not answered, evidence and testimony in this matter did not substantiate that this is a widespread problem, as opposed to being isolated to one or two supervisors. The change in language proposed by the Union, while resulting in a grievance being won by default, undermines the integrity of the grievance process. Hypothetically, if an employee mistakenly believes he should have been allowed to change shifts by seniority, but is wrong in his calculation of who is more senior, the failure of the supervisor not answering a grievance would result in a less senior employee being allowed to change shifts instead of the more senior employee who also bid to change to the same shift. In this example, an untimely supervisory response or no response at all, when there was no violation of the Agreement, undermines the integrity grievances, of the grievance process, and the Agreement. But automatic appeal rights, which are present in the current language, preserves the grievance and allows an opportunity to evaluate the situation more accurately. Moreover, the Union in its appeal can always make it known at all steps of the grievance process, including arbitration, that a supervisor has a history of refusing to answer grievances and even though the Union has raised this issue time and time again, no corrective action was taken with the supervisor. Such a scenario will not likely place the Employer in a favorable light in front of an arbitrator.

## Recommendation

### ARTICLE 8 EMPLOYEE GRIEVANCE PROCEDURE

E. Formal Grievance Procedure:

1. Step One

- a. If the aggrieved employee does not receive a satisfactory verbal answer, or does not receive any answer at the Informal Step within **five (5)** working days following the day of oral presentation, the aggrieved

employee may reduce the grievance to writing and submit it to his/her immediate supervisor.

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

**Issue 3 Article 9, UNION STEWARDS**

**Current Language (see CBA)**

**ARTICLE 9  
UNION STEWARDS**

- A. *The Union shall be entitled to select thirty (30) stewards plus one (1) Chief Steward and to designate their area of representation which shall be in reasonable proximity to their designated work area.*
- B. *The Steward, Chief Steward and Union President, during their normal working hours without loss of time or pay, may in accordance with the terms of this Agreement, process and handle grievances upon first having received permission from their immediate supervisor to do so. Such permission shall not be unreasonably withheld. The right of stewards, Chief Steward, and President leaving their work during normal working hours without loss of time or pay is subject to the understanding that the time will be devoted to the proper handling and processing of grievances and will not be abused; and stewards and President will perform their regularly assigned work at all times, except when necessary to leave their work to process and handle grievances as provided herein. A steward, Chief Steward, and President who enters into a unit or department other than his/her own shall first notify the supervisor of that unit or department of his/her presence for the purpose of investigating or processing a formal written grievance.*
- C. *The Union President will be allowed reasonable time during working hours without loss of pay to meet with Union or University representatives concerning provisions of this Agreement. Before leaving work he/she shall seek approval of the appropriate administrator in charge of Employee/Labor Relations or their designee. The appropriate administrator in charge of Employee/Labor Relations or their designee shall give prompt reply. Approval shall not be unreasonably withheld.*
- D. *In the event that Fair Share Fee is implemented in accordance with Article 7, Paragraph C of this Agreement, and notwithstanding other provisions of this agreement, the Steward, Chief Steward and Union President, as well as all other Union officers, shall investigate and write grievances and perform other union related activities on non-work time only, except for meetings scheduled with management. In addition, should the Union request to perform other Union-related work (investigating and/or writing of grievances) during scheduled work time, and this time is approved by Management, the Union officials performing such Union-related work shall record the time involved in a manner specified by the University (e.g., Kronos or time clock) and the time shall be reimbursed to the University by the Union at the employee's hourly rate. A request to perform Union business shall not be unreasonably denied.*
- E. *The Union shall furnish the University with a written list of its stewards and President and shall promptly notify the University in writing of any changes therein.*

F. *There shall be no Union activity on University time except as expressly provided herein.*

**Employer's Position.** The Employer is proposing a reduction in the amount of working hour time is spent by the President and Chief Union Steward in processing grievances. It is proposing that the Union pick up the pay for this time and/or the President and Chief Steward conduct Union business, even if it is with the University, on unpaid time, with narrow exceptions outlined in Section 9 F.

**Union's Position.** Maintain Current Language

**Discussion.** The evidence indicates that although the Union has most likely a more dependable revenue stream following the existence of a fair share fee, the processing of grievances in a jointly negotiated grievance procedure is a shared responsibility. To require two Union Officers to have to work on unpaid time to fulfill their legal responsibility to process grievances, when in reality much of their work in terms of investigation and grievance writing is already done on their own time, is not reasonable given the facts related to the bargaining units dues structure.

### Recommendation

## ARTICLE 9 UNION STEWARDS

Maintain Current Language

### Issues 4 Article 11, WORK OF SUPERVISOR

### Current Language (see CBA)

## ARTICLE 11 WORK OF SUPERVISOR

- A. *It is the intent of the parties that supervisors and foremen will not be employed to perform food production, maintenance and custodial work covered by this Agreement; but it is understood that supervisors and foremen may perform bargaining unit work when specified in the classification specifications, and in cases of instruction, methods planning and development, quality control and testing, emergency and unavailability of a bargaining unit member.*
- B. *It is understood between the parties that the classification specifications referred to above, only pertain to the following supervisors and foremen who are permitted to perform bargaining unit work:*
- 1) *Assistant Greenskeeper*

- 2) Assistant Sales Manager
- 3) Carpentry Supervisor
- 4) Electrician Supervisor
- 5) Glazier Supervisor
- 6) Head Locksmith
- 7) HVAC Supervisor
- 8) Mail Services Supervisor
- 9) Parking Services Supervisor
- 10) Recreation Facilities Maintenance Supervisor
- 11) Recreation Facilities Custodial Work Supervisor

*It is further understood that the above classification titles may change, but a title change would not affect the intent of Article 11.*

- C. *However, it is understood that no bargaining unit employee shall be laid off as a direct result of Foremen and Supervisors performing bargaining unit work.*

**Employer’s Position.** Maintain current language.

**Union’s Position.** The Union argues proposes language under Section 11 a. to narrow the circumstances when foremen and supervisors can perform bargaining unit work. It proposes the following modification to Section A.:

**ARTICLE 11 - WORK OF SUPERVISOR**

A. It is the intent of the parties that supervisors and foremen will not be employed to perform **bargaining unit work.** ~~food production, maintenance and custodial work covered by this Agreement; but it is understood that supervisors and foremen may perform bargaining unit work when specified in the classification specifications, and in cases of instruction, methods planning and development, quality control and testing, emergency and unavailability of a bargaining unit member.~~

**Discussion.** While it is certainly not uncommon for a bargaining unit to be concerned about this issue, the facts do not indicate that what supervisors are doing is adversely impacting the bargaining unit’s size or work. As previously cited in Employer Exhibit 5, the bargaining unit, over the past four (4) years has increased by thirty-one percent (31%). This would indicate more work and not less is being given to the bargaining unit and undercuts the argument that the circumstances in the language of Article 11 that allow for a foreman and supervisor to perform bargaining unit work is currently posing a problem.

**Recommendation**

**ARTICLE 11  
WORK OF SUPERVISOR**

## Maintain Current Language

### Issues 5 Article 13, LATERAL TRANSFER AND SHIFT PREFERENCE

#### Current Language (see CBA)

#### **ARTICLE 13 LATERAL TRANSFER AND SHIFT PREFERENCE**

- A. *An employee may exercise his University seniority as defined in Article 35 for the purpose of cross-department lateral transfer or shift transfer when a vacancy occurs within his/her classification provided he/she has the ability to perform the job in question. An employee who desires a cross-department lateral transfer or a change of shift must make application during the posting period of such vacancy to the appropriate administrator in charge of Employee/Labor Relations or their designee requesting the transfer and indicating the location and shift preferred. Lateral transfers and shift transfers shall be limited to no more than two (2) per employee during any twelve (12) month period.*

**Union's Position.** The Union is proposing that all cross department lateral transfers or shift transfers within a classification be done by seniority, with the removal of the qualification requirement. The Union's proposal is as follows:

#### ARTICLE 13 - LATERAL TRANSFER AND SHIFT PREFERENCE

- A. An employee may exercise his University seniority as defined in Article 35 for the purpose of cross-department lateral transfer or shift transfer when a vacancy occurs within his/her classification. ~~provided he/she has the ability to perform the job in question.~~ An employee who desires a cross-department lateral transfer or a change of shift must make application during the posting period of such vacancy to the appropriate administrator in charge of Employee/Labor Relations or their designee requesting the transfer and indicating the location and shift preferred. Lateral transfers and shift transfers shall be limited to no more than two (2) per employee during any twelve (12) month period.

**Employer's Position.** In mediation the Employer demonstrated a willingness to consider modification of the Article's language to accommodate a shift transfer by seniority within the same department. In mediation the University also suggested that lateral transfers should be included under Article 14, Job Posting. The University argues that departments and the demands placed upon employees differ from department to department, in spite of employees having the same classification designation.

**Discussion.** In the experience of the fact finder, classification designations may or may not indicate that skill and knowledge requirements are the same from one department to another. In one example, the fact finder, while serving as a neutral at another major university, was

presented with evidence of a single classification of “skill worker”, which in the plumbing department meant plumber, in the carpentry shop meant carpenter, and in the electrical area was intended to be the classification applying to electricians. The Employer presented convincing evidence that a single classification can call for different skills in different departments. The University’s removal of lateral transfers from this Article and placing it in Article 14 makes sense from the standpoint of where lateral transfer rights are typically found in labor agreements. However, the Union both in mediation and fact finding made a persuasive case for allowing shift changes by seniority, which is commonly found in both the public and private sectors.

## Recommendation

### ARTICLE 13 LATERAL TRANSFER AND SHIFT PREFERENCE

- A. An employee may exercise his University seniority as defined in Article 35 for the purpose of shift transfer **in his/her classification within his/her department** when a vacancy occurs within his/her classification. An employee who desires a change of shift must make application during the posting period of such vacancy to the appropriate administrator in charge of Employee/Labor Relations or their designee requesting the transfer and indicating the shift preferred. Lateral transfers and shift transfers shall be limited to no more than two (2) per employee during any twelve (12) month period.

**All other sections of this Article shall remain current language unless previously TA’d by the parties.**

## Issue 6 Article 14, JOB POSTING

### Current Language (see CBA)

#### ARTICLE 14 JOB POSTING

- A. *It is the intent of the parties to provide employees with the opportunity to be promoted. Therefore, when the University determines a bargaining unit vacancy exists and it is not filled by cross-department lateral transfer or shift transfer, a notice of vacancy will be posted at all time-keeping locations and other locations as agreed, indicating that a vacancy exists. The details of the vacancy will be provided in the notice of vacancy.*
- B. *Vacancies will be posted for a period of seven (7) calendar days. Any employee who is interested in the position should apply at Human Resource Services and Solutions. If an employee is unable to apply at Human Resource Services and Solutions at a time other than during his/her regular work hours, the*

*employee should consult with his/her supervisor to schedule a mutually agreeable time to make application. An employee shall receive a copy of the application at the time such application is made.*

*C. The successful qualified applicant within the bargaining unit will be awarded the vacancy.*

*University seniority as defined in Article 35 shall prevail when the qualifications, ability, and physical fitness of the applicants being considered are relatively equal. The University agrees to provide the Union with a list of the applicants and the successful bidder at the time the bid is awarded. Normally a job will be awarded within two (2) weeks.*

*D. The University will consider the following criteria in determining whether an applicant is qualified under the job posting procedure for promotion or a cross-department lateral transfer to a particular vacancy:*

*1. Minimum job qualifications as established or modified by the University.*

*2. a. Work history and performance of the employee;*

*b. Attendance;*

*c. Educational background (when applicable);*

*d. Aptitude and/or familiarity with the required duties of the new position, which may be determined by a test. The test may be written, oral, and/or require a demonstration of skill.*

*e. Seniority will be considered.*

*3. Reasonable related University job requirements.*

*E. If a test is required, an applicant who fails to obtain a passing grade on a test or tests cannot compete or take another examination for the same classification for a period of six (6) months from the date of the last examination.*

*F. If there is no qualified applicant from within the bargaining unit, the most qualified applicant from outside the bargaining unit will be awarded the position.*

*G. First consideration shall be given to employees making application who are in the same classification as the vacancy, and who are requesting a cross department lateral transfer. Should the position be awarded as a cross department lateral transfer to an employee in the same classification, the original list of applicants shall be used to fill any subsequent opening, without the need for the employer to re-post the opening. Second consideration shall be given to employees in higher classifications who wish to bid down, however should an employee in a higher classification be selected, he/she will assume the lower pay rate.*

*H. Cross departmental lateral transfers within a classification shall be awarded on the basis of qualifications and University seniority.*

*I. No employee shall be eligible for promotion or transfer who has not satisfactorily completed the required probationary period.*

*J. If no application is received, the University may fill the job by hiring a new employee or transferring a qualified junior employee.*

- K. *The University may reassign employee(s) to fill vacancies on a temporary basis. If such temporary transfer is to a higher paying position starting on the sixth (6<sup>th</sup>) consecutive work day in such position, the employee shall receive the entry rate of the classification to which he/she is so transferred or a rate five percent (5%) above his/her current rate, whichever is higher. If an employee is temporarily transferred to a classification with a lower rate of pay, the employee shall be paid his/her regular rate.*
- L. *Vacancies hereunder shall not be filled by continuous or repeated temporary transfers. Temporary transfers shall not be used to fill promotional vacancies in an unreasonable or arbitrary manner.*
- M. *All promotions are subject to a probationary period of one hundred twenty (120) days. During the first thirty (30) days of the probationary period employees can voluntarily return to their former position, if available, or a similar position. If the promoted employee is found to be unsatisfactory in the advanced position, the employee shall be returned to the position from which he/she was promoted or to a similar position. Upon such return, the employee's salary shall be the same as he/she was receiving prior to the promotion, except for changes in pay that may have occurred. Seniority in this instance will continue unchanged.*

**Union's Position.** The Union proposes the following language which conveys its desire to make major changes in this Article that calls for Union input on testing, and addresses problems it argues exist with intermittent and temporary supervisors. The Union asserts through testimony that overtime opportunities are lost when working supervisors are on a job. It takes away work from employees, with one example citing how a working supervisor, with an MRW assisting him was performing work that should have been performed by a plumber. The Union proposes the following changes to Article 14:

#### ARTICLE 14 - JOB POSTING

- A. It is the intent of the parties to provide employees with the opportunity to be promoted. Therefore, when the University determines a bargaining unit vacancy exists and it is not filled by cross-department lateral transfer or shift transfer, a notice of vacancy will be posted at all time-keeping locations and other locations as agreed, indicating that a vacancy exists. The details of the vacancy will be provide din the notice of vacancy.
- B. Vacancies will be posted for a period of seven (7) calendar days. Any employee who is interested in the position should apply at Human Resource Services and Solutions at a time other than during his/her regular work hours, the employee should consult with his/her supervisor to schedule a mutually agreeable time to make application. An employee shall receive a copy of the application at the time such application is made.
- C. The successful ~~qualified~~ applicant within the bargaining unit will be awarded the vacancy. University seniority as defined in Article 35 shall prevail. ~~when the qualifications, ability, and physical fitness of the applicants being considered are relatively equal.~~ The University agrees to provide the Union with a list of applicants and the successful bidder at the time the bid is awarded. Normally a job will be awarded within two (2) weeks.

