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IN THE MATTER OF FACT FINDING

BETWEEN

FRATERNAL ORDER OF POLICE, OLC, INC.

AND

CLEVELAND STATE UNIVERSITY

MAD AGREEMENT

Robert G. Stein, Fact-finder

ADVOCATE FOR THE UNION:

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INTRODUCTION

The parties to this matter are the Fraternal Order of Police, Ohio Labor Counsel, Inc. (hereinafter "Union") and the Cleveland State University (hereinafter "Employer", "University"). The Employer is located in northeast Ohio. The bargaining unit is comprised of approximately nineteen (19) employees who hold the positions of ULEO 2 (Patrolman) and ULEO 3 (Sergeant). Seven (7) negotiations sessions were held between the parties prior to the involvement of the fact finder. The parties, with the assistance of the fact finder, opted to attempt to mediate a resolution of numerous unresolved issues instead of going directly to fact finding. The fact finder held several mediation sessions with the parties that resulted in what appeared to be a complete tentative agreement to all unresolved issues, including the introduction of merit pay for the first time in the long history of the parties bargaining relationship. However, during the review of the language that each party believed represented a complete tentative agreement on all outstanding issues, a discrepancy arose as to the continuation of longevity and the elimination of pay steps in lieu of a new pay range. These matters were not discussed with the fact finder as part of the mediation process. The Employer asserts that its proposed contractual provisions that called for a new compensation system included the elimination of longevity pay and employee pay steps, and because the Union did not respond prior to reaching a tentative agreement the Employer concluded the Union had accepted the Employer's proposed elimination of these pay provisions. The Union argued these matters were never negotiated and assumed the Employer withdrew them because they were not mentioned after they were proposed and were not included in the tentative agreement. The tentative agreement reached on 6/23/12 did not address the elimination of these two forms of compensation. As a result of this impasse the fact finder returned the parties to the bargaining table and fact finding was invoked.

General/State/Local Economic Overview: Continued concern and general widespread uneasiness appears to be an apt characterization of the state of the current international, national and the local economy. Adding to the uncertainty in the United States are phrases like "the fiscal cliff," which is related to the expiration of the Bush era tax cuts and the automatic imposition of cuts in federal spending at the end of 2012 if the United States Congress is unable to come up with an alternative. The economy in Ohio continues to show signs of improvement from a very long and 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, not to mention growing debt obligations of the United States. With the focus on other issues and countries, it remains to be seen if Greece will adequately address its economic problems and whether others such as Spain, with a national unemployment rate approaching 25%, will become the next major crisis to plague the financial markets. It is remarkable and difficult to understand how the economic collapse of one European country can significantly undo months of economic recovery in the United States, but during a soon to be concluded summer that in reality was indicative of the wide swings in the stock market.

Other concerns that are closer to home include stubbornly high unemployment rates in Ohio and in many parts of the United States, a housing market that is said to be slowly recovering, the uncertain future of national health care, thought to be clarified by a U.S. Supreme Court decision, but further complicated by a presidential election, and a rising national debt. What Americans have experienced from 2008 until the present has left a lasting impression about the insecurity of the future and it has had a profound effect on public attitudes and spending patterns. Additionally, it has left a lasting impression on employers and unions who now appear to be viewing the future with the sobering reality of global uncertainty that was not profoundly present prior to 2008. The impact of this uncertainty has spurred unfortunate events such as cities in California going bankrupt or the city of Scranton, Pennsylvania having to reduce all public employee wages to the minimum wage due to its financial exigency. All the news is not bad; there are states that have a much lower unemployment rate, such as Virginia (5.6%) and Nebraska (4.0%), and there are several employers who are doing very well and continue to do well in the aftermath of the recession. Detroit automakers are experiencing a sustained comeback, extra shifts are being added, and that is particularly good news for neighboring Ohio and in particular Youngstown and its surrounds. Universities have experienced enrollment increases as many Americans seek ways to adjust to a rapidly changing economy that now completes with global rivals like China and India.

In reality there is one main area of dispute between the parties, Article 46 Wages. However, the Union also proposed that the tentative agreements not in contention be part of the recommendations of the fact finder, and that the factor finder be involved in the next set of negotiations for a successor agreement. The University it its position statement did not cite any other areas of dispute outside of the tentative agreement other than longevity and salary steps. The tentative agreement, minus the area of dispute and the continued involvement of the fact finder will be recommended because the University did not file any objection to the Union's position.

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.

By mutual request of the parties, the general rational and the statutory criteria stated above shall in part serve as the basis for the following comprehensive set of recommendations on all unresolved matters in Article 46 that were carefully examined and thoroughly vetted during the mediation process. However, where appropriate the fact finding has including additional rationale in support of recommendations that draws their essence from the statutory criteria cited above.

