

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF
THE FACT FINDING**

Between

UNIVERSITY OF CINCINNATI

And

AFSCME OHIO COUNCIL 8, LOCAL 2544

SERB No. 11-MED-12-1728

Before:

**CHRISTOPHER E. MILES, ESQUIRE
Fact Finder**

APPEARANCES:

**William T. Johnson, Senior Director
Representing the University**

**Taurean J. Johnson, Staff Representative
Representing the Association**

BACKGROUND

This case concerns the fact finding proceedings between the University of Cincinnati (hereinafter referred to as the "University" or "Employer") and AFSCME, Ohio Council 8, Local 2544 (hereinafter referred to as the "Union"). By letter dated November 16, 2012, the undersigned, Christopher E. Miles, Esquire, was appointed as the Fact Finder in this matter through the offices of the State Employment Relations Board (SERB). The fact finding proceedings were conducted pursuant to the Ohio Administrative Code Rule 4117 and the rules and regulations of SERB, as amended. The University and the Union mutually agreed to extend the period of fact finding. Prior to the appointment of the Fact Finder, the parties engaged in extensive negotiations and were able to resolve several provisions for the new collective bargaining agreement. However, the following issues remained unresolved:

- Article 12 Reduction in Force (Layoff) and Recall
- Article 13 Hours of Work and Overtime
- Article 14 Shift Differential Leave
- Article 17 Vacations
- Article 20 Health Insurance
- Article 22 Wages, Classification and Compensation

The items which were resolved by the parties during negotiations prior to the fact finding hearing are attached as Appendix "A".

The University was represented by Mr. William T. Johnson, Senior Director, and the Union was represented by Mr. Taurean J. Johnson, Staff Representative. A fact finding hearing was scheduled for and conducted on January 28, 2013 at University Hall on the University's campus in Cincinnati, Ohio. Prior to the hearing, the parties agreed to engage in mediation of the unresolved issues and as a result of those deliberations, the Fact Finder makes the Findings and Recommendations set forth below.

FINDINGS AND RECOMMENDATIONS

After consideration and a thorough review of the financial information, the documentation supplied by the parties, as well as their positions and arguments, the Fact Finder makes the following recommendations:

ARTICLE 12
REDUCTION IN FORCE (LAYOFF) AND RECALL

The only open issue regarding this article is in Section D. The parties acknowledge working closely over the years to avoid laying-off members of the bargaining unit. When a job abolishment was necessary, the parties worked within and sometimes beyond the confines of the agreement to avoid having a union member sever employment with the university.

It is recommended that the language previously tentatively agreed to by the parties be adopted. The language appears below in bold.

*D. Displacements shall continue by seniority and FTE grouping University-wide within the bargaining unit so long as the displaced employee(s) is qualified to do the work. **The employee shall then be afforded the opportunity to bump down one (1) pay grade if they are qualified to hold that position, pursuant to the definition in Article 11.7, and if they have previously held that position.** The lowest seniority bargaining unit employee within the classification affected shall be laid off.*

ARTICLE 13
HOURS OF WORK AND RECALL

The only open issue regarding this article pertains to the amount of notice for schedule changes. The Union credibly argued that forty-eight hours notice of a permanent schedule change is insufficient to allow an employee to make necessary changes to his/her personal life, such as child care. The University agreed and proposed language that required at least forty-eight hours notice. That proposal was agreed to by the Union negotiating team, but subsequently rejected by the membership.

It is recommended that the language previously tentatively agreed to by the parties be adopted. The language appears below in bold.

*13. Work schedules will be posted, and where possible, they will be posted four (4) weeks in advance. Before a change in the regular schedule is made, **no less than** forty-eight (48) hours notice will be given, except in cases of emergencies or special maintenance operations. In no event shall any employee have a regular work schedule of more than seven (7) consecutive days. *when operation requirements permit, every effort will be made to schedule consecutive days off.**

ARTICLE 14
SHIFT DIFFERENTIAL AND ON-CALL PAY

In July 2012, the University implemented a new time keeping system that modified the manner in which shift differential is calculated.

There is no fundamental dispute between the parties on this issue. The parties have agreed in principle to calculate shift differential rates that will neither adversely affect the employees nor the University.

It is recommended that the language previously tentatively agreed to by the parties be adopted. The language appears below. It is further recommended that a sub-committee of the parties meet and determine the proper rates.

1. **Effective July 22, 2012, the University will establish the beginning and ending times for shifts as 6:00 p.m. to 11:00 p.m. for second shift and 11:00 p.m. to 6:00 a.m. for third shift.** ~~pay shift differential for all time actually worked between 3:00 p.m. and 8:00 a.m. provided the period actually worked ended after 6:00 p.m. or started before 6:00 a.m. Shift differential at \$___ per hour will be paid for second shift time prior to 11:00 p.m. and \$___ per hour for third shift. time after 11:00 p.m. The intent of the change is that no employees shall see any result in pay and the employer shall see no increase in cost due to the change to the time keeping system. The parties shall audit the shift differential process in July 2013 to assess the impact of the change to the time keeping system.~~
2. ~~Employees assigned to a shift ending after 12:01 a.m. and before 8:00 a.m., shall receive shift differential of \$.50/hour for the entire shift.~~
- 2.3. ~~Employees at the Hoxworth Blood Center shall receive \$.25/hour shift work in addition to the \$___ and \$___ referred to in Paragraph 1.~~
- 3.4. ~~Employees who are "on-call" at Hoxworth Blood Center shall receive \$1 per hour.~~
- 4.5. ~~Employees in Donor Services Department shall only receive a shift differential at \$___ per hour to be paid for second shift time prior to 11:00 p.m. and \$___ per hour for third shift. time after 11:00 p.m.~~
5. **Employees in Radiation Safety shall be paid \$1.75 per hour for on-call pay.**

ARTICLE 17 VACATION

The only outstanding issue regarding this article concerned vacation scheduling at the Hoxworth Blood Center. The Center accepts donations and supplies blood and other blood-related services to local hospitals and health care facilities. The parties reached a tentative agreement; however, bargaining unit members employed by Hoxworth subsequently expressed some concerns regarding the language.

It is recommended that the parties return to the language of the current agreement; and, if they so choose, the matter be addressed at a local labor-management committee.

ARTICLE 20 HEALTH INSURANCE

As in most organizations and industries across the nation, insurance costs represent a major and growing expense at the University. Total costs to the University in 2011 were over \$63,500,000, and, if left unchecked, costs in 2016 are estimated at \$103,600,000.

The University proposed that the Union accept the same plan design and premium contribution structure as unrepresented employees. This is consistent with the approach taken by the University in negotiations with other bargaining units at the University.

The University proposed that the changes be effective July 1, 2013.

It is recommended that the Union move to the same plan design and premium structure as the unrepresented employees, but not to become effective until January 1, 2014; however, the parties should re-open the agreement to negotiate premium contribution for January 2015. That re-opener should occur no later than June 30, 2014. The language appears below in bold.

~~The parties agree to continue the terms of the current agreement regarding this article until negotiations are re-opened and an agreement is reached.~~

The University will continue to provide benefit-eligible employees in the bargaining unit the group insurance plan (hospitalization, major medical, prescription drug, dental, basic life insurance coverage and long-term disability) as approved by the Board of Trustees. Additionally, the University reserves the right to change the present or successor insurance carriers, and to designate alternate carriers of its own choice, in lieu thereof, so long as the same benefit levels remain unchanged. Effective