D. The University will consider the following criteria in determining whether an applicant is qualified under the job posting procedure for promotion. ~~or a cross department lateral transfer to a particular vacancy;~~

1. Minimum job qualifications as established or modified by the University.

2. ~~A. Work history and performance of the employee;~~

~~B. Attendance;~~

~~C. Educational background (when applicable);~~

~~D. A. Aptitude and/or familiarity with the required duties of the new position, which may be determined by a test. The test may be written, oral, and/or require a demonstration of skill.~~

~~E. B. Seniority will be considered; prevail.~~

~~3. Reasonable related University job requirements.~~

E. If a test is required **the Union will have input.** An applicant who fails to obtain a passing grade on a test or tests cannot compete or take another examination for the same classification for a period of six (6) months from the date of the last examination.

**When the Employer uses a promotion examination, which includes a practical skills test, the results of the practical skills test will be either pass or fail. Practical skills tests are those tests the Employer may utilize to determine if an employee has the minimum skill level and/or ability to operate equipment, build, fabricate, repair, etc., through the actual demonstration of those skills. The Employer will give advance written notice of the equipment, functions or skills to be tested, and demonstrate the test prior to administering the test to the employees. The use of a written promotional examination will be graded based upon the percentage of correct answers. Applicants will receive one-half percentage point per year of seniority before being ranked based on their scores on the written promotional examination.**

F. If there is no qualified applicant from within the bargaining unit, the most qualified applicant from outside the bargaining unit will be awarded the position.

G. First consideration shall be given to employees making application who are in the same classification as the vacancy, and who are requesting a cross department lateral transfer. Should the position be awarded as a cross department lateral transfer to an employee in the same classification, the original list of applicants shall be used to fill any subsequent opening, without the need for the employer to re-post the opening. Second consideration shall be given to employees in higher classifications who wish to bid down, however should an employee in a higher classification be selected, he/she will assume the lower pay rate.

- H. Cross-departmental lateral transfers within a classification shall be awarded on the basis of qualifications and University seniority.
- I. No employee shall be eligible for promotion or transfer who has not satisfactorily completed the required probationary period.
- J. If no application is received, the University may fill the job by hiring a new employee or transferring a qualified junior employee.
- K. The University may reassign employee(s) to fill vacancies on a temporary basis. If such temporary transfer is to a higher paying position starting on the sixth (6<sup>th</sup>) consecutive work day in such position, the employee shall receive the entry rate of the classification to which he/she is so transferred or a rate five percent (5%) above his/her current rate, whichever is higher. If an employee is temporarily transferred to a classification with a lower rate of pay, the employee shall be paid his/her regular rate.
- L. Vacancies hereunder shall not be filled by continuous or repeated temporary transfers. Temporary transfers shall not be used to fill promotional vacancies in an unreasonable or arbitrary manner.
- M. All promotions are subject to a probationary period of one hundred twenty (120) thirty (30) days. During the first thirty (30) days of the probationary period employees can voluntarily return to their former position. if available, or a similar position. If the promoted employee is found to be unsatisfactory in the advanced position, the employee shall be returned to the position from which he/she was promoted. or to a similar position. Upon such return, the employee's salary shall be the same as he/she was receiving prior to the promotion, except for changes in pay that may have occurred. Seniority in this instance will continue unchanged.

**N Bargaining unit members assigned as intermittent or temporary supervisors will not be permitted to perform bargaining work while serving as intermittent or temporary supervisor's.**

**Employer's Position.** The Employer rejects most of the Union's proposed language and proposes its own changes that also incorporates lateral transfer rights formerly found in Article 13. It proposes:

**ARTICLE 14  
JOB POSTING**

- A. It is the intent of the parties to provide employees with the opportunity to be promoted. Therefore, when the University determines a bargaining unit vacancy exists **during the first seven (7) calendar days, the position will be identified as "for internal candidates only."** ~~and if the vacancy is not filled by cross-department lateral transfer~~

or shift transfer, **qualified bargaining unit candidates will be given first consideration during this period.** ~~a notice of vacancy will be posted at all time-keeping locations and other locations as agreed, indicating that a vacancy exists.~~ The details of the vacancy will be provided **on-line** in the notice of vacancy.

- B. Vacancies will be posted for a period of seven (7) calendar days. Any employee who is interested in the position should apply ~~at Human Resource Services and Solutions.~~ **by utilizing the on-line hiring system.** If an employee is unable to apply ~~at Human Resource Services and Solutions~~ **by using the on-line hiring system** at a time other than during his/her regular work hours, the employee should consult with his/her supervisor to schedule a mutually agreeable time to make application. An employee ~~shall receive a copy~~ **is able to copy, view or edit their on-line application.** ~~of the application at the time such application is made.~~
- C. The successful qualified applicant within the bargaining unit will be awarded the vacancy. University seniority as defined in Article 35 shall prevail when the qualifications, ability, and physical fitness of the applicants being considered are relatively equal. The University agrees to provide the Union with a list of the applicants and the successful bidder at the time the bid is awarded. Normally a job will be awarded within two (2) weeks.
- D. The University will consider the following criteria in determining whether an applicant is qualified under the job posting procedure for promotion or a cross-department lateral transfer to a particular vacancy:
1. Minimum job qualifications as established or modified by the University.
  2.
    - a. Work history and performance of the employee;
    - b. Attendance;
    - c. Educational background (when applicable);
    - d. Aptitude and/or familiarity with the required duties of the new position, which may be determined by a test. The test may be written, oral, and/or require a demonstration of skill.
    - e. Seniority will be considered.
  3. Reasonable related University job requirements.
- E. If a test is required, an applicant who fails to obtain a passing grade on a test or tests cannot compete or take another examination for the same classification for a period of six (6) months from the date of the last examination.

- F. If there is no qualified applicant from within the bargaining unit, **selected from the “for internal candidates only” posting, the vacancy will be posted to allow for external applications. The qualifications of all bargaining unit employees applying during this period will be given equal consideration as external applicants.** The most qualified applicant ~~from outside the bargaining unit~~ will be awarded the position.
- G. First consideration shall be given to employees making application who are in the same classification as the vacancy, and who are requesting a cross department lateral transfer. Should the position be awarded as a cross department lateral transfer to an employee in the same classification, the original list of applicants shall be used to fill any subsequent opening, without the need for the employer to re-post the opening. Second consideration shall be given to employees in higher classifications who wish to bid down, however should an employee in a higher classification be selected, he/she will assume the lower pay rate.
- H. Cross departmental lateral transfers within a classification shall be awarded on the basis of qualifications and University seniority. **Cross departmental lateral transfers shall be limited to no more than two (2) per employee during any twelve (12) month period.**
- I. No employee shall be eligible for promotion or transfer who has not satisfactorily completed the required probationary period.
- J. If no application is received, the University may fill the job by hiring a new employee or transferring a qualified junior employee.
- K. The University may reassign employee(s) to fill vacancies on a temporary basis. If such temporary transfer is to a higher paying position starting on the sixth (6<sup>th</sup>) consecutive work day in such position, the employee shall receive the entry rate of the classification to which he/she is so transferred or a rate five percent (5%) above his/her current rate, whichever is higher. If an employee is temporarily transferred to a classification with a lower rate of pay, the employee shall be paid his/her regular rate.
- L. Vacancies hereunder shall not be filled by continuous or repeated temporary transfers. Temporary transfers shall not be used to fill promotional vacancies in an unreasonable or arbitrary manner.
- M. All promotions are subject to a probationary period of one hundred twenty (120) days. During the first thirty (30) days of the probationary period employees can voluntarily return to their former position, if available, or a similar position. If the promoted employee is found to be unsatisfactory in the advanced position, the employee shall be returned to the position from which he/she was promoted or to a similar position. Upon such return, the employee's salary shall be the same as he/she was receiving prior

to the promotion, except for changes in pay that may have occurred. Seniority in this instance will continue unchanged.

**Discussion.** The weight of the facts support the relatively minor changes made by the University in updating this Article to conform with the efficient use of electronic technology. The Union's proposal to eliminate several well accepted criteria (e.g. qualification, ability, work history, attendance, educational background, skill) from the job selection process simply does not reflect commonly accepted standards in the public sector or private sector. Additionally, to confine a practical skills test to pass or fail "dumbs down" selection to minimums and prevents the Employer from promoting the most qualified employees. While the Union made a strong argument for modifying Section K. the somewhat limited resources available for recommended salaries appear to be a greater priority at this time. Finally, there was insufficient evidence to demonstrate that intermittent and temporary supervisors are performing bargaining unit work to an extent that justifies additional language.

## Recommendation

### ARTICLE 14 JOB POSTING

- A. It is the intent of the parties to provide employees with the opportunity to be promoted. Therefore, when the University determines a bargaining unit vacancy exists **during the first seven (7) calendar days, the position will be identified as "for internal candidates only."** ~~and~~ **If the vacancy is not filled by shift transfer, qualified bargaining unit candidates will be given first consideration during this period.** The details of the vacancy will be provided **on-line** in the notice of vacancy.
- B. Vacancies will be posted for a period of seven (7) calendar days. Any employee who is interested in the position should apply **by utilizing the on-line hiring system.** If an employee is unable to apply **by using the on-line hiring system** at a time other than during his/her regular work hours, the employee should consult with his/her supervisor to schedule a mutually agreeable time to make application. An employee **is able to copy, view or edit their on-line application.**
- C. The successful qualified applicant within the bargaining unit will be awarded the vacancy. University seniority as defined in Article 35 shall prevail when the qualifications, ability, and physical fitness of the applicants being considered are relatively equal. The University agrees to provide the Union with a list of the applicants and the successful bidder at the time the bid is awarded. Normally a job will be awarded within two (2) weeks.

- D. The University will consider the following criteria in determining whether an applicant is qualified under the job posting procedure for promotion or a cross-department lateral transfer to a particular vacancy:
1. Minimum job qualifications as established or modified by the University.
  2.
    - a. Work history and performance of the employee;
    - b. Attendance;
    - c. Educational background (when applicable);
    - d. Aptitude and/or familiarity with the required duties of the new position, which may be determined by a test. The test may be written, oral, and/or require a demonstration of skill.
    - e. Seniority will be considered.
  3. Reasonable related University job requirements.
- E. If a test is required, an applicant who fails to obtain a passing grade on a test or tests cannot compete or take another examination for the same classification for a period of six (6) months from the date of the last examination.
- F. If there is no qualified applicant from within the bargaining unit, **selected from the “for internal candidates only” posting, the vacancy will be posted to allow for external applications. The qualifications of all bargaining unit employees applying during this period will be given equal consideration as external applicants.** The most qualified applicant ~~from outside the bargaining unit~~ will be awarded the position.
- G. First consideration shall be given to employees making application who are in the same classification as the vacancy, and who are requesting a cross department lateral transfer. Should the position be awarded as a cross department lateral transfer to an employee in the same classification, the original list of applicants shall be used to fill any subsequent opening, without the need for the employer to re-post the opening. Second consideration shall be given to employees in higher classifications who wish to bid down, however should an employee in a higher classification be selected, he/she will assume the lower pay rate.
- H. Cross departmental lateral transfers within a classification shall be awarded on the basis of qualifications and University seniority. **Cross departmental lateral transfers shall be limited to no more than two (2) per employee during any twelve (12) month period.**

- I. No employee shall be eligible for promotion or transfer who has not satisfactorily completed the required probationary period.
- J. If no application is received, the University may fill the job by hiring a new employee or transferring a qualified junior employee.
- K. The University may reassign employee(s) to fill vacancies on a temporary basis. If such temporary transfer is to a higher paying position starting on the sixth (6<sup>th</sup>) consecutive work day in such position, the employee shall receive the entry rate of the classification to which he/she is so transferred or a rate five percent (5%) above his/her current rate, whichever is higher. If an employee is temporarily transferred to a classification with a lower rate of pay, the employee shall be paid his/her regular rate.
- L. Vacancies hereunder shall not be filled by continuous or repeated temporary transfers. Temporary transfers shall not be used to fill promotional vacancies in an unreasonable or arbitrary manner.
- M. All promotions are subject to a probationary period of one hundred twenty (120) days. During the first thirty (30) days of the probationary period employees can voluntarily return to their former position, if available, or a similar position. If the promoted employee is found to be unsatisfactory in the advanced position, the employee shall be returned to the position from which he/she was promoted or to a similar position. Upon such return, the employee's salary shall be the same as he/she was receiving prior to the promotion, except for changes in pay that may have occurred. Seniority in this instance will continue unchanged.

<b>Issue 7 Article 18, WEATHER EMERGENCIES</b>
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**Current Language (see CBA)**

**ARTICLE 18  
WEATHER EMERGENCY**

- A. *In the event a weather emergency requires the University President to close the University, bargaining unit employees will be compensated at their regular rate for the number of hours for which they were scheduled to work during the emergency period.*
- B. *Bargaining unit employees who are required to work during the emergency period shall, in addition to pay for their regularly scheduled hours, be paid for the actual hours worked at their regular rate. Such hours worked will be included in the computation of overtime as set forth in Article 20.*

- C. *Employees not scheduled to work because of scheduled vacation or continuing sick leave will be charged for the leave regardless of the declared emergency. If vacation or sick leave ends prior to the end of the declared emergency, no sick time will be charged for the remainder of the emergency.*

**Employer's Position.** The Employer wishes to update the title of this provision to "Emergency Closures" in order to capture other contingencies, such as tornados. Additionally, the Employer proposes to require essential employees to work or they will not get paid and will be subject to disciplinary action. It argued through testimony that it is important for bargaining unit employees to be on campus for recovery duties, in addition to other responsibilities. It proposes the following modifications to Article 18:

**ARTICLE 18**  
**~~WEATHER~~ EMERGENCY CLOSURES**

- A. In the event a weather emergency requires the University President to close the University, bargaining unit employees will be compensated at their regular rate for the number of hours for which they were scheduled to work during the **designated** emergency period.
- B. Bargaining unit employees who are required to work during the emergency period shall, in addition to pay for their regularly scheduled hours, be paid for the actual hours worked at their regular rate. Such hours worked will be included in the computation of overtime as set forth in Article 20. **If an employee who is required to work during the emergency fails to come to work, the employee will not receive the pay referenced in Section A and maybe subject to discipline.**
- C. Employees not scheduled to work because of scheduled vacation or continuing sick leave will be charged for the leave regardless of the declared emergency. If vacation or sick leave ends prior to the end of the declared emergency, ~~no sick time will be charged for the remainder of the emergency.~~ **Sections A and B will then apply.**

**Union's Position.** Maintain Current Language. The Union is strongly opposed to penalizing employees who are not able to make it into work. During the mediation process and fact finding the Union, through testimony, referred to employees who live in rural areas of Portage County and elsewhere, who may be prohibited from being on the road during a Level 3 emergency.