RECOMMENDED AWARD LANGUAGE

THE TENTATIVE AGREEMENTS (IN REDLINE) REACHED BETWEEN THE PARTIES, MINUS THE ISSUES CONTAINED IN ARTICLE 46, WAGES (AND APPENDIX A, STEP INCREASE SCEDHULE AND LONGEVITY TABLE), ARE RECOMMENDED BY THE FACT FINDER AND ARE FOUND IN APPENDIX A OF THIS REPORT.

THE FACT FINDER, IF RATIFIED BY THE PARTIES, AGREES TO BE OF SERVICE TO THE PARTIES IN NEGOTIATIONS FOR A SUCCESSOR AGREEMENT.

ISSUE 1- Article 46, WAGES

Employer's Position:

The University contends that on April 4, 2012 it presented its economic proposals to the Union. Denise Mutti, Manager of Human Resources, led the University bargaining team, and Maria Karansniansky, Director of Compensation and Employment, presented the University's proposal on wage increases that would substantial revise Article 46 in a manner that would eliminate longevity and step payments. It would establish both pay ranges and create a compensation package that includes across-the-board raises and potential salary bonus based on individual merit. The University contends that several years ago the bargaining unit contract contained pay ranges in lieu of steps, and it wanted to return to that type of pay system. The University avers that its proposed pay range system has been negotiated with other bargaining units prior to negotiations with the FOP.

The University's wage proposal provides a two percent (2%) across-the-board increase to be added to every Union member's new base wage on January 1, 2012. The new base wage, as explained, would combine the employee's current base rate with longevity, if any, resulting in the new base rate. Commencing January 1, 2013 the University is proposing a merit pay system nearly identical to those recently adopted in contracts between the University and the SEIU and CWA bargaining units. The FOP wage increase for

2013 would be a 0.75% across-the-board increase for all employees, plus an additional 1.25% for those who meet merit requirements. In 2014 the University proposed across-the-board wage adjustment is 1.25% with an additional 1.25% increase for those who meet merit requirements.

The University makes two distinct arguments in support of its position (found below). Each will be identified with summary comments; however, the details of each will not be repeated here, but can be found in the University's position statement. The two distinct arguments are as follows:

I. The University's proposal for Article 46 is the only fair way to administer the allotted compensation increases, offers an above the average increase in compensation, and adopts a merit system that is not unique to Ohio's university police officers.

The University argues a wage increase of 6.5% over three years is well above average in Ohio. The University also notes that FOP Lodge 38, which represents police officers at Ohio's Miami University, has agreed to a merit system similar to what Cleveland State University is proposing, including pay ranges. It is also noted that in contrast to its proposal the merit pay system at Miami University is more lenient as to eligibility criteria, but does not include any across-the-board increases. The University also points out that during mediation it modified its proposal to alleviate concerns over personality conflicts affecting evaluation ratings that would impact merit pay.

II. The University's FOP wage proposal is the product of an established pattern that is contained in contracts with the SEIU and CWA and must be given strong deference.

Since 2010 the University points out it has been moving to revamp its compensation system with all of its employees and has successfully negotiated merit based pay with its SEIU and CWA bargaining units. Its AAUP bargaining unit, which represents university professors, has had merit based pay for several years. In general the University points out that the widely accepted concept of patterned bargaining is a commonly used mechanism for a single employer to settle contracts with multiple bargaining units.

The University's proposed changes to Article 46 are as follows (the redlined version is attached to this report in Appendix B):

ARTICLE 46
COMPENSATION

Section 1 – Employee Base Pay Rate and Salary Schedule

1. Effective the first day of the pay period which includes January 1, 2012, employee

step rates and longevity rates will be combined into a base pay rate. Ongoing, FOP represented employees shall have a base pay rate.

2. Effective the first day of the pay period which includes January 1, 2012, the FOP Step Schedule will be replaced with FOP Pay Ranges as indicated below:

Title	Pay Range	Minimum	Midpoint	Maximum
ULEO 1	28	$21.55 $44,824.00		
ULEO 2	30	$23.27 $48,401.60	$27.39 $56,971.20	$31.50 $65,520.00
ULEO 3	31	$25.14 $52,291.20	$29.57 $61,505.60	$34.00 $70,720.00

3. Effective the first day of the pay period which includes January 1, 2013, the FOP Pay Ranges effective in 2012 shall be increased upward by 2.0%, as shown below:

Title	Pay Range	Minimum	Midpoint	Maximum
ULEO 1	28	$21.98 $45,718.40		
ULEO 2	30	$23.74 $49,379.20	$27.94 $58,115.20	$32.13 $66,830.40
ULEO 3	31	$25.64 $53,331.20	$29.84 $62,067.20	$34.68 $72,134.40

4. Effective the first day of the pay period which includes January 1, 2014, the FOP Pay Ranges effective in 2013 shall be increased upward by 2.5%, as shown below:

Title	Pay Range	Minimum	Midpoint	Maximum
ULEO 1	28	$22.53 $46,862.40		
ULEO 2	30	$24.33 $50,606.40	$28.63 $59,550.40	$32.93 $68,494.40
ULEO 3	31	$26.28 $54,662.40	$30.92 $64,313.60	$35.55 $73,944.00

5. Employees whose base pay rates fall below the minimum of the new FOP Pay Range

shall have their base pay rate increased to the minimum for the appointed grade in each year of the Agreement prior to application of wage increases.

Section 2 – Salary Pool and General Eligibility Requirements

The total salary pool for wage increases effective with the first day of the pay period, which includes January 1, 2012, shall be 2% of the total base fiscal year 2011 bargaining unit salaries.

1. The 2012 salary pool shall be distributed as a 2.0% across-the-board base wage increase, which includes one-half percent (0.50%) returned as gain-sharing from the agreement on health insurance.

a) Employees with a continuous employment date beginning on or before October 31, 2011 shall receive the across-the-board base wage increase.

b) Only those members employed by the University at the time of disbursement of the across-the-board base wage adjustment shall receive the increase.

2. The total salary pool for wage increases effective with the first day of the pay period which includes January 1, 2013 shall be 2% of the total base fiscal year 2012 bargaining unit salaries, distributed as a combination of across-the-board increase and merit adjustments.

a) The 2.0% general wage increase shall be apportioned as .75% for an across-the-board base wage increase, which includes one-half percent (0.50%) returned as gain-sharing from the agreement on health insurance, and 1.25% for merit adjustment.

b) Employees with a continuous employment date beginning on or before October 31, 2012 shall receive the across-the-board base wage increase.

c) Only those members employed by the University at the time of disbursement of the across-the-board base increase or merit adjustment shall receive the pay increase.

3. The total salary pool for wage increases effective with the first day of the pay period which includes January 1, 2014 shall be 2.5% of total base fiscal year 2013 bargaining unit salaries, distributed as a combination of across-the-board increase and merit adjustments.

a) The 2.5% general wage increase shall be apportioned as 1.25% for an across-the-board base wage increase, which includes one-half percent (0.50%) returned as gain-sharing from the agreement on health insurance, and 1.25% for merit adjustments.

b) Members with a continuous employment date on or before October 31, 2013 shall receive the across-the-board base wage increase.

c) Only those members employed by the University at the time of disbursement of the across-the-board base or merit increase shall receive the pay increase.

Section 3 – Merit Increases

Effective the first day of the pay period which includes January 1, 2013, and the first pay period which includes January 1, 2014, employees will be eligible for merit increases from the salary pool equal to 1.25% of the total base fiscal year bargaining unit salaries paid in the preceding year.

A. Eligibility Requirements

Bargaining unit employees must be hired by July 1 of the prior year to be eligible for a performance adjustment due on January 1st. Since merit increases are directly tied to the performance evaluation process, employees will follow a calendar year review cycle.

B. Merit Plan Specifics

A completed written performance review, as described in Article 17, covering the relevant review period for each employee must be on file with Human Resources by March 1st. The amount of the adjustment will be based on sustained meritorious performance as reflected in the written performance evaluation as follows:

- Fiscal Year 2013 – The total amount of merit pay adjustments for employees with an “Outstanding” or “Exceeds Expectations” rating will be awarded an amount not to exceed 1.25% of total base fiscal year 2012 bargaining unit salaries. Each rating category will have a flat dollar amount, which will be calculated accordingly, based on the ratings distribution. The corresponding dollar amount will be added to their base pay rate. Employees whose base pay rate exceeds the maximum of their grade (redlined) shall receive their merit increase in the form of a lump sum payment. If a portion of their increase is above the maximum of their salary range, that portion shall be paid in a lump sum.

- Fiscal Year 2013 – Employees with the rating of "Meets Expectations," who earn two points based on the following four point review, will be eligible for a merit adjustment equivalent to the level of the "Exceeds Expectations" rating, calculated as stipulated above. Points are awarded as follows:

  1. One point will be awarded to any member who has earned an Associate's Degree or higher from a recognized educational institution authorized to confer such degrees.

  2. One point will be awarded to any member who has not had an at-fault accident in the preceding calendar year.

  3. One point will be awarded to any member who scores 60% or higher on a fitness exam to be administered by the Department in accordance with OPOTA standards for physical condition testing.

  4. One point will be awarded to any member who, in the first two attempts, scores 80% or higher on the firearms proficiency test required for certification to carry firearms as required by the State of Ohio.

- Fiscal Year 2014 – The total amount of merit pay increases for employees with an "Outstanding" or "Exceeds Expectations" rating will be awarded an amount not to exceed 1.25% of total base fiscal year 2013 bargaining unit salaries. Each rating category will have a flat dollar amount, which will be calculated accordingly, based on the ratings distribution. The corresponding dollar amount will be added to their base pay rate. Employees whose base pay rate exceeds the maximum of their grade (redlined) shall receive their merit increase in the form of a lump sum payment. If a portion of their increase is above the maximum of their salary range, that portion shall be paid in a lump sum.

- Fiscal Year 2014 – Employees with a rating of "Meets Expectations," and achieve two additional points will be eligible for a merit adjustment equivalent to the level of the "Exceeds Expectations" rating. The same criteria and calculation methods will be utilized as outlined for Fiscal Year 2013, but based on total base fiscal year 2013 bargaining unit salaries.

Section 4 The use of the foregoing merit pay system expires with this Agreement unless continued by agreement or through negotiations for the successor contract.

Section 5 – Officer In Charge

Employees, while working as an Officer In Charge, shall receive $0.75 per hour in addition to their regular hourly rate.

Section 6 – Shift Pay

Employees required to work the afternoon or midnight shift will be compensated in addition to their regular pay at the rate of $0.25 per hour for the afternoon and midnight shift.

Section 7 – New Hires, Probation and Pay upon Promotion

a. New Hires at ULEO 1 – New employees who are hired with their certification, but no previous law enforcement experience, will be paid at the hiring rate of a ULEO 1. They will serve a one year probationary period. Effective January 1, 2012, upon completion of their probationary period, a ULEO 1 will be promoted to ULEO 2 and will be provided an increase of 8% in base pay but not less than the minimum of the new salary range, whichever is greater.

b. New Hires at ULEO 2 – New employees who are hired with their certification and who have one year previous law enforcement experience or who have worked one thousand (1,000) hours in a University law enforcement setting will be paid at the hiring rate of a ULEO 2. They will serve a one year probationary period. No subsequent adjustment will be granted upon completion of the probationary period. Newly hired ULEO2's with certification and more than one year previous law enforcement experience or more than 1000 hours in a University law enforcement setting may be paid at a rate within the designated salary range, provided the Police Department's budget can accommodate the advanced hiring rate and provided the salary placement does not create internal inequity.

c. Promotions to ULEO 3 – Effective January 1, 2012, an employee promoted from ULEO 2 to ULEO 3 will be provided an 8% increase in base pay if the salary range schedule can accommodate the increase.

Section 8 – Demotions or Downward Movement in Position

If an employee is demoted or applies for and receives a position in a pay grade lower than the one currently held, and if the employee's current pay rate is above the maximum of the lower position's pay range, then the employee's pay rate will be reduced to the maximum of the lower pay grade's range, effective on the first day in the position. Otherwise, the employee's pay rate will remain the same. The move to a lower salary grade will not affect the employee's entitlement to any other increases in compensation that may be applicable.

Section 9 – Market Adjustments

In order to maintain market competitiveness or to aid in the recruitment or retention of employees, it may be necessary for the University to adjust salaries. Such adjustments will be based on survey data or other facts documenting the threat to retention or inability to recruit at current salary levels. The University shall provide the Union President or designee with supporting documentation prior to the effective date of the market adjustments. The award (and amount) of any market adjustments shall be at the discretion of administration and shall not be grievable.

Section 10 – Equity Adjustments

An equity adjustment is a special salary action to correct an inequity that cannot be corrected within the normal salary guidelines. This adjustment is used to react to sudden shifts in the competitive market where the hiring rate of a new candidate may cause an internal inequity. Consequently, an adjustment may be applied to individual bargaining unit members or a specific classification affected by the inequity. The University shall provide the Union President or designee with supporting documentation prior to the effective date of the equity adjustment. The award (and amount) of any equity adjustments shall be at the sole discretion of administration and shall not be grievable.