**Discussion.** The proposal of the Employer to broaden the title of the article is not unreasonable given the possibility that emergencies may result from a variety of events in addition to weather. It is also not unreasonable to designate employees to be required to work during emergencies, particularly considering the number of lives the University is responsible for on its campuses. However, the Union makes a strong point regarding corrective action,

particularly during severe weather emergencies, like snow storms, which could cause employees difficulty with getting to work. Moreover, for most employees the loss of pay is sufficient incentive to make a good faith effort to come to work. However, if they are unable to make it into work they should not suffer a loss of pay, but should be able to offset any losses with benefit time.

## Recommendation

### ARTICLE 18 EMERGENCY CLOSURES

- A. In the event a weather emergency requires the University President to close the University, bargaining unit employees will be compensated at their regular rate for the number of hours for which they were scheduled to work during the **designated** emergency period.
- B. Bargaining unit employees who are required to work during the emergency period shall, in addition to pay for their regularly scheduled hours, be paid for the actual hours worked at their regular rate. Such hours worked will be included in the computation of overtime as set forth in Article 20. **If an employee who is required to work during the emergency fails to come to work, the employee will not receive the pay referenced in Section A. However, said employee may use compensatory time or vacation time to avoid the loss of pay.**
- C. Employees not scheduled to work because of scheduled vacation or continuing sick leave will be charged for the leave regardless of the declared emergency. If vacation or sick leave ends prior to the end of the declared emergency **Sections A and B will then apply.**

## Issue 8 Article 21, EQUALIZATION OF OVERTIME

### Current Language (see CBA)

### ARTICLE 21 EQUALIZATION OF OVERTIME

- A. Overtime work shall be distributed as equally as possible among employees working within the same job classification in a unit, by shift, provided they are capable of

performing the work available. Records showing overtime hours worked, scheduled and refused will be maintained in each department and made available.

- B. Except as provided in Paragraph D hereof whenever overtime is required, the person with the least number of overtime hours in the unit and shift will be called first and so on down the list in an attempt to equalize the overtime hours. Employees on sick leave or unpaid leave are ineligible to be called for overtime, and will not be charged for overtime. Employees on vacation or compensatory time off are also not eligible, nor shall they be charged for overtime unless the employee has notified his/her supervisor in writing prior to going on vacation or leave that he/she is available for overtime during such leave. If qualified volunteers are not available in the required numbers, qualified employees within the departmental unit in the affected classification most recently hired shall be required to work overtime as reasonably required to meet the operational needs of the University. Employees in other units within a department may be called if there is a shortage of employees needed. In such cases, they will be called on the basis of the least hours of overtime in their unit, provided they are capable of doing the work. Temporary employees will not be offered overtime opportunities until all permanent employees within the departmental unit have been offered the overtime.
- C. An employee who is unavailable (or cannot return to work within 45 minutes of being contacted during an emergency of snow removal and/or Utility situation) or does not choose to work overtime assignments shall be charged with the average number of overtime hours of employees working (not less than two (2) hours).
- D. When overtime is required in a department or departmental unit which operates seven days a week, qualified employees within the department or departmental unit in the affected classification will be required to work on the basis of the least hours of overtime in their department or departmental unit. The University has the right to offer overtime to qualified bargaining unit employees in such departments or department units, and in other departments or department units before imposing mandatory overtime upon the qualified employee who has worked the least hours of overtime.
- E. Excess overtime hours will be carried over each year and are subject to review.
- F. An employee who has been newly hired, transferred, returns from a leave, or reclassified will be charged with the average number of overtime hours that exist in his/her classification, unit, and shift on the day he/she was assigned or reassigned to the unit.
- G. Overtime opportunities will be offered during employee's work hours by supervision or phone call to listed residence phone number after work hours, of at least three rings. The University is not responsible for messages left at the employee's listed residence phone number which does not result in an immediate affirmative response. If it is determined that an employee has not been given his/her overtime opportunity, he/she

shall be given the next available opportunity for at least equal or greater amount of overtime. If supervision fails to give the employee the next available opportunity for overtime, the employee will be compensated for overtime opportunity denied.

- H. When an employee indicates in writing, on the designated leave request form, that while on vacation or compensatory time off that he/she does not want to work overtime on their regularly scheduled days off, proceeding or following their leave request, the employee will not be charged for those overtime hours. The employee must provide the notice at least five (5) business days in advance of the requested leave.
- I. Departmental units are subject to re-designation based on buildings/facilities being permanently closed or opened or organizational changes. In the event of unit re-designation, the University shall notify the President of Local 153 in writing of the changes prior to implementing the re-designated unit(s).

Designation of Departmental Units for Overtime Purposes:

- 1. Dining Service
  - a) Each service area is a unit
    - 1) Prentice
    - 2) Rosie's
    - 3) Eastway 2<sup>nd</sup> fl.
    - 4) Beall Bake Shop
    - 5) Second Fl. Student Ctr., Schwebel and Kent Market 1<sup>st</sup> Fl.
    - 6) The Hub and Pete's Arena
- and other similar units as established.
- 2. Kent Student Center Maintenance and Custodial
  - a) Kent Student Center Maintenance
  - b) Kent Student Center Custodial
- 3. Residence Halls Custodial
  - a) All Residence Halls comprise a unit
- 4. Grounds Maintenance Department
  - a) Equipment Operators
  - b) Groundskeepers
- 5. Maintenance Department
  - a) Each shop comprises a unit
  - b) All maintenance zones comprise a unit
  - c) Power Plant
  - d) Energy Management
  - e) ACPM (by shift comprises a unit)

6. Custodial Department
  - a) All Custodial comprises a unit
7. Receiving and Distribution
8. Parking Services Department
  - a) Entire Department is a unit
9. Printing Service Department
  - a) Entire Department is a unit
10. University Bookstore Department
  - a) Entire Department is a unit
11. Recreation Services
  - a) Custodians
  - b) Recreation Facility Workers

**Employer's Position.** Maintain current language except for the change to Section A proposed by the Union.

**Union's Position.**

#### ARTICLE 21 - EQUALIZATION OF OVERTIME

- A Overtime work shall be distributed as equally as possible among employees working within the same job classification in a unit, by shift, provided they are capable of performing the work available. Records showing overtime hours worked, scheduled and refused will be maintained in each department and made available. **The overtime record for each departmental unit will be reset to zero effective with the beginning of the first pay period following the execution date of the Agreement and shall reflect the overtime accumulation through the expiration date of this Agreement.**
- G. Overtime opportunities will be offered during employee's work hours by supervision or phone call to listed residence phone number after work hours, of at least three rings. The University is not responsible for messages left at the employee's listed residence phone number which does not result in an immediate affirmative response. If it is determined that an employee has not been given his/her overtime opportunity, **employee shall be compensated for overtime opportunity denied.** ~~he/she shall be given the next available opportunity for at least equal or greater amount of overtime.~~ If supervision

fails to give the employee the next available opportunity for overtime, the employee will be compensated for overtime opportunity denied.

- A. Departmental units are subject to re-designation based on buildings/facilities being permanently closed or opened or organizational changes. In the event of unit re-designation, the University shall notify the President of Local 153 in writing of the changes prior to implementing the re-designated unit(s).

Designation of Departmental Units for Overtime Purposes:

1. Dining Service

- a. ~~Each service area is a unit.~~ **All Dining Service comprise a unit.**

~~1. Prentice~~

~~2. Rosie's~~

~~3. East way 2<sup>nd</sup> fl.~~

~~4. Beall Bake Shop~~

~~5. Second fl. Student Ctr., Schwebel and Kent Market 1<sup>st</sup> fl.~~

~~6. The Hub and Pete's Arena~~

~~and other similar units as established~~

2. Kent Student Center Maintenance and Custodial

- a. Kent Student Center Maintenance

- b. Kent Student Center Custodial

3. Residence Halls Custodial

- a. All Residence Halls comprise a unit

4. Grounds Maintenance Department

- a. Equipment Operators

- b. Groundskeepers

5. Maintenance Department

- a. Each shop comprises a unit

- b. All maintenance zones comprise a unit

- c. Power Plant

- d. Energy Management

- e. ACPM ~~(by shift comprises a unit)~~

6. Custodial Department

- a. All Custodial comprises a unit

7. Receiving and Distribution

8. Parking Services Department

- a. Entire Department is a unit

9. Printing Service Department
  - a. Entire Department is a unit
  
10. University Bookstore Department
  - a. Entire Department is a unit
  
11. Recreation Services
  - a. Custodians
  - b. Recreation Facility Workers

**Discussion.** The facts do not justify a change in language at this time. While I understand why the Union argues for combining dining services for purposes of overtime distribution, this change would help some and hurt others in the bargaining unit. In essence, the facts indicate this proposal needs to be more carefully analyzed. There needs to be more discussion and the presentation of more convincing evidence to demonstrate how this major organizational change in the distribution of overtime would be accomplished.

## Recommendation

### ARTICLE 21

#### EQUILIZATION OF OVERTIME

- A. Overtime work shall be distributed as equally as possible among employees working within the same job classification in a unit, by shift, provided they are capable of performing the work available. Records showing overtime hours worked, scheduled and refused will be maintained in each department and made available. **The overtime record for each departmental unit will be reset to zero effective with the beginning of the first pay period following the execution date of the Agreement and shall reflect the overtime accumulation through the expiration date of this Agreement.**

All other sections of this Article shall remain current language unless previously TA'd by the parties.

Issue 9 Article 27, LEAVES OF ABSENCE

Current Language (see CBA)

**ARTICLE 27**  
**LEAVES OF ABSENCE**

- A. *An unpaid leave of absence for personal reasons may be granted at the discretion of the University up to a period of six (6) months without loss of seniority.*
- B. *All leaves of absence and any extensions thereof, must be applied for in advance and granted in writing on forms to be provided by the University, with a copy to be retained by the employee.*
- C. *A leave of absence without pay normally will not be granted an employee prior to completion of the probationary period following initial employment.*
- D. *All accrued vacation and compensatory time must be used before the employee is granted a leave without pay.*
- E. *Upon completion of a leave of absence without pay, the employee shall be returned to the next available position vacancy in his/her classification.*
- F. *An employee may, upon request, return to work prior to the expiration of a leave of absence if such early return is agreed to by the University.*
- G. *The employee shall be subject to termination if it is found that a leave of absence is not actually being used for the purpose or purposes for which it was granted or if the employee fails to return to duty at the completion of a leave of absence.*
- H. *During a period of approved personal leave of absence, the employee may continue University group insurance coverage by paying the monthly premiums. Arrangements for such payments must be made with the Staff Benefits Office prior to the leave of absence.*
- I. *An employee on leave of absence does not receive pay for holidays falling within the dates of the leave of absence.*
- J. *During a leave of absence, both the employer and employee contributions to PERS are discontinued. Accrued benefits are not forfeited, nor can they be withdrawn during a leave of absence.*
- K. *An employee on leave of absence without pay does not earn sick leave or vacation credit. However, the time spent on authorized leave of absence is counted in determining length of service for purposes of extended vacation eligibility or other purposes where longevity is a factor, provided the employee is properly returned to service and is not serving a probationary period.*
- L. *An employee may, at the discretion of the University, be granted a leave of absence without pay for the purpose of child care. All requests for leave of absence without pay for child care shall be considered on a nondiscriminatory basis without regard to the sex of the employee. An adoptive parent's request for leave of absence for purposes of child care shall be considered on the same basis as that of a biological parent.*
- M. *Unpaid leaves of absence for Union business may be granted for employees to attend Union conventions and conferences. Written requests for such leave shall be made in advance to the appropriate administrator in charge of Employee/Labor Relations or their designee who shall not reasonably withhold approval of such leaves.*

**Union's Position.** The Union is seeking release time to vote on the contract. Additionally, the parties during mediation reached a PTA on the issue of FMLA being granted in accordance with University policy.

**Employer's Position.** The Employer rejects the Union's request for time off to vote on a contract as being unmanageable and argues that the Union has been able to conduct votes in the past without much trouble. The Employer and the Union have agreed on the FMLA language proposed by the Union.

**Discussion.** There is insufficient evidence to justify release time to vote on a contract. The Union did not present a workable plan to demonstrate how this could be accomplished with minimum disruption, and without said plan the fact finder is unable to address this issue in a meaningful manner. The PTA reached by the parties on FMLA is incorporate in the following recommendation.

## **Recommendation**

### **ARTICLE 27 LEAVES OF ABSENCE**

- A. An unpaid leave of absence for personal reasons may be granted at the discretion of the University up to a period of six (6) months without loss of seniority.
- B. All leaves of absence and any extensions thereof, must be applied for in advance and granted in writing on forms to be provided by the University, with a copy to be retained by the employee.
- C. A leave of absence without pay normally will not be granted an employee prior to completion of the probationary period following initial employment.
- D. All accrued vacation and compensatory time must be used before the employee is granted a leave without pay.
- E. Upon completion of a leave of absence without pay, the employee shall be returned to the next available position vacancy in his/her classification.
- F. An employee may, upon request, return to work prior to the expiration of a leave of absence if such early return is agreed to by the University.
- G. The employee shall be subject to termination if it is found that a leave of absence is not actually being used for the purpose or purposes for which it was granted or if the employee fails to return to duty at the completion of a leave of absence.