Union's Position:

The Union's proposal regarding Article 46 rejects the concept of merit pay and strongly asserts that the University proposal to eliminate longevity and step increases would result in pay decreases and a pay system that would take it back to a time when wages were so askew that it required the parties to negotiate an entire wage system that addressed numerous inequities. The Union asserts that in its negotiations with the University there was "no mention that the Longevity and Step scale would be absorbed by the NEW WAGE scale." (See Union's Position Statement) The Union claims that in what it believed to be a tentative agreement on all remaining issues reached in mediation with the fact finder, the concept of eliminating longevity and salary steps was a unilateral addition by the University. In contrast to the University's approach to completely revamping the wage system, the Union is taking a far more conservative approach. It is proposing conventional increases of 2% for 2012, 2% for 2013, and 2.5% for 2014, all of which would be across-the-board increases, and rejects the idea of merit pay. And, longevity and salary steps systems would remain unchanged. The Union points out that wage step systems represent fixed cost systems and support the notion of cost containment, by providing incremental steps toward the full salary of a bargaining unit member over several years. As with the Employer's proposed changes, the following represents a summary of the Union's arguments, the details of which can be found in its Position Statement.

The Union argues that the step and longevity wage scale currently in use is a system that provides for equitable and predictable wage increases relative to the members' years of service. In contrast the Union argues that the University's proposal to eliminate steps and longevity would create inequities and would deprive current bargaining unit members of thousands of dollars in lost wages. One bargaining unit member cited in the Union's Position Statement, who is currently in the middle of the step schedule, would lose $18, 632 in lost wages under the University's proposed wage system over a period of three years. And, another bargaining unit member who is at the top of the wage scale would lose $4,031 in lost wages over the next three years. A table prepared by the Union, using the Union's calculations, demonstrates just how many thousands of dollars would be lost to each bargaining unit member over the life of the Agreement under the University revamped compensation system. The Union strongly asserts that the University's proposed wage system would act "as an across-the-board wage decrease for all members who were expecting step or longevity increases for years 2012-2014." Finally, the Union argues that the University's proposal is patently unfair and results in an inequitable method of compensating members of the bargaining unit.

The Union's proposed changes to Article 46 maintain the current step schedule and longevity system and are as follows:

APPENDIX A - 2% ACROSS THE BOARD RAISE-STEP INCREASE SCHEDULE and LONGEVITY TABLE 2012

Effective January 1, 2012, the Hiring Rates are as follows:

Title	Hire Rate
ULEO 1:	$20.62
ULEO 2:	$22.52
ULEO 3:	$24.33

Effective January 1, 2012, the following step schedule will go into effect:

Title	Pay Range	**Step 1**	**Step 2**	**Step 3**	**Step 4**	**Step 5**	**Step 6**	**Step 7**
ULEO 1:	28	$20.62						
ULEO 2:	30	$22.52	$23.42	$24.36	$25.34	$26.35	$27.40	$28.22
ULEO 3:	31	$24.33	$25.30	$26.32	$27.37	$28.45	$29.59	$30.48

The corresponding Longevity Table is as follows (utilizing the formula per the Ohio Revised Code): (.005 *longevity years* step 1 rate)

	Year	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
	Percent	0.025	0.03	0.035	0.04	0.045	0.05	0.055	0.06	0.065	0.07	0.075	0.08	0.085	0.09	0.095	0.1
ULEO 1:	$20.62	$0.52	$0.62	$0.72	$0.82	$0.93	$1.03	$1.13	$1.24	$1.34	$1.44	$1.55	$1.65	$1.75	$1.86	$1.96	$2.06
ULEO 2:	$22.52	$0.56	$0.68	$0.79	$0.90	$1.01	$1.13	$1.24	$1.35	$1.46	$1.58	$1.69	$1.80	$1.91	$2.03	$2.14	$2.25
ULEO 3:	$24.33	$0.61	$0.73	$0.85	$0.97	$1.09	$1.22	$1.34	$1.46	$1.58	$1.70	$1.82	$1.95	$2.07	$2.19	$2.31	$2.43

APPENDIX A - 2% ACROSS THE BOARD RAISE-STEP INCREASE SCHEDULE and LONGEVITY TABLE 2013

Effective January 1, 2013, the Hiring Rates are as follows:

Title	Hire Rate
ULEO 1:	$21.04
ULEO 2:	$22.97
ULEO 3:	$24.81

Effective January 1, 2013, the following step schedule will go into effect:

Title	Pay Range	**Step 1**	**Step 2**	**Step 3**	**Step 4**	**Step 5**	**Step 6**	**Step 7**
ULEO 1:	28	$21.04						
ULEO 2:	30	$22.97	$23.89	$24.84	$25.84	$26.87	$27.95	$28.79
ULEO 3:	31	$24.81	$25.80	$26.84	$27.91	$29.02	$30.18	$31.09

The corresponding Longevity Table is as follows (utilizing the formula per the Ohio Revised Code): (.005 *longevity years* step 1 rate)

	Year	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
	Percent	0.025	0.03	0.035	0.04	0.045	0.05	0.055	0.06	0.065	0.07	0.075	0.08	0.085	0.09	0.095	0.1
ULEO 1:	$21.04	$0.53	$0.63	$0.74	$0.84	$0.95	$1.05	$1.16	$1.26	$1.37	$1.47	$1.58	$1.68	$1.79	$1.89	$2.00	$2.10
ULEO 2:	$22.97	$0.57	$0.69	$0.80	$0.92	$1.03	$1.15	$1.26	$1.38	$1.49	$1.61	$1.72	$1.84	$1.95	$2.07	$2.18	$2.30
ULEO 3:	$24.81	$0.62	$0.74	$0.87	$0.99	$1.12	$1.24	$1.36	$1.49	$1.61	$1.74	$1.86	$1.98	$2.11	$2.23	$2.36	$2.48

APPENDIX A - 2.5% ACROSS THE BOARD RAISE-STEP INCREASE SCHEDULE and LONGEVITY TABLE 2014

Effective January 1, 2014, the Hiring Rates are as follows:

Title	Hire Rate
ULEO 1:	$21.56
ULEO 2:	$23.55
ULEO 3:	$25.43

Effective January 1, 2014, the following step schedule will go into effect:

Title	Pay Range	**Step 1**	**Step 2**	**Step 3**	**Step 4**	**Step 5**	**Step 6**	**Step 7**
ULEO 1:	28	$21.56						
ULEO 2:	30	$23.55	$24.48	$25.47	$26.49	$27.55	$28.64	$29.51
ULEO 3:	31	$25.43	$26.45	$27.51	$28.61	$29.74	$30.94	$31.86

The corresponding Longevity Table is as follows (utilizing the formula per the Ohio Revised Code): (.005 *longevity years* step 1 rate)

	Year	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**
	Percent	0.025	0.03	0.035	0.04	0.045	0.05	0.055	0.06	0.065	0.07	0.075	0.08	0.085	0.09	0.095	0.1
ULEO 1:	$21.56	$0.54	$0.65	$0.75	$0.86	$0.97	$1.08	$1.19	$1.29	$1.40	$1.51	$1.62	$1.72	$1.83	$1.94	$2.05	$2.16
ULEO 2:	$23.55	$0.59	$0.71	$0.82	$0.94	$1.06	$1.18	$1.30	$1.41	$1.53	$1.65	$1.77	$1.88	$2.00	$2.12	$2.24	$2.36
ULEO 3:	$25.43	$0.64	$0.76	$0.89	$1.02	$1.14	$1.27	$1.40	$1.53	$1.65	$1.78	$1.91	$2.03	$2.16	$2.29	$2.42	$2.54

Discussion:

The fact finder in this matter, is a master's degree graduate of Cleveland State University (CSU), is very familiar with the bargaining history of the parties and has had the good fortune to assist the parties in reaching agreement concerning several contracts in the past with all of its bargaining units. In those settlements the concept of patterned bargaining was ever present in several aspects of the process, but in particular in the areas of health care and wages. However, it is also recognized that there are distinctions among the bargaining units. Certainly, the AAUP bargaining unit is unique in its membership, structure, and in its charge. Likewise the SEIU bargaining unit and the CWA bargaining unit have their own distinct characteristics and contain a variety of talented personnel vital to the University's successful operation. For example the needs of librarians and IT employees are certainly distinct from those who provide custodial services. So while patterned bargaining has been a mainstay of this neutral's experience at CSU, where there were distinctions with a difference, the parties readily recognized them and the need to address those distinctions apart from the pattern. The same is true of the FOP bargaining unit. These employees have a special security mission, carry deadly weapons and have a special set of responsibilities, which distinguishes them from other employees in the University.

The transition to merit based pay, first started with the AAUP unit, in which the concept of merit pay uniquely conforms to the bargaining unit's particular mission at the University. The history of university bargaining with the AAUP contains many forms of pay and it has had time to refine them over decades. The SEIU unit, which agreed to merit pay for the first time in this current bargaining cycle, previously did not have a step schedule and did not have longevity pay. This acceptance of a hybrid across-the-board/merit system did not involve having to transition from a step schedule and longevity supplemented pay system. It was more of an evolution than a transformation. The only true internal comparable from the standpoint of having to make a major transformation was the CWA unit. From information provided by the parties during fact finding, it appears that the CWA unit moved from a step schedule and longevity system to University's hybrid across-the-board/merit system. However, what is unknown is to what extent did employees forego wages if the old system had remained in place? How did this change affect individuals in the bargaining unit? The data provided by the FOP demonstrating that its members would suffer a loss of several thousand dollars over the three years of the Agreement was not refuted by the Employer. This is troubling at best and is inconsistent with the bargaining history of the parties, which constantly sought ways to improve the level of compensation and the equity of the system. While negotiations between the parties in past rounds of bargaining were contentious at times, neither party proposed a salary system that would result with employees having to experience a net reduction salary through the loss of other forms of compensation. This may have been why the parties, who reached a tentative agreement after what were tough negotiations in mediation were surprised to find out that their efforts ended up in a fundamental misunderstanding over removal of salary components that were long standing.