- H. During a period of approved personal leave of absence, the employee may continue University group insurance coverage by paying the monthly premiums. Arrangements for such payments must be made with the Staff Benefits Office prior to the leave of absence.
- I. An employee on leave of absence does not receive pay for holidays falling within the dates of the leave of absence.
- J. During a leave of absence, both the employer and employee contributions to PERS are discontinued. Accrued benefits are not forfeited, nor can they be withdrawn during a leave of absence.
- K. An employee on leave of absence without pay does not earn sick leave or vacation credit. However, the time spent on authorized leave of absence is counted in determining length of service for purposes of extended vacation eligibility or other purposes where longevity is a factor, provided the employee is properly returned to service and is not serving a probationary period.
- L. An employee may, at the discretion of the University, be granted a leave of absence without pay for the purpose of child care. All requests for leave of absence without pay for child care shall be considered on a nondiscriminatory basis without regard to the sex of the employee. An adoptive parent's request for leave of absence for purposes of child care shall be considered on the same basis as that of a biological parent.
- M. Unpaid leaves of absence for Union business may be granted for employees to attend Union conventions and conferences. Written requests for such leave shall be made in advance to the appropriate administrator in charge of Employee/Labor Relations or their designee who shall not reasonably withhold approval of such leaves.
- N. **FMLA will be granted to bargaining unit employees in accordance with University policy.**

**Issue 10 Article 28, SICK LEAVE, Section F.**

**Current Language (see CBA)**

**ARTICLE 28  
SICK LEAVE**

- A. *Each employee shall be entitled for each completed eighty (80) hours of service to sick leave of four and six-tenths hours with pay.*

- B. Sick leave may be used for absence due to the employee's personal illness, pregnancy, injury, or exposure to contagious disease which could be communicated to other employees; illness, injury or death in the employee's immediate family.
1. For purposes of this Article, "immediate family" is defined to include the employee's spouse, parents, children, grandparents, siblings, grandchildren, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, father-in-law, step-parents, step-children, step-siblings, domestic partner, or a legal guardian or other person who stands in the place of a parent.
- C. Unused sick leave shall be cumulative without limit.
- D. Sick leave shall be charged in minimum units of fifteen minutes, and will be granted only for days and hours for which the employee would have otherwise been scheduled to work, but shall not include scheduled overtime. All use of sick leave must be requested in writing using the form provided by the University and is subject to the approval of the department head or designee.
- E. Applications for sick leave with intent to defraud may result in dismissal and refund of salary or wage paid for the period of time in question.
- F. An application for sick leave for any absence of three (3) days or more due to an employee's personal illness, injury, or exposure to contagious disease which could be communicated to other employees must be accompanied by a certificate from a licensed physician stating the nature of the illness, injury or exposure. Where the supervisor and the Associate Vice President of Human Resources reasonably believes an employee is abusing sick leave, they shall notify the employee in writing that future requests for sick leave for the next six months shall be accompanied by certificate from a licensed physician verifying his/her inability to work, or other written proof as required by the University for absences of less than three (3) days.
- G. Pregnancy, childbirth and related medical conditions: A pregnant employee may use any or all of the employee's accumulated sick leave credit only for the period of time, as certified by a licensed physician, that the employee is unable to work as a result of pregnancy, childbirth, or related medical conditions. Once having exhausted sick leave credits, the employee may choose to use accumulated vacation during the pregnancy leave.
- H. Where sick leave is requested to care for a member of the immediate family, the department head, or Associate Vice President for Human Resources may require a physician's certificate to the effect that the specific presence of the employee is necessary to care for the ill member. In the event of a prolonged illness of a member of the immediate family, it is understood that the employee will make arrangements as soon as possible for outside assistance to care for the afflicted member of the family. Paid sick leave will be granted for only a reasonable period of time to enable the employee to make the necessary arrangements, normally not in excess of five (5) days.
- I. Sick leave granted by reason of death is defined to include the employee's immediate family. This leave shall be granted for a reasonable period of time, not to exceed five (5) working days.
- J. Physical examination. The University may, in its reasonable discretion, require that an employee submit to an examination conducted by a licensed physician to assist in determining whether an employee is physically and mentally able to perform the duties of his/her position. The cost of the examination shall be paid by the University. In the event the employee disagrees with the conclusion of the University's physician, he/she may, at the employee's expense, submit to a physical examination by a physician of their choice. If the University's and the employee's physician agree, their decision shall be final. If the University's and the employee's physician disagree, the dispute may be referred to a medical clinic or neutral doctor selected by the University's physician and the employee's physician for a final

determination of whether the employee is physically and mentally fit for continued employment. The fees of the third party shall be borne equally by the university and the Union. If an employee is found physically or mentally incapable of performing his/her duties and no reasonable accommodation is available, the employee may be placed on paid sick leave or unpaid disability leave by the University. If the employee is found mentally or physically capable of performing his/her duties, the employee must return to work or further sick leave may accordingly be denied.

K. *Notification of Absence.*

1. *When an employee is incapacitated and is unable to report to work as scheduled, the employee, or the employee's designee is responsible for notifying his/her immediate supervisor, or other designated person, that he/she will be unable to report for work. The employee or designee must state the specific reason for their inability to report for work, and must indicate the probable duration of sick leave. Such notification must be received by the immediate supervisor or other designated person not less than one-half hour prior to the time he/she is scheduled to report for work on the first day of absence and each day thereafter. However, when an employee's duties must be continuously performed within a department which operates twenty-four (24) hours a day, seven (7) days a week and the employee is unable to report for work, he/she shall notify the immediate supervisor or other designated person not less than two hours before the time he/she is scheduled to report to work on the first day of absence and each day thereafter. Daily notification is waived for any period where the employee has previously submitted to his/her supervisor, documentation by his/her physician of a disability covering that period.*
2. *When institutionalization or hospitalization is required, the employee is responsible for notifying his/her supervisor or other designated person upon admission and upon discharge.*
3. *When convalescence at home is required, the employee is responsible for notifying his/her immediate supervisor or other designated person at the start and conclusion of such period of convalescence.*

L. *Conversion of sick leave upon retirement.*

1. *Upon retiring from active service with the University after ten (10) or more years of service, an employee may elect to be paid for one fourth (1/4) of the accrued but unused sick leave credit. This payment will be based upon the employee's rate of pay at the time of retirement. Upon accepting such payment, all sick leave credit accrued up to that time will be eliminated.*
2. *Such payment will be made only once to any employee. That is, an employee who returns to the University or other state service after retiring may accrue and use sick leave as before, but may not convert the unused sick leave at the time of the second retirement.*
3. *The maximum payment allowed will be one fourth (1/4) of one hundred twenty days (120). Sick leave conversion does not apply to any termination or separation other than retirement.*

M. *Conversion of sick leave upon death of employee.*

1. *If an employee dies while actively employed by the University, and had ten (10) or more years of University service, payment for one-fourth (1/4) the accrued but unused sick leave to his or her credit will be made in accordance with paragraph (3) of this rule. This payment will be based upon the employee's rate of pay at the time of death.*
2. *The maximum payment allowed will be one-fourth (1/4) of one hundred and twenty (120) days.*

3. *The cash conversion of unused sick leave credit shall be paid in accordance with Section 2213.04 of the Ohio Revised Code (release of decedent's wages without administration), or to the estate of the decedent.*

N. *Transfer of sick leave.*

1. *An employee who transfers from a public agency to the University or who is re-appointed or re-instated shall upon re-entering and submitting certified evidence of accumulated sick leave shall be credited with the unused balance of accumulated sick leave, provided time between separation and reappointment does not exceed ten (10) years.*

O. *An employee may make sick leave donations or may receive sick leave donations in accordance with the applicable University policy that applies to most University employees.*

**Employer's Position.** Maintain current language.

**Union's Position.** The Union proposes that it have the ability to convert twenty-four (24) hours of sick leave to personal leave, provided a twenty-four (24) hour notice is given to the Employer. The Union proposes to delete Section F and added a new section P. As follows:

#### ARTICLE 28 - SICK LEAVE

F. ~~An application for sick leave for any absence of three (3) days or more due to an \_\_\_\_\_ employee's personal illness, injury, or exposure to contagious disease which could be \_\_\_\_\_ communicated to other employees must be accompanied by a certificate from a licensed \_\_\_\_\_ physician stating the nature of the illness, injury or exposure. Where the supervisor and \_\_\_\_\_ the Associate Vice President of Human Resources reasonably believes an employee \_\_\_\_\_ abusing sick leave, they shall notify the employee in writing that future request for sick leave for the next six months shall be accompanied by certificate from a licensed physician verifying his/her inability to work, or other written proof as required by the University for absences of less than three (3) days.~~

**P. Employees may convert twenty-four (24) hours of sick leave per year to personal leave. Such leave will be granted with twenty-four (24) hour advance notice.**

**Discussion.** It is not uncommon in the public sector in Ohio and elsewhere in both the private and public sectors for an employer to have the right to require a medical verification of an illnesses of three (3) days or more. At this time there is insufficient evidence to support the conversion of sick leave to personal leave.

#### Recommendation

#### ARTICLE 28 SICK LEAVE

**Maintain Current Language**

**Issue 11 Article 32, VACATION**

**Current Language (see CBA)**

**ARTICLE 32  
VACATION**

- A. *A full-time employee shall earn vacation according to years of service with the University based on the following schedule:*

*Less than one year of service. Accrued vacation is available after six (6) months of service.*

*One year, but less than five (5) - Two weeks, (80 work hours) (10 working days).*

*Five years but less than ten (10) - Three weeks, (120 work hours) (15 working days).*

*Ten years, but less than twenty-one (21) - Four weeks, (160 working hours) (20 working days).*

*Twenty-one or more years of service - four weeks, (160 working hours) (20 working days) plus an additional 8 hours (one day) per year for each year of service over twenty years (20) to a maximum addition of 40 hours (5 days) for a total annual accrual of 200 hours (25 days) for twenty-five (25) or more years of service.*

*One year of service shall be computed on the basis of twenty-six biweekly pay periods.*

*Prior service with the state or any political subdivision of the state shall not be credited for purposes of calculating an employee's vacation entitlement, provided bargaining unit employees hired prior to February 4, 1990, shall be credited for prior service only with the State of Ohio for purposes of calculating vacation entitlement.*

- B. *Employees shall forfeit their right to take or to be paid for any vacation leave to their credit which is in excess of the accrual for three years. Such excess leave shall be eliminated from the employee's leave balance. Upon separation from University service, an employee shall be entitled to compensation at his/her current rate of pay for all lawfully accrued and unused vacation leave to his/her credit at the time of separation up to three years.*
- C. *All use of vacation leave must be requested in writing using the form provided by the University, and is subject to the prior written approval of the immediate supervisor or designee. Vacation requests may be denied for operational and staffing reasons, but otherwise shall not be unreasonably denied. A copy of the vacation request will be returned to the employee. Once a vacation period is approved, it will not be changed or canceled within a two-week period immediately preceding the first day of the vacation period, except with the mutual consent of the employee and his/her immediate supervisor or designee.*
- D. *An hourly paid employee may receive in advance his/her pay check that would normally be received during his/her vacation period, where such request is made in writing to Human Resource Services at least three weeks in advance of the vacation date and where the vacation period is for a minimum of one week. This provision is not applicable to employees paid by direct deposit.*
- E. *In the event the State of Ohio enacts legislation granting vacation rights to part-time employees, the University will implement same.*

- F. *Holidays observed under this Agreement shall not be included in computing the length of vacation periods.*
- G. *Annually, during the fourteen (14) calendar days beginning September 1 of each year, employees who have accrued 500 or more hours of unused sick leave may elect, in writing, to transfer 40 hours of their unused sick leave into their unused vacation leave accrual.*

**Union's Position.** The Union proposes to modify the language of this Article to ensure prior service credit for military service. In addition, the Union seeks to add language to Section C to speed up vacation approval. It proposes the following changes to Article 32:

#### ARTICLE 32 - VACATION

A. A full-time employee shall earn vacation according to years of service with the University based on the following schedule:

Less than one year of service. Accrued vacation is available after six (6) months of service.

One year, but less than five (5) - Two weeks, (80 work hours) (10 working days).

Five years but less than ten (10) - Three weeks, (120 work hours) (15 working days).

Ten years, but less than twenty-one (21) - Four weeks, (160 working hours) (20 working days).

Twenty-one or more years of service - four weeks, (160 working hours) (20 working days) plus an additional 8 hours (one day) per year for each year of service over twenty years (20) to a maximum addition of 40 hours (5 days) for a total annual accrual of 200 hours (25 days) for twenty-five (25) or more years of service.

One year of service shall be computed on the basis of twenty-six biweekly pay periods.

~~Prior service with the state or any political subdivision of the state shall not be credited for purposes of calculating an employee's vacation entitlement, provided bargaining unit employees hired prior to February 4, 1990, shall be credited for prior service only with the State of Ohio for purposes of calculating vacation entitlement.~~

**Employees who provide valid documentation to their Human Resources department shall receive credit for prior service with the State, the Ohio National Guard, any branch of the United States Military or any political subdivision of the State for purposes of computing vacation leave. This new rate shall take effect starting the pay period immediately following the pay period that includes the date that the Human Resources department processes and approves their request. Time spent concurrently with the Ohio National Guard any branch of the United States Military or a State Agency or political subdivision shall not count double.**

C. All use of vacation leave must be requested in writing using the form provided by the University, and is subject to the prior written approval of the immediate supervisor or designee. Vacation requests may be denied for operational and staffing reasons, but otherwise shall not be unreasonably denied. A copy of the vacation request will be returned to the employee **within five (5) days of the request.** Once a vacation period is approved, it will not be changed or cancelled within a two-week period immediately preceding the first day of the vacation period, except with the mutual consent of the employee and his/her immediate supervisor or designee.

**Employer's Position.** Maintain current language except for the change to Section C proposed by the Union.

**Discussion.** There is insufficient data to indicate how many bargaining unit members would be impacted by this proposed change. However, the Employer has agreed to the PTA on the additional language to Section C.

### Recommendation

#### ARTICLE 32 VACATION

C. All use of vacation leave must be requested in writing using the form provided by the University, and is subject to the prior written approval of the immediate supervisor or designee. Vacation requests may be denied for operational and staffing reasons, but otherwise shall not be unreasonably denied. A copy of the vacation request will be returned to the employee **within five (5) days of the request.** Once a vacation period is approved, it will not be changed or cancelled within a two-week period immediately preceding the first day of the vacation period, except with the mutual consent of the employee and his/her immediate supervisor or designee.

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

### Issue 12 Article 35, SENIORITY

#### **Current Language (see CBA)**

#### ARTICLE 35 SENIORITY

A. *An employee's seniority with the University, or in his/her department, or in his/her classification, shall be determined as defined below. An employee will be credited with one point for each bi-weekly pay period of full-time service. An employee will be credited with one-half (.5) point for each bi-weekly pay period of*

*part-time service. Points shall be combined to determine each employee's total seniority points. Time on authorized leave of absence will be included. An employee shall have no seniority during the probationary period following initial employment, but upon satisfactory completion of the probationary period shall have seniority retroactive to date of hire.*

1. *"University seniority" is the employee's seniority with the University as determined above.*
2. *"Department seniority" is the employee's seniority in his/her department as determined above.*
3. *"Classification seniority" is the employee's seniority in his/her current classification as determined above.*

*Tie Breaker. In the event two or more employees have identical seniority points as calculated by the above, the tie shall be broken by utilizing the following methods, in the following order:*

1. *First, the employee having the most recent date of continuous service shall be deemed the least senior.*
2. *Coin toss.*

*B. Seniority for all purposes hereof shall be broken (or terminated) when an employee;*

1. *quits;*
2. *is discharged for cause;*
3. *is laid off or otherwise out of active pay status with the University for a period of more than twelve (12) consecutive months;*
4. *is absent without leave for three (3) consecutive work days (unless the employee is physically unable to contact the University and provided he/she thereafter provides proper and acceptable excuse as determined by the University);*
5. *fails to report for work as scheduled when recalled from lay off;*
6. *fails to return to work on the next scheduled work day following vacation or leave of absence (unless proper and acceptable excuse is shown by the employee).*

*C. Annually, the University will furnish the President of Local 153 with four (4) copies of the seniority list and Ohio Council 8 with one (1) copy of that list. Any discrepancies in the seniority list brought to the attention of Human Resource Services and Solutions will be corrected. The University will also furnish a listing in hire date order of all current members of the bargaining unit.*

*D. Effective January 1, 1999, permanent full-time and part-time bargaining unit employees, including those with seasonal appointments, will be eligible to receive a Service Achievement Award as established in Section 3342-6-65 of the University Policy Register.*

**Union's Position.** The Union proposes the following new provision E.:

## ARTICLE 35 - SENIORITY

D. Effective January 1, 1999, permanent full-time and part-time bargaining unit employees, including those with seasonal appointments, will be eligible to receive a Service Achievement Award as established in Section 3342-~~6-65~~ **07.11** of the University Policy Register.

**E. On execution of this Agreement and on May 15<sup>th</sup> thereafter, all employees will bid on the shift assignment, days off and work zone of each work area. All bids will be awarded based on seniority.**

The Union contends what it is proposing is pretty standard language found in agreements in the public sector in Ohio. The Union agreed to Section D. by virtue of a PTA.

**Employer's Position.** Maintain current language except for the change to Section D on which there was a PTA. What the Union is proposing is unworkable in the opinion of the Employer.

**Discussion.** The Union is correct when it asserts that the language in proposed E. can be found in many public sector contracts. The problem here is that this type of procedure must be planned for by the parties and it may have operational implications that have not been fully considered. Had the Union been able to more fully explain how its proposal would not affect the operations of the University, it may have been given greater consideration.

### Recommendation

## ARTICLE 35 SENIORITY

**Maintain Current Language, except for Section D. which shall be as follows:**

D. Effective January 1, 1999, permanent full-time and part-time bargaining unit employees, including those with seasonal appointments, will be eligible to receive a Service Achievement Award as established in Section 3342 **07.11** of the University Policy Register.

### Issue 13 Article 36, EMPLOYEE PERFORMANCE EVALUATION

#### Current Language (see CBA)

## ARTICLE 36 EMPLOYEE PERFORMANCE EVALUATION

A. *The annual Employee Performance Evaluation of bargaining unit employees shall continue. Each employee will be given a completed copy of his/her annual Performance Evaluation form. The fact that the employee signs the report does not signify his/her approval.*

- B. *An employee may write a response to the evaluation and such signed response shall be attached to the evaluation.*

**Union's Position.** Maintain current language.

**Employer's Position.** The Employer proposes to modify language to reflect electronic access and usage for job evaluations. It proposes the following language:

**ARTICLE 36  
EMPLOYEE PERFORMANCE EVALUATION**

- A. The annual Employee Performance Evaluation of bargaining unit employees shall continue. Each employee will be given **on line access to** a completed copy of his/her annual Performance Evaluation form. The fact that the employee **electronically acknowledges signs** the report does not signify his/her approval.
- B. An employee may **submit an on-line write** a response to the evaluation and such signed response shall be **include with attached** to the evaluation.

**Discussion.** The changes proposed by the Employer are reasonable and procedural in nature while maintaining the rights of employees. Electronic processing of data comports with contemporary HR methodology, is more cost effective, and preserves resources.

**Recommendation**

**ARTICLE 36  
EMPLOYEE PERFORMANCE EVALUATION**

- A. The annual Employee Performance Evaluation of bargaining unit employees shall continue. Each employee will be given **on line access to** a completed copy of his/her annual Performance Evaluation form. The fact that the employee **electronically acknowledges signs** the report does not signify his/her approval.
- B. An employee may **submit an on-line write** a response to the evaluation and such signed response shall be **included with attached** to the evaluation.

**Issue 14 Article 37, POSITION AUDIT/ESTABLISHMENT OF NEW BARGAINING UNIT CLASSIFICATIONS.**

**Current Language (see CBA)**

**ARTICLE 37**  
**POSITION AUDIT/ESTABLISHMENT OF NEW BARGAINING**  
**UNIT CLASSIFICATIONS**

A. *The University may initiate and make continuing audits, inspections, and investigations of bargaining unit positions. When the University determines that a position is improperly classified, the position will be reallocated to the proper bargaining unit classification. The Union shall be notified ten (10) working days prior to any reallocation by the University.*

B. *Bargaining unit employees who feel they are not classified in accordance with their current classification specification may request an audit. Thereafter if an employee believes the duties of his/her position have substantially changed, the employee may request an audit of the classification of his/her position not more than once every twelve (12) months.*

*Employee requests for a classification review must be submitted to the Associate Vice President for Human Resources. The request shall include the name of the employee whose position is to be audited, the name of the department, the name of the employee's supervisor, and the address where an audit form is to be mailed.*

C. *The audit form shall be completed by the employee and his/her supervisor. It must include an accurate description of the duties currently being performed by the employee. The completed form must be signed by the employee, supervisor, and department/division head and, where practical, returned to the Associate Vice President for Human Resources within thirty (30) days of the employee's submission of the completed form to his/her supervisor. The Associate Vice President for Human Resources will then conduct the investigation and evaluation. The Union shall receive a copy of the completed audit form at the time it is submitted. Should the Union object to the audit or any information in the audit, it shall provide written documentation to the Associate Vice President for Human Resources within ten (10) working days of receiving the audit form.*

D. *Audit determinations will be based upon information obtained during the review process. That information will be compared to existing classification specifications, as established by the University. The classification specification which most accurately describes the duties performed and the responsibilities assumed by the employee shall determine the classification to which the position is allocated. Job specifications in effect on the effective date of this agreement shall not be arbitrarily changed by the University.*

E. *The position audit shall be deemed completed when the Manager of Compensation sends written notification of the results to the employee and the Union President. Where practical, this notification will be within thirty (30) days of the date the Manager of Compensation receives the audit form.*

*If it is determined the position shall be reallocated to a classification assigned to a higher pay range, the incumbent will be reassigned to the new classification and will receive a wage rate increase of five percent (5%) or the entry pay level for the new classification, whichever is greater.*

*If it is determined the position should be reallocated to a classification assigned to a lower pay range, the incumbent shall be reassigned to the lower classification without a reduction in pay.*

*If it is determined the position should be reallocated to a different classification in the same pay range, the incumbent shall be reassigned to the new classification with no change in pay.*

*The effective date of a classification change shall be the first day of the bi-weekly pay period immediately following the notification of the classification change by the Manager of Compensation.*

- F. *The Employer shall notify the Union upon establishment of a new job classification within the bargaining unit which has not been previously classified. Such notification shall occur no less than ten (10) days prior to the intent of the employer to establish the position. The Employer shall establish a wage rate for the newly established position with due consideration for current wage rates and duties for similar bargaining unit positions. Should the Union disagree with the rate established by the Employer, it may file a grievance at Step 3 of the Grievance Procedure.*
- G. *Should the parties agree on the wage rate for the classification, or if the matter is resolved by arbitration, such wage rate and classification shall become a part of the collective bargaining agreement. If the negotiated or determined rate is higher than the rate established by the Employer, it shall be applied retroactively to the date any incumbent employee(s) began to work in such classification.*
- H. *Grievances filed pursuant to this Article shall be submitted to Step 3 of the grievance procedure.*

**Union's Position.** Delete this language. The Union opposes the Employer's substitute language, which it argues leaves open the door for improper favoritism.

**Employer's Position.** The Employer is willing to delete this language, but wishes to substitute the following language:

#### **Salary Adjustments**

- A. While the University recognizes the Union as the exclusive agent for negotiating salaries for their membership, the University reserves the right to adjust salaries beyond negotiated levels to address salary discrepancies if proven through a salary review conducted by the University, to counter a bona fide offer of outside external employment of an employee, or in other unusual circumstances**
- B. The University will notify the Union ten (10) days before any such adjustment can occur.**
- C. If the University adjusts the salary of employees, all similarly situated employees will have salaries adjusted as of the effective date of the adjustment.**

**Discussion.** While I agree the Employer's proposed language potentially could favor one group of employees over another, it also represents an opportunity for the retention or recruitment and provides an argument for the Union to raise salaries of all employees in a classification. Moreover, the Union always retains the option of filing a grievance over any perceived improprieties.

#### **Recommendation**

### **ARTICLE 37 POSITION AUDIT/ESTABLISHMENT OF NEW BARGAINING UNIT CLASSIFICATIONS**

## Salary Adjustments

- A. While the University recognizes the Union as the exclusive agent for negotiating salaries for their membership, the University reserves the right to adjust salaries beyond negotiated levels to address salary discrepancies if proven through a salary review conducted by the University, to counter a bona fide offer of outside external employment of an employee, or in other unusual circumstances
- B. The University will notify the Union ten (10) days before any such adjustment can occur.
- C. If the University adjusts the salary of employees, all similarly situated employees will have salaries adjusted as of the effective date of the adjustment.

### Issue 15 Article 38, SAFETY AND HEALTH

#### Current Language (see CBA)

#### ARTICLE 38 SAFETY AND HEALTH

- A. *The University will continue to provide the required safety equipment and protective clothing to those employees who are required to use the equipment or who perform on-job assignments where protective clothing is mandatory by code. All employees will abide by University Safety Regulations and will utilize or wear the required safety equipment and/or protective clothing. Employees and supervisors will work together to resolve safety issues.*
- B. *The Union will continue to encourage safety in all matters with its members and will promote the safety rules and regulations established by the University Safety Program. Periodic meetings will be held as necessary during working hours to update employees on University safety rules and regulations.*
- C. *The Union shall select one (1) person to serve as its representative on the University Safety Committee. The representative named to serve on the Safety Committee shall suffer no loss of pay for the time necessarily spent in meetings of the Safety Committee during his or her regularly scheduled working hours, and shall be notified of meetings of the Safety Committee at least three (3) days in advance of such meeting. Notification shall be in writing and shall contain the time, date and place of the meeting.*
- D. *All matters involving safety and health shall be promptly brought first, to the attention of the employee's supervisor, and if not resolved by the supervisor, then in writing to the Department Head, and if not resolved, then in writing to the University Safety Director and, if not resolved, then set for discussion at an ad hoc joint labor/management safety committee with two (2) members appointed by the Director of Campus Environment and Operations with expertise in the area of concern, and two (2) members appointed by the Union.*

- E. *No less than two (2) persons will be assigned to a crew when work, other than inspection, is to be performed in University tunnels, or when an employee is required to work in an excavation of greater than four (4) feet in depth, or at other times as determined by the Director of Campus Environment and Operations or specified in the Safety Policy. Proper communication devices will be provided when the employees are assigned to inspect tunnels or assigned to the cherry picker.*
- F. *Employees who are required by the University to wear safety shoes shall be allocated up to \$125 in 2009 (for the balance of the Contract), by the University on or about each anniversary date of this Agreement for the purchase of a pair of safety shoes. Employees will be required to wear the safety shoes and maintain the safety quality and appearance of the shoes as determined by the Director of Safety.*

**Union Position.** The Union agrees to a PTA to Section E., and proposes an increase in the allowance for safety shoes as follows:

#### ARTICLE 38 - SAFETY AND HEALTH

E. No less than two (2) persons will be assigned to a crew when work, other than inspection, is to be performed in University tunnels, **on roofs** or when an employee is required to work in an excavation of greater than four (4) feet in depth, or at other times as determined by the Director of Campus Environment and Operations or specified in the Safety Policy. Proper communication devices will be provided when the employees are assigned to inspect tunnels or assigned to the cherry picker.

**F.** Employees who are required by the University to wear safety shoes shall be paid ~~reimbursed up to \$100.00 in 2005 (\$125 in 2006, 2007 and 2008)~~ by the University **in the first pay period in October in each year of the contract** ~~on or about each anniversary date of this Agreement~~ for the purchase of a pair of safety shoes. Employees will be required to wear the safety shoes and maintain the safety quality and appearance of the shoes as determined by the Director of Safety.

**Employer's Position.** With the exception of Section E, which is agreed to by PTA, the Employer proposes current language on Section F.

**Discussion.** The Union's proposed language is somewhat confusing in that it appears from the CBA that bargaining unit employees are already eligible to receive \$125 for safety shoes. Therefore, the fact finder cannot recommend a change in language without more clarity.

#### Recommendation

**ARTICLE 38**  
**SAFETY AND HEALTH**

- A. The University will continue to provide the required safety equipment and protective clothing to those employees who are required to use the equipment or who perform on-job assignments where protective clothing is mandatory by code. All employees will abide by University Safety Regulations and will utilize or wear the required safety equipment and/or protective clothing. Employees and supervisors will work together to resolve safety issues.
- B. The Union will continue to encourage safety in all matters with its members and will promote the safety rules and regulations established by the University Safety Program. Periodic meetings will be held as necessary during working hours to update employees on University safety rules and regulations.
- C. The Union shall select one (1) person to serve as its representative on the University Safety Committee. The representative named to serve on the Safety Committee shall suffer no loss of pay for the time necessarily spent in meetings of the Safety Committee during his or her regularly scheduled working hours, and shall be notified of meetings of the Safety Committee at least three (3) days in advance of such meeting. Notification shall be in writing and shall contain the time, date and place of the meeting.
- D. All matters involving safety and health shall be promptly brought first, to the attention of the employee's supervisor, and if not resolved by the supervisor, then in writing to the Department Head, and if not resolved, then in writing to the University Safety Director and, if not resolved, then set for discussion at an ad hoc joint labor/management safety committee with two (2) members appointed by the Director of Campus Environment and Operations with expertise in the area of concern, and two (2) members appointed by the Union.
- E. No less than two (2) persons will be assigned to a crew when work, other than inspection, is to be performed in University tunnels, **on roofs** or when an employee is required to work in an excavation of greater than four (4) feet in depth, or at other times as determined by the Director of Campus Environment and Operations or specified in the Safety Policy. Proper communication devices will be provided when the employees are assigned to inspect tunnels or assigned to the cherry picker.
- F. Employees who are required by the University to wear safety shoes shall be allocated \$125 in 2011 (for the balance of the Contract), by the University on or about each anniversary date of this Agreement for the purchase of a pair of safety shoes. Employees will be required to wear the safety shoes and maintain the safety quality and appearance of the shoes as determined by the Director of Safety.