Change is hard, but what is being proposed by the University is supported by contemporary trends that place more and more emphasis on performance, and not just time in grade. What the University is proposing in concept is certainly progressive, but with all merit based systems, the devil is in the execution. Moreover, the unique mission of the FOP unit makes this an even greater challenge. Other than Miami University, the Employer did not provide any other comparable higher educational employers who have merit based pay for their police officers. Moreover, it could not provide any other police department comparable data, among the hundreds of law enforcement bargaining units in Ohio. While it is predictable that merit based pay will appear more frequently for police units in a society that has come to demand more accountability from employees, a formula for execution that is fair and reasonable has yet to become commonly accepted.

As was the outcome in mediation and differs from what is before the fact finder, was the Union's willingness to take measured steps in agreeing to merit based pay that did not cause employees to forego thousands of dollars in future pay. The tentative agreement, while containing a misunderstanding regarding longevity and pay steps, nevertheless resulted in the parties agreeing upon merit categories that are both unique to law enforcement (e.g. physical fitness, weapon proficiency, safe practices) and provide the University with real measures of quality. This neutral, has worked in many higher educational settings, both in and outside of Ohio, and supports a move to a practical and measurable level of accountability. However, change of this magnitude has to be fair and predictable, and must have real meaning in terms of performance; it must be viewed as a pay system which enhances performance outcomes, while providing police officers with a fair and doable opportunity to earn a competitive wage. It was just a few years ago, that this neutral assisted the parties in transitioning to a major change in the compensation system, led by the University. A system which the University argued it needed for a variety of reasons, not the least of which was retention of good officers.

I find that the University's proposal fails to consider the substantial negative impact of removing longevity pay that has existed for over a substantial period of time, is grounded in state statute, and has been an integral part of the history of bargaining with the parties. Also, the transition to a pay range, versus a step schedule, needs to be accomplished reasonably without causing employees to lose thousands of dollars in future pay. When hired current bargaining unit employees were committed to a lower starting wage <u>and</u> a clear path of steps in order to achieve a top wage based upon experience. In making a major transition away from this system it is important that this commitment is preserved. There was absolutely no indication that the University in modernizing its compensation system, sought to have employees severally disadvantaged in terms of future compensation. In the experience of this neutral, the key is to make this transaction a reasonable one, made in a manner that over time is consistent with how many public sector employers have overhauled pay systems. This neutral was involved is such a sea change in a major hospital in Cleveland, in which 6,000 employees were transitioned to a merit based system, but with care not to have employees suffer losses in pay. Additionally, in order for merit pay to have real "traction" as a valid method to provide pay for performance, supervisors have to have time to be trained in the new system, and employees have to have sufficient time to understand the system and be able to perform under it. The remaining time in 2012 is less than 4 months, under the University's proposed date of January 1, 2013. This is simply not enough time for training and for employees to have a fair chance to earn one-half of their next pay increase. Therefore, it seems only reasonable that if one half of an employee's pay raise is tied to meritorious performance, an employee needs sufficient time to adjust to this new paradigm and to have a reasonable chance to meet the goals established by the University as it transitions to merit based system. An implementation date that provides employees with a year to meet performance standards is consistent with this fact finder's understanding of how the University evaluates employees.

RECOMMENDATIONS:

RETROACTIVE TO JANUARY 1, 2012 THE CURRENT WAGE SYSTEM SHALL REMAIN IN PLACE AND A 2% ACROSS-THE-BOARD WAGE INCREASE SHALL BE APPLIED TO THE SCHEDULE AND TO ALL EMPLOYEES IN THE BARGAINING UNIT.

EFFECTIVE JANUARY 1, 2013 THE CURRENT WAGE SYSTEM SHALL REMAIN IN PLACE AND A 2% ACROSS-THE-BOARD WAGE INCREASE SHALL BE APPLIED TO THE SCHEDULE AND TO ALL EMPLOYEES IN THE BARGAINING UNIT.