Current Language (see CBA)

**ARTICLE 41  
DISCIPLINE**

- A. *No bargaining unit member shall be disciplined except for just cause. Employees shall not be discharged or given a disciplinary suspension without first being given an opportunity to attend a conference where the employee may give his/her version of the events at issue. The employee being so disciplined shall, upon request, have a Union representative present, but shall not have the right to be accompanied or represented by a private attorney or any other person other than the Union. Such a pre-suspension/discharge conference shall not be required relative to serious offenses requiring immediate action.*
- B. *The University may promulgate and publish work rules regulating the conduct of bargaining unit employees and informing employees of the types of conduct which shall be deemed inappropriate. Newly promulgated or amended work rules shall be sent to the Union President or his/her designee fourteen (14) days prior to the date they take effect. Until the time new rules are promulgated, present department rules and the enumerated offenses stated in O.R.C. §124.34 will apply. The grievance procedure shall be available if the rules are unreasonable or are applied in a discriminatory manner.*
- C. *Copies of suspension and discharge actions will be provided to the employee or mailed to the employee's address of record and mailed to the Union President or his/her designee at the time disciplinary action is taken.*
- D. *Disciplinary suspensions shall be for a specified number of days and holidays shall be counted as a day of suspension for this purpose.*
- E. *Suspensions and discharges may be submitted to the grievance procedure at Step 3. All other disciplinary actions may be submitted to the grievance procedure at the step at which the discipline was issued.*
- F. *Notices dealing with discipline consisting of a suspension or termination shall state the type and amount of discipline imposed, and the reasons for the disciplinary action taken. The notice shall include any contract provision, statute, policy or work rule which the employer considers to have been violated. The Union shall receive a copy of the discipline notice at the time the notice is presented to the employee.*

**Union Position.** Modify the language of Section G as follows in order to place a reasonable limit on how long discipline remains active in the record:

ARTICLE 41 – DISCIPLINE

**G. Disciplinary action will be removed from the employees personnel file and will cease to have any force or effect in compliance with the following schedule.**

**1. VERBAL REPRIMAND TWELVE (12) MONTHS.**

**2. WRITTEN REPRIMAND EIGHTEEN (18) MONTHS.**

**3. SUSPENSION TWENTY FOUR (24) MONTHS.**

**Employer's Position.** Maintain current language.

**Discussion.** The Union's proposal does not include the issue of additional discipline that may occur during the length of time under Section 1, 2, or 3. However, it is common in the public sector to place reasonable limitations on discipline and provide an employee with an opportunity to learn from his/her error. The purpose of discipline is to correct and not to punish, and allowing an employee to undo what has been done is consistent with this purpose. Additionally, verbal and written discipline is somewhat indistinguishable in that verbal warnings are routinely reduced to writing for record purposes. Verbal and Written discipline should have the same active time in an employee's record.

**Recommendation**

**Maintain Current Language A through F, but add new Section G.:**

ARTICLE 41 – DISCIPLINE

**G. Disciplinary action will be removed from the employees personnel file and will cease to have any force or effect in compliance with the following schedule, provided the employee has no intervening discipline while current discipline remains active. If an employee has intervening discipline during the time period that formal discipline remains active, the time of the new discipline shall extend the old discipline with it until the new discipline expires:**

**1. VERBAL AND WRITTEN REPRIMAND TWELVE (12) MONTHS.**

**2. SUSPENSION TWENTY FOUR (24) MONTHS.**

**Issue 17 Article 42, GENERAL**

**Current Language (see CBA)**

**ARTICLE 42  
GENERAL**

- A. *The University agrees to provide copies of this Agreement in booklet form to the Union as necessary.*
- B. *A custodial worker shall not be required to perform work involving the connecting or disconnecting of wiring of a light fixture. The routine changing of light bulbs is considered a proper duty of a custodial worker.*
- C. *The occasional duty of flat roof repair is considered the proper assignment of a Maintenance Repair Worker. All other types of roof repair are within the normal duties of the Carpenter classification.*
- D. *The Union shall provide the University notification of the man or woman serving as acting President in the event of illness or absence of the President.*
- E. *The University will continue to provide adequate locker space for all Maintenance, Custodial and Food Service employees in need of same.*
- F. *The Union shall have the right to utilize the campus mail service for handling of official Union correspondence and grievance processing, on the same basis and policies, and at the same rate, where applicable, as departments within the University community. The privilege of using the mail service does not include the handling of general mailings or mass distribution of notices, leaflets, etc.*

**Union's Position.** The Union through testimony indicates that custodians do not have the expertise to handle many types of light fixtures, particularly with the ubiquity of florescent light bulbs versus incandescent bulbs, which are on their way out. The Union also pointed out that carpenters are better suited to repair flat roof shingles as opposed to MRWs.

**Employer's Position.** While the Employer, through testimony does not disagree that some light fixtures are complex and should not be handled by custodians, it does not feel the current language needs to be changed.

**Discussion.** There is apparently some consistency of thought by the parties on proper assignments for custodians and carpenters depending on the level of expertise needed on a particular job. This was apparent in the testimony proffered at the fact finding hearing. However, this problem is not easily resolved through contract language. Moreover, anything that is not "routine" as cited in the language is difficult to define in contract language and is a more appropriate subject of labor/management and or safety committee discussions.

**Recommendation**

**ARTICLE 42  
GENERAL**

**Maintain Current Language**

**Issue 18 Article 43, UNIFORMS**

**Current Language (see CBA)**

**ARTICLE 43  
UNIFORMS**

- A. *The University will provide uniforms for every employee who is required to wear attire other than usual clothing in the normal pursuit of his/her duties. Housekeeping, Custodial and Maintenance employees will be issued five (5) uniforms, with replacement as needed. Parking Facility Attendants will be issued five (5) uniforms, with appropriate accessories, with replacements as needed. The University will, at its option, issue to Food Service employees five (5) uniforms with replacement as needed or provide a clean uniform each work day. All employees will wear the required uniforms.*
- B. *Coveralls will be made available for use on the job where working conditions require same and approved jackets can be purchased at University cost.*

**Union's Position.** The Union proposes to add to Section A the following:

- A. The University will provide uniforms for every employee who is required to wear attire other than usual clothing in the normal pursuit of his/her duties. Housekeeping, Custodial and Maintenance employees will be issued five (5) uniforms, with replacement as needed. Parking Facility Attendants will be issued five (5) uniforms, with appropriate accessories, with replacements as needed. The University will, at its option, issue to Food Service employees five (5) uniforms with replacement as needed or provide a clean uniform each work day. All employees will wear the required uniforms. **In addition all employees will be issued five (5) T-Shirts and five (5) pairs of shorts with replacements as needed.**

**Employer's Position.** Maintain current language.

**Discussion.** The Union did not provide sufficient evidence to demonstrate the need to expand the contents of this provision to t-shirts and shorts. Moreover, it is not even clear that said items would conform to the University's uniform policy.

**Recommendation**

**Maintain Current Language**

**Issue 19 Article 44, PARKING**

**Current Language (see CBA)**

**ARTICLE 44  
PARKING**

- A. *The University agrees to provide free parking for its employees at a location or locations specified by the University.*
- B. *The University will provide one (1) "service" parking sticker to the Union President and Chief Steward.*
- C. *The Union shall select one (1) person to serve as its representative on the University Parking and Traffic Committee. The representative named to serve on the Parking and Traffic Committee shall suffer no loss of pay for time necessarily spent in meetings of the Parking and Traffic Committee during his/her regularly scheduled working hours.*
- D. *Parking fees will remain at the current rate through May 31, 2002. From that date through the life of the agreement, the charge for a staff parking permit will be \$11.00 per month.*

**Union Proposal.** Maintain current language.

**Employer Proposal.** The Employer is proposing that all services passes be purchased by the Union and wants to eliminate current language that provides a pass to the President and Chief Steward. Furthermore, the University wants to uncap parking rates and charge the standard established rate to employees.

**Discussion.** Although it is not unreasonable to charge a representative a discounted amount for parking, which could be used by more than one Union officer, The University provided insufficient evidence to justify charging the Union President and Chief Steward the full rate for parking given their duties. Moreover, it is unreasonable to expose the bargaining unit to unlimited increases in parking. Yet, over time costs do rise and a modest periodic increase in what employees are required to pay is not unusual in the public sector.

**Recommendation**

**ARTICLE 44  
PARKING**

- A. The University agrees to provide free parking for its employees at a location or locations specified by the University.
- B. **The Union can purchase up to three (3) service permit passes for \$50 each.**
- C. The Union shall select one (1) person to serve as its representative on the University Parking and Traffic Committee. The representative named to serve on the Parking and Traffic Committee shall suffer no loss of pay for time necessarily spent in meetings of the Parking and Traffic Committee during his/her regularly scheduled working hours.

- D. Parking fees a staff parking permit will be **\$12.00 per month, effective next full pay period following ratification of the Agreement and for the remainder of 2012 and all of 2013. And shall increase to \$13.00 for 2014.**

**Issue 20 Article 45, INSURANCE**

**Current Language (see CBA)**

**ARTICLE 45  
INSURANCE**

A. *Maintenance of Benefits.*

*Effective January 1, 2009, and through the life of this Agreement, the University agrees to offer health insurance plans according to the guidelines set forth below:*

1. *During the life of this agreement, the percentage of the premium for medical insurance paid by employees will increase in accordance with the following schedule:*

2009                      0.0%

2010                      2.0%

2011                      2.0%

2. *The University reserves the right to change medical insurance carriers during the course of the contract so long as the plan of benefits then in effect is not reduced and so long as there is no significant disruption in patient provider relationships as a result of a change in carrier.*

3. *The University reserves the right to change carriers for other coverages during the course of the contract so long as the plan of benefits is not reduced.*

B. *Health Insurance Benefit.*

*Effective January 1, 2009, the University will allow full-time bargaining unit members to select one of three health insurance plans as set forth herein:*

1. *The "90/70 PPO" comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.*

2. *The "80/60 PPO" comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.*

3. *The "70/50 PPO" comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.*

4. All medical plan options will have the following features:

- a. *The lifetime maximum benefit will be \$2,500,000. The lifetime maximum will include all benefits paid under the university health plan since January 1, 2003.*
- b. *The definition of dependent will include eligible children over the age of 20 up to their 25<sup>th</sup> birthday so long as they remain dependents of the employee. An eligible dependent must be enrolled in an accredited institution of higher learning. It must be certified that the student is enrolled for a minimum of six (6) undergraduate hours per semester or four (4) graduate hours per semester, or their equivalent. Enrollment must be in a program progressing toward a degree or professional certification.*

5. *Employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to 10% of the cost of coverage for the 90/70 PPO, 8% of the cost of coverage for the 80/60 PPO and 6% of the cost of coverage for the 70/50 PPO. Effective in the 2010 calendar year, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to 12% of the cost of coverage for the 90/70 PPO, 10% of the cost of coverage for the 80/60 PPO, and 8% of the cost of the coverage for the 70/50 PPO. Effective in the 2011 calendar year, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to 14% of the cost of the coverage for the 90/70 PPO, 12% of the cost of coverage for the 80/60 PPO, and 10% of the cost of coverage for 70/50 PPO. Contributions will be based upon the employee's salary on a schedule as depicted by the sample on Schedule A attached.*

C. *Coverage for Preventive Services.*

*All mammograms, routine PAP smears, and routine prostate function examinations (to include the prostate-specific antigen (PSA) test) are considered to be covered expenses under all medical plans, subject to the terms and conditions of those plans. These services will not be subject to the annual deductible, but will be subject to appropriate coinsurance and other coverage provisions.*

D. *Life Insurance Benefit.*

1. *The basic life insurance benefit made available to full-time bargaining unit members shall be calculated as three (3) times base annual earnings, rounded to the next highest \$1,000, but not more than \$200,000. A separate additional benefit up to the amount of the life insurance will be paid for accidental death, dismemberment, or loss of sight. The amount of Life and Accidental Death and Dismemberment benefits will be reduced to 65% at age 65, and further reduced (from the original insurance amount) as follows: to 50% at age 70, and 35% at age 75. Basic life insurance and AD&D benefits will be provided with no employee contributions.*
2. *Full-time bargaining unit members are eligible to purchase additional amounts of group term life insurance at a level of between one (1) and three (3) times annual salary with a maximum of \$500,000. The life insurance carrier will determine the guaranteed issue level at initial enrollment.*
3. *Full-time bargaining unit members are eligible to purchase group term life insurance for spouses at a level of between one (1) and three (3) times the employee's annual salary with a maximum of \$500,000. The life insurance carrier will determine the guaranteed issue level at initial enrollment.*

4. *Full-time bargaining unit members are eligible to purchase group term life insurance for eligible dependent children at a level of \$10,000.*
5. *The University reserves the right to change the insurance carrier or otherwise alter the method of providing the life insurance benefit.*

*E. Prescription Drug Benefit.*

*Bargaining unit members electing any medical plan except the HMO will be eligible to participate in the current prescription program. Purchases are subject to a 20% co-insurance from the employee (10% for generics), but are not subject to an annual deductible. The maximum co-insurance for any single prescription will be \$50.*

1. *Prescription drug benefits for full-time bargaining unit members electing medical benefit plans set forth in Section 45 above shall also include coverage for oral contraceptives.*
2. *January 1, 2009 the prescription drug benefit provided to employees electing one of the medical plans set forth in Section 45 above will include the following features:*
  - a. *Medications may be received from either a retail pharmacy or a mail service pharmacy subject to the limitations below. The maximum prescription available at a retail pharmacy is a 30-day supply; the maximum prescription available from the mail service pharmacy is a 90-day supply.*
  - b. *Co-insurance levels will be 10% for generic medications, 20% for brand name medications and 40% for brand name medications when a generic equivalent is available. The maximum coinsurance for any single prescription will be \$50.*
  - c. *Benefits will be provided for maintenance medications (whether brand or generic) through a retail pharmacy for a 30-day prescription and two 30-day refills at the retail level. After the initial 90-day period, benefits will be provided for maintenance medications through the mail service pharmacy only.*

*F. Dental Benefit.*

1. *The university will maintain the current PPO plans, or the equivalent currently administered by Medical Mutual of Ohio. The University will pay the full cost of the premium for single coverage. During the life of the contract, employee co-payments of premiums for dependent dental coverage will equal the actuarially rated premium for dependent coverage.*
2. *Bargaining unit members may elect to participate in the Aetna Preferred Dental Plan in lieu of the dental plan referenced in Section 45.F.1 hereof. The University will pay the full cost of the premium for single coverage or dual (one dependent) coverage. Employee co-payment of premiums for family coverage (more than one dependent) will be \$10.00 per month.*
3. *The University will eliminate the \$25 deductible for orthodontia services, increase the lifetime maximum for orthodontia services from \$750 to \$1,000, and increase the annual maximum benefit (per covered person) from \$1,000 to \$1,250 for the PPO. During the life of this Agreement, the University will also explore the feasibility of establishing a PPO plan where any unused benefit per person per year may be carried over to the subsequent year up to a maximum of two years.*

G. *Vision Care Benefit.*

*The basic vision care benefit plan in effect as of January 26, 2005, shall be maintained. Any unused benefit per person per year may be carried over to the subsequent year up to a maximum of two years.*

H. *In accordance with and subject to applicable laws and regulations, pursuant to which full-time bargaining unit members may annually make a voluntary election to have a specified amount withheld on a pre-tax basis from the first and last paycheck of each month to be used to pay the bargaining unit member's share of any contributions to premium costs for medical or dental coverage under Article 45.*

I. *The University established plan, in accordance with and subject to applicable laws and regulations, pursuant to which bargaining unit members may annually make a voluntary election to have a specified amount withheld on a pre-tax basis from the first and last paycheck of each month to be used for reimbursement of eligible dependent care and health care expenses.*

J. *Domestic Partner Benefits.*

1. *Domestic Partners, opposite or same sex, of a bargaining unit member may be covered for all benefits in those instances where the partner is not eligible for or already covered by another employer. These benefits will include medical, dental, life, personal accident insurance and tuition remission at the same contribution level applicable to a spouse.*

2. *The benefit for domestic partners will be subject to IRS rules and regulations. Elements and conditions of the benefit are:*

a. *To cover a domestic partner the following conditions must be met:*

- i. *Share a permanent residence (unless residing in different cities, states, or countries on a temporary basis).*
- ii. *Are the sole domestic partner of each, having been in the relationship for at least six (6) months, and intending to remain in the relationship indefinitely.*
- iii. *Are not currently married to or legally separated from another person under either statutory or common law.*
- iv. *Are responsible for each other's welfare.*
- v. *Are not related by blood to a degree that would bar marriage in the state of Ohio.*
- vi. *Are financially interdependent on each other verified by documentation of at least (3) of the following:*
  - a. *Joint ownership of real estate property or joint tenancy on a residential lease.*
  - b. *Joint ownership of an automobile.*
  - c. *Joint bank or credit account.*
  - d. *A will designating the domestic partner as the primary beneficiary.*
  - e. *A retirement plan or life insurance policy designating the domestic partner as the primary beneficiary.*
  - f. *A durable power of attorney signed to the effect that powers are granted to one another.*

**Union's Proposal.** Cap the rates at 2011 levels.

**Employer's Proposal.**

**ARTICLE 45  
INSURANCE**

A. *Maintenance of Benefits.*

Effective **January 1, 2012**, and through the term of this Agreement, the University agrees to offer health insurance plans according to the guidelines set forth below:

1. During the term of this agreement, the percentage of the premium for medical insurance paid by employees will increase in accordance with the following schedule:

**2012**            **1.26%**

**2013**            **2.0%**

**2014**            **3.0%**

2. The University reserves the right to change **or reduce the number of medical insurance carriers** during the course of the contract so long as the plan of benefits then in effect is not reduced and so long as there is no significant disruption in patient provider relationships as a result of a change in carrier.
3. The University reserves the right to change carriers for other types of coverage during the course of the contract so long as the plan of benefits is not reduced.

B. *Health Insurance Benefit.*

Effective **January 1, 2012**, the University will allow full-time bargaining unit members to select one of three health insurance plans as set forth herein:

1. *The "90/70 PPO"* comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.
2. *The "80/60 PPO"* comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.
3. *The "70/50 PPO"* comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.

~~4. All medical plan options will have the following features:~~

~~a. The lifetime maximum benefit will be \$2,500,000. The lifetime maximum will include all benefits paid under the university health plan since January 1, 2003.~~

~~b. The definition of dependent will include eligible children over the age of 20 up to their 25<sup>th</sup> birthday so long as they remain dependents of the employee. An eligible dependent must be enrolled in an accredited institution of higher learning. It must be certified that the student is enrolled for a minimum of six (6) undergraduate hours per semester or four (4) graduate hours per semester, or their equivalent. Enrollment must be in a program progressing toward a degree or professional certification~~

5. Effective **January 1, 2012**, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to **15%** of the cost of coverage for the 90/70 PPO, **13%** of the cost of coverage for the 80/60 PPO and **11%** of the cost of coverage for the 70/50 PPO. Effective in the **2013** calendar year, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to **17%** of the cost of coverage for the 90/70 PPO, **15%** of the cost of coverage for the 80/60 PPO, and **13%** of the cost of the coverage for the 70/50 PPO. Effective in the **2014** calendar year, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to **20%** of the cost of the coverage for the 90/70 PPO, **18%** of the cost of coverage for the 80/60 PPO, and **16%** of the cost of coverage for 70/50 PPO. Contributions will be based upon the employee's salary on a schedule as depicted by the sample on Schedule A attached.

C. *Coverage for Preventive Services.*

All mammograms, routine PAP smears, and routine prostate function examinations (to include the prostate-specific antigen (PSA) test) are considered to be covered expenses under all medical plans, subject to the terms and conditions of those plans. These services will not be subject to the annual deductible, but will be subject to appropriate coinsurance and other coverage provisions.

D. *Life Insurance Benefit.*

1. The basic life insurance benefit made available to full-time bargaining unit members shall be calculated as three (3) times base annual earnings, rounded to the next highest \$1,000, but not more than \$200,000. A separate additional benefit up to the amount of the life insurance will be paid for accidental death, dismemberment, or loss of sight. The amount of Life and Accidental Death and Dismemberment benefits will be reduced to 65% at age 65, and further reduced (from the original insurance

amount) as follows: to 50% at age 70, and 35% at age 75. Basic life insurance and AD&D benefits will be provided with no employee contributions.

2. Full-time bargaining unit members are eligible to purchase additional amounts of group term life insurance at a level of between one (1) and three (3) times annual salary with a maximum of \$500,000. The life insurance carrier will determine the guaranteed issue level at initial enrollment.
3. Full-time bargaining unit members are eligible to purchase group term life insurance for spouses at a level of between one (1) and three (3) times the employee's annual salary with a maximum of \$500,000. The life insurance carrier will determine the guaranteed issue level at initial enrollment.
4. Full-time bargaining unit members are eligible to purchase group term life insurance for eligible dependent children at a level of \$10,000.
5. The University reserves the right to change the insurance carrier or otherwise alter the method of providing the life insurance benefit.

E. *Prescription Drug Benefit.*

**Bargaining unit members electing any medical plan will be eligible to participate in the current prescription program. Purchases are subject to a co-insurance from the employee, but are not subject to an annual deductible.**

1. Prescription drug benefits for full-time bargaining unit members electing medical benefit plans set forth in Section 45 above shall also include coverage for oral contraceptives.
2. **January 1, 2012** the prescription drug benefit provided to employees electing one of the medical plans set forth in Section 45 above will include the following features:
  - a. Medications may be received from either a retail pharmacy or a mail service pharmacy subject to the limitations below. The maximum prescription available at a retail pharmacy is a 30-day supply; the maximum prescription available from the mail service pharmacy is a 90-day supply.
  - b. Co-insurance levels will be 10% for generic medications, 20% for brand name medications and 40% for brand name medications only when a generic equivalent is available. The maximum coinsurance for any single prescription will be **\$70, except for members who choose a brand name**

**medication rather than a generic medication will be required to pay the full retail price of the brand name medication less the cost of the generic medication, unless their physician specifies the brand name medication and the brand name medication has been determined to be medically necessary through the appeal process. The University may, in its discretion, implement a Generic Step Therapy strategy during the term of this Agreement.**

- c. Benefits will be provided for maintenance medications (whether brand or generic) through a retail pharmacy for a 30-day prescription and two 30-day refills at the retail level. After the initial 90-day period, benefits will be provided for maintenance medications through the mail service pharmacy only.

F. *Dental Benefit.*

**During the term of this Agreement the University will offer a PPO plan, which will include a high, basic or low option. Employee co-payment of premiums for single, dual coverage (one dependent) and family coverage (more than one dependent) for each of the options appears in Addendum \_\_ of this Agreement.**

G. *Vision Care Benefit.*

**Bargaining unit members enrolled in medical coverage automatically have vision coverage and will continue to have vision coverage at the same coverage level indicated for medical coverage. The plan is on a rolling 24-month calendar.**

- H. In accordance with and subject to applicable laws and regulations, pursuant to which full-time bargaining unit members may annually make a voluntary election to have a specified amount withheld on a pre-tax basis from the first and last paycheck of each month to be used to pay the bargaining unit member's share of any contributions to premium costs for medical or dental coverage under Article 45.
- I. The University established plan, in accordance with and subject to applicable laws and regulations, pursuant to which bargaining unit members may annually make a voluntary election to have a specified amount withheld on a pre-tax basis from the first and last paycheck of each month to be used for reimbursement of eligible dependent care and health care expenses.

J. *Domestic Partner Benefits.*

- 5. Domestic Partners, opposite or same sex, of a bargaining unit member may be covered for all benefits in those instances where the partner is not eligible for or

already covered by another employer. These benefits will include medical, dental, life, personal accident insurance and tuition remission at the same contribution level applicable to a spouse.

6. The benefit for domestic partners will be subject to IRS rules and regulations. Elements and conditions of the benefit are:
  - a. To cover a domestic partner the following conditions must be met:
    - i. Share a permanent residence (unless residing in different cities, states, or countries on a temporary basis).
    - ii. Are the sole domestic partner of each, having been in the relationship for at least six (6) months, and intending to remain in the relationship indefinitely.
    - iii. Are not currently married to or legally separated from another person under either statutory or common law.
    - iv. Are responsible for each other's welfare.
    - v. Are not related by blood to a degree that would bar marriage in the state of Ohio.
    - vi. Are financially interdependent on each other verified by documentation of at least (3) of the following:
      - a. Joint ownership of real estate property or joint tenancy on a residential lease.
      - b. Joint ownership of an automobile.
      - c. Joint bank or credit account.
      - d. A will designating the domestic partner as the primary beneficiary.
      - e. A retirement plan or life insurance policy designating the domestic partner as the primary beneficiary.
      - f. A durable power of attorney signed to the effect that powers are granted to one another.

K. *Wellness Benefit.*

If the University implements a wellness incentive program for all employees, bargaining unit members may also participate in the program in order to receive a reduction in the employee share of health insurance premiums or other incentives during the term of this Agreement.

**Discussion.** In general the Employer's proposal reflects the importance of maintaining quality coverage at the best rates possible for the entire employee population and their families. The Employer presented a summary of health benefit changes to the Union, some of which required modification of the contract and some of which are not addressed in the contract. Employer Ex. 8 and testimony. It includes cost saving measures like changes to the opt-out incentive,

coverage for spouses with other available coverage, and changes to the dental plan. These changes are appropriate and are to be adopted as part of these recommendations, unless specifically modified below. The Employer also proposed changes in the number of tiers for determining contribution rates from the current 12 tiers (Employer Ex. 3) to only ten tiers (Employer Ex. 10). I find that in order to keep costs to employees in check the current 12 tier approach should be maintained. Although the Employer has proposed an increase in the percentages used to determine health care contributions, I also find that a lower increase in employee contributions than the increase proposed by the Employer is appropriate, again to lessen the burden on employees, particularly those in lower pay ranges. Overall, this modified recommendation is reasonable, does not represent an overwhelming cost shift, and is not out of line with comparable universities. It is important to note that approximately 50% of the membership stands to gain in terms of cost to them as a result of the Employer's restructuring of the plan. Also, I find that an increase in the maximum to be paid for prescriptions to \$60 is more reasonable than the \$70 proposed by the University and that requiring all participating employees to contribute 26.4% toward the cost of dental coverage beginning in 2013 is also a reasonable approach to controlling anticipated increases in health insurance costs, together with the other cost savings measures proposed by the University.

## Recommendation

### ARTICLE 45 INSURANCE

#### A. *Maintenance of Benefits.*

Effective **January 1, 2012**, and through the term of this Agreement, the University agrees to offer health insurance plans according to the guidelines set forth below:

1. During the term of this agreement, the percentage of the premium for medical insurance paid by employees will increase in accordance with the following schedule:

**2012**                    **1.26% (to 15%)**

**2013**                    **1.0% (to 16%)**

**2014**                    **1.0% (to 17%)**

2. The University reserves the right to change **or reduce the number of medical insurance carriers** during the course of the contract so long as the plan of benefits then in effect is not reduced and so long as there is no significant disruption in patient provider relationships as a result of a change in carrier.

3. The University reserves the right to change carriers for other types of coverage during the course of the contract so long as the plan of benefits is not reduced.

B. *Health Insurance Benefit.*

Effective **January 1, 2012**, the University will allow full-time bargaining unit members to select one of three health insurance plans as set forth herein:

1. *The "90/70 PPO"* comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.
2. *The "80/60 PPO"* comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.
3. *The "70/50 PPO"* comprehensive medical insurance plan with deductibles, co-insurance, out-of-pocket limitations and other significant plan features as set forth in Attachment A hereto.
4. Effective **January 1, 2012**, employees electing coverage under any of the Plan options effective January 1, 2012 will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to **15%** of the cost of coverage for the 90/70 PPO, **13%** of the cost of coverage for the 80/60 PPO and **11%** of the cost of coverage for the 70/50 PPO. Effective in the **2013** calendar year, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to **16%** of the cost of coverage for the 90/70 PPO, **14%** of the cost of coverage for the 80/60 PPO, and **12%** of the cost of the coverage for the 70/50 PPO. Effective in the **2014** calendar year, employees electing coverage under any of the Plan options will contribute a monthly amount which will be calculated with the contribution at the median university salary level equal to **17%** of the cost of the coverage for the 90/70 PPO, **15%** of the cost of coverage for the 80/60 PPO, and **13%** of the cost of coverage for 70/50 PPO. Contributions will be based upon the employee's salary on a schedule as depicted by the sample on Schedule A attached.