EFFECTIVE JANUARY 1, 2014 THE MERIT BASED PROPOSAL OF THE UNIVERSITY, FOR A 1.25% ACROSS-THE-BOARD AND A 1.25% MERIT PAY SHALL BE IMPLEMENTED AS FOLLOWS:

1. THE ACROSS-THE-BOARD INCREASE SHALL BE APPLIED TO EACH EMPLOYEE'S SALARY.

2. THE MERIT PAY SHALL BE PAID BY THE SECOND PAY IN JANUARY 2014 AND SHALL BE PAID IN A LUMP SUM IN ORDER TO MAINTAIN THE INTEGRITY OF THE SALARY RANGE.

3. THE STEP SCHEDULE SHALL BE ELIMINATED AND SHALL BE REPLACED WITH THE UNIVERSITY'S SALARY RANGE. SYSTEM THAT COMPORTS WITH THE SALARIES IN EFFECT ON DECEMBER 31, 2013.

4**.** **ONE A ONE TIME BASIS**, THOSE EMPLOYEES WHO'S WAGE/STEP RATE IS STEP 1 OR 2, AS OF DECEMBER 31, 2013, SHALL FIRST BE PLACED AT THE MIDPOINT OF THE RANGE RETROAACTIVE TO JANUARY 1, 2014. EMPLOYEES SHALL HAVE THEIR WAGES ADJUSTED TO THE MIDPOINT OF THE RANGE ESTABLISHED BY THE UNIVERSITY, BUT SHALL REMAIN AT THEIR CURRENT STEP RATE IF THE MIDPOINT IS LOWER THAN THEIR STEP RATE ON DECEMBER 31, 2013. THEN THE ACROSS-THE-BOARD INCREASE OF 1.5% EFFECTIVE JANUARY 1, 2014 SHALL BE APPLIED. THEN A CALCULATION OF ANY MERIT LUMP SUM PAYMENT DUE SHALL FOLLOW AND SHALL BE PAID TO THEM IN ACCORDANCE WITH NUMBER 2 ABOVE.*

5. **ONE A ONE TIME BASIS**, THOSE EMPLOYEES WHO'S WAGE/STEP RATE IS STEP 3 OR ABOVE AS OF DECEMBER 31, 2013, SHALL BE PLACED AT THE TOP OF THE RANGE RETROACTIVE TO JANUARY 1, 2014. EMPLOYEES SHALL HAVE THEIR WAGES ADJUSTED TO THE TOP OF THE RANGE, BUT SHALL REMAIN AT THEIR CURRENT STEP RATE IF THE TOP OF THE RANGE IS LOWER THAN THEIR STEP RATE ON DECEMBER 31, 2013. THEN THE ACROSS-THE-BOARD INCREASE OF 1.5% EFFECTIVE JANUARY 1, 2014 SHALL BE APPLIED. THEN A CALCULATION OF ANY MERIT LUMP SUM PAYMENT DUE SHALL FOLLOW AND SHALL BE PAID TO THEM IN ACCORDANCE WITH NUMBER 2 ABOVE. *

*FOLLOWING THE ONE TIME IMPLEMENTATION OF THESE "GRANDFATHER CLAUSES" THE UNIVERSITY'S SALARY RANGE SYSTEM AND MERIT PAY SYSTEM SHALL BE APPLIED *IN ACCORDANCE WITH THE AGREED UPON CRITERIA FOR THE FOP MERIT SYSTEM SPECIFIED IN THE TENTATIVE AGREEMENT REACHED ON 6/23/12.*

6. CONSISTENT WITH THE TENTATIVE AGREEMENT REACHED BY THE PARTIES ON 6/23/12, THE MERIT PAY SYSTEM SHALL REMAIN IN PLACE FOR THE LIFE OF THE AGREEMENT AND IN ORDER TO BE RENEWED MUST BE NEGOTIATED INTO A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT. THE LONGEVITY SYSTEM IS RECOMMENDED TO CONTINUE THROUGH THE LIFE OF THE AGREEMENT, AND AS WITH ALL PROVISIONS IS SUBJECT TO NEGOTIATIONS IN A SUCCESSOR AGREEMENT.

TENTATIVE AGREEMENT

During negotiations and the following impasse proceedings, the parties reached tentative agreements on several issues. The Appendices contained this report, any and all tentative agreements, all signed side letter agreements (6/23/12), all signed agreements to sign side letters of agreement (5/25/12), any grievance settlements that were subject to the negotiations process are part of the recommendations for a successor Collective Bargaining Agreement contained in this report. Additionally, any current language that is not changed or not addressed above should be considered to be recommended in the successor Collective Bargaining Agreement.

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

____
Robert G. Stein, Fact finder