C. *Coverage for Preventive Services.*

All mammograms, routine PAP smears, and routine prostate function examinations (to include the prostate-specific antigen (PSA) test) are considered to be covered expenses under all medical plans, subject to the terms and conditions of those plans. These

services will not be subject to the annual deductible, but will be subject to appropriate coinsurance and other coverage provisions.

*D. Life Insurance Benefit.*

1. The basic life insurance benefit made available to full-time bargaining unit members shall be calculated as three (3) times base annual earnings, rounded to the next highest \$1,000, but not more than \$200,000. A separate additional benefit up to the amount of the life insurance will be paid for accidental death, dismemberment, or loss of sight. The amount of Life and Accidental Death and Dismemberment benefits will be reduced to 65% at age 65, and further reduced (from the original insurance amount) as follows: to 50% at age 70, and 35% at age 75. Basic life insurance and AD&D benefits will be provided with no employee contributions.
2. Full-time bargaining unit members are eligible to purchase additional amounts of group term life insurance at a level of between one (1) and three (3) times annual salary with a maximum of \$500,000. The life insurance carrier will determine the guaranteed issue level at initial enrollment.
3. Full-time bargaining unit members are eligible to purchase group term life insurance for spouses at a level of between one (1) and three (3) times the employee's annual salary with a maximum of \$500,000. The life insurance carrier will determine the guaranteed issue level at initial enrollment.
4. Full-time bargaining unit members are eligible to purchase group term life insurance for eligible dependent children at a level of \$10,000.
5. The University reserves the right to change the insurance carrier or otherwise alter the method of providing the life insurance benefit.

*E. Prescription Drug Benefit.*

**Bargaining unit members electing any medical plan will be eligible to participate in the current prescription program. Purchases are subject to a co-insurance from the employee, but are not subject to an annual deductible.**

1. Prescription drug benefits for full-time bargaining unit members electing medical benefit plans set forth in Section 45 above shall also include coverage for oral contraceptives.
2. **January 1, 2012** the prescription drug benefit provided to employees electing one of the medical plans set forth in Section 45 above will include the following features:

- a. Medications may be received from either a retail pharmacy or a mail service pharmacy subject to the limitations below. The maximum prescription available at a retail pharmacy is a 30-day supply; the maximum prescription available from the mail service pharmacy is a 90-day supply.
- b. Co-insurance levels will be 10% for generic medications, 20% for brand name medications and 40% for brand name medications only when a generic equivalent is available. The maximum coinsurance for any single prescription will be **\$60, except for members who choose a brand name medication rather than a generic medication will be required to pay the full retail price of the brand name medication less the cost of the generic medication, unless their physician specifies the brand name medication and the brand name medication has been determined to be medically necessary through the appeal process. The University may, in its discretion, implement a Generic Step Therapy strategy during the term of this Agreement.**
- c. Benefits will be provided for maintenance medications (whether brand or generic) through a retail pharmacy for a 30-day prescription and two 30-day refills at the retail level. After the initial 90-day period, benefits will be provided for maintenance medications through the mail service pharmacy only.

F. *Dental Benefit.*

**During the term of this Agreement the University will offer a PPO plan, which will include a high, basic or low option. Employee co-payment of premiums for single, dual coverage (one dependent) and family coverage (more than one dependent) for each of the options appears in Addendum \_\_ of this Agreement.**

G. *Vision Care Benefit.*

**Bargaining unit members enrolled in medical coverage automatically have vision coverage and will continue to have vision coverage at the same coverage level indicated for medical coverage. The plan is on a rolling 24-month calendar.**

- H. In accordance with and subject to applicable laws and regulations, pursuant to which full-time bargaining unit members may annually make a voluntary election to have a specified amount withheld on a pre-tax basis from the first and last paycheck of each month to be used to pay the bargaining unit member's share of any contributions to premium costs for medical or dental coverage under Article 45.

I. The University established plan, in accordance with and subject to applicable laws and regulations, pursuant to which bargaining unit members may annually make a voluntary election to have a specified amount withheld on a pre-tax basis from the first and last paycheck of each month to be used for reimbursement of eligible dependent care and health care expenses.

J. *Domestic Partner Benefits.*

1. Domestic Partners, opposite or same sex, of a bargaining unit member may be covered for all benefits in those instances where the partner is not eligible for or already covered by another employer. These benefits will include medical, dental, life, personal accident insurance and tuition remission at the same contribution level applicable to a spouse.

2. The benefit for domestic partners will be subject to IRS rules and regulations. Elements and conditions of the benefit are:

a. To cover a domestic partner the following conditions must be met:

- i. Share a permanent residence (unless residing in different cities, states, or countries on a temporary basis).
- ii. Are the sole domestic partner of each, having been in the relationship for at least six (6) months, and intending to remain in the relationship indefinitely.
- iii. Are not currently married to or legally separated from another person under either statutory or common law.
- iv. Are responsible for each other's welfare.
- v. Are not related by blood to a degree that would bar marriage in the state of Ohio.
- vi. Are financially interdependent on each other verified by documentation of at least (3) of the following:
  - a. Joint ownership of real estate property or joint tenancy on a residential lease.
  - b. Joint ownership of an automobile.
  - c. Joint bank or credit account.
  - d. A will designating the domestic partner as the primary beneficiary.
  - e. A retirement plan or life insurance policy designating the domestic partner as the primary beneficiary.
  - f. A durable power of attorney signed to the effect that powers are granted to one another.

K. *Wellness Benefit.*

**If the University implements a wellness incentive program for all employees, bargaining unit members may also participate in the program in order to receive a reduction in the employee share of health insurance premiums or other incentives during the term of this Agreement.**

**Issue 21 Article 48, WAGES**

**Current Language (see CBA)**

**ARTICLE 48  
WAGES**

- A. *This article is the sole source of rights and obligations of the parties to this agreement concerning wages and supersedes all provisions applicable to bargaining unit employees in the Ohio Revised Code and/or the Administrative Rules of the Ohio Department of Administrative Services relative to wages. Bargaining unit employees will be paid in accordance with the pay plan set forth in this Agreement.*
- B. *All employees covered by this Agreement shall continue to be paid on the existing biweekly payroll schedule. Time cards reflecting actual hours worked and approved leaves of absence must be completed, signed, and turned in on a weekly basis. New employees will continue to receive their initial pay checks two weeks after the end of the pay period in which their employment began.*
- C. *For the duration of this Agreement, the pay grade for each classification shall be as designated in Appendix A.*
- D. *A newly hired employee shall be employed at the applicable entry rate established for the pay grade corresponding to the classification for which he/she was hired as set forth in Appendix A of this Agreement, whichever is then currently applicable.*
- E. *Beginning on the first day of the pay period within which the employee completes one hundred and eighty-two (182) calendar days of service in his classification, the employee's hourly rate of pay will be adjusted to the six (6) month rate within the pay grade as set forth in Appendix A of this Agreement, whichever is then currently applicable. Time spent on unpaid leaves of absence shall be deducted from the time required to obtain the above adjustment.*
- F. *Effective with the pay period which contains October 1, 2008, each employee on the active payroll shall have his/her individual wage rate as of that date increased by three percent (3%) per hour.*
- G. *Effective with the start of the pay period which contains October 1, 2009, each employee on the active payroll shall have his/her individual wage rate as of that date increased by three percent (3%) per hour.*
- H. *Effective with the start of the pay period which contains October 1, 2010, each employee on the active payroll shall have his/her individual wage rate as of that date increased by three percent (3%) per hour.*
- I. *If, during the course of this agreement, the university is unable to recruit sufficient qualified employees at the minimum rate for a particular classification represented by the Bargaining Agreement, the University may increase the starting rate of pay for such classification. Any bargaining unit member within the*

*classification whose hourly rate is below the new minimum hourly rate shall be brought to the new minimum hourly rate no later than the effective date of a new hire to the classification.*

*J. If, during the course of this agreement, the University finds that market rates make it difficult to retain qualified employees at the minimum rate for a particular Bargaining Unit classification the University may increase the starting rate of pay for such classification no sooner than thirty (30) days after written notification to the Union of the intent to make the change(s). The Union may propose additional classifications for adjustment at the time the University proposes changes. Should the University reject the proposals of the Union, the Union may propose such changes at the next contract negotiation. If the parties agree on the Union's proposals, it shall be implemented in accordance with this paragraph. Should the Union disagree with the decision of the University, it may file directly for arbitration on the issue within thirty (30) days of the date of the written notification. Nothing herein shall prohibit the parties from meeting at any time to discuss the issue. Increased wage rates may be implemented by the University, notwithstanding the filing of a grievance. The only issue to be placed before the arbitrator is whether the University has been arbitrary or capricious in increasing wage rates for the particular positions. Should the arbitrator find that the University was arbitrary or capricious, he/she may retroactively return the wage rate to that which was in effect prior to the change by the University. Any bargaining unit member within the classification which is adjusted, shall have his/her rate of pay adjusted so that his/her rate is at least at the minimum for the classification, in addition to any applicable job enrichment increment. The University may establish new pay grades for any such adjusted classifications.*

*K. When an employee is promoted to a higher classification, or when a pay grade is increased, his/her hourly rate of pay will increase by five percent (5%) or to the entry rate of the new classification, whichever is greater.*

*If the employee's hourly rate of pay following the five percent (5%) adjustment is less than the job rate of the higher classification, the employee's hourly rate will be adjusted to the job rate effective on the first day of the pay period within which the employee completes 182 calendar days of service in the higher classification.*

*If the five percent (5%) adjustment places the employee's hourly rate at or above the job rate, the employee's rate of pay will remain at that rate until it is affected by the pay plan set forth in this Agreement.*

*L. 1. An employee reduced or demoted involuntarily or as the result of displacement during a layoff, will return to the hourly rate of pay received in the lower classification which he/she held previously or the current job rate of the lower classification whichever is greater. In the case where the employee is reduced or demoted to a lower classification that he/she had not held previously, the employee's rate of pay will be the job rate of the lower classification.*

*2. In the case where an employee is reduced or demoted voluntarily, the employee's rate of pay will be determined by the University, in its discretion, but shall not be less than the current job rate of the lower classification nor more than the maximum rate of the lower classification.*

*M. Shift Differential*

*1. Employees whose established work schedule begins after 2:00 p.m. shall be compensated over and above their regular rate of pay as follows:*

*a. Employees whose work schedule regularly begins between the hours of 2:00 p.m. and 9:59 p.m. shall receive an adjustment of one percent (1%) of their regular hourly rate of pay.*

b. *Employees whose work schedule regularly begins between the hours of 10:00 p.m. and 2:00 a.m. shall receive an adjustment of one and one-half percent (1.5%) of their regular hourly rate of pay.*

2. *All changes in shift differential will occur at the beginning of a pay period.*

N. *During the life of the Agreement salaries will be adjusted to those outlined in Appendix "A".*

### **Union Position.**

**The Union has proposed a fixed hourly increase for all employees, which will have a greater impact on the lower paid employees.**

### ARTICLE 48 - WAGES

F. Effective with the pay period which contains October 1, ~~2008~~ **2011**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by ~~three (3%) percent~~ **fifty cents (\$0.50)** per hour.

G. Effective with the pay period which contains October 1, ~~2009~~ **2012**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by ~~three (3%) percent~~ **fifty cents (\$0.50)** per hour.

H. Effective with the pay period which contains October 1, ~~2010~~ **2013**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by ~~three (3%) percent~~ **fifty cents (\$0.50)** per hour.

### **Employer's Position.**

**The Employer has proposed lower percentage increases.**

### ARTICLE 48 - WAGES

F. Effective with the pay period which contains **upon ratification**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by **one and one-half (1.5) percent.**

G. Effective with the pay period which contains October 1, ~~2009~~ **2012**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by **one (1) percent.**

H. Effective with the pay period which contains October 1, ~~2010~~ **2013**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by **one (1) percent.**

**Discussion.** While the data indicates a prudent approach by the University is called for during the current fragile economic recovery, an increase that exceeds what the Employer is offering is particularly justified in light of other changes made to the Agreement in this report that benefit the Employer, particularly the changes in health insurance. The economy, although vulnerable to international unrest, is showing signs of internal stability and modest growth. Welcome signs indeed. The rising costs of food and gasoline alone justify a modest increase for employees in order to maintain purchasing power. Based on the information provided at the hearing, I find that a 2% increase in 2011, a 2% increase in 2012, and a 2% increase in 2013 are appropriate.

## Recommendation

### ARTICLE 48 WAGES

F. Effective with the pay period which contains each employee on the active payroll shall have his/her individual wage rate as of that date increased by **two (2.0) percent retroactive to October 1, 2011.**

G. Effective with the pay period which contains October 1, **2012**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by **two (2.0) percent.**

H. Effective with the pay period which contains October 1, **2013**, each employee on the active payroll shall have his/her individual wage rate as of that date increased by **two (2.0) percent.**

## Issue 22 Article 49, TERMINATION

### Current Language (see CBA)

#### ARTICLE 49 TERMINATION

A. *This Agreement shall continue in full force and effect from October 1, 2008 until midnight, September 30, 2011. Thereafter, it shall be renewed for periods of one year unless written notice is given by either the Union or Kent State University to the other not less than ninety (90) days prior to the expiration date heretofore stated that it is desired to amend or terminate the Agreement. In the event notice is given by either party, negotiations shall begin no later than sixty (60) days prior to the termination date of the Agreement.*

B. *This Agreement may be extended by mutual agreement beyond the termination date.*

**Discussion.** The parties are in accord on a three (3) year term for the Collective Bargaining Agreement.

## Recommendation

### ARTICLE 49 TERMINATION

- A. This Agreement shall continue in full force and effect from October 1, 2011 until midnight, September 30, 2014. Thereafter, it shall be renewed for periods of one year unless written notice is given by either the Union or Kent State University to the other not less than ninety (90) days prior to the expiration date heretofore stated that it is desired to amend or terminate the Agreement. In the event notice is given by either party, negotiations shall begin no later than sixty (60) days prior to the termination date of the Agreement.
- B. This Agreement may be extended by mutual agreement beyond the termination date.

## Issue 23 MEMORANDUMS

**Discussion.** The parties agreed at the hearing to eliminate certain Memorandums in the Agreement. Said agreement shall be included in the TENTATIVE AGREEMENT section below.

## **TENTATIVE AGREEMENT**

During negotiations and during and following impasse proceedings, the parties reached tentative agreements on several issues. These tentative agreements, pending tentative agreements, removal of Memorandums, and any unchanged current language are part of the determinations/recommendations for a successor Collective Bargaining Agreement contained in this report.

The fact finder respectfully submits the above recommendations to the parties this \_\_\_\_\_ day of March 2012 in Portage County, Ohio.

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Robert G. Stein, Fact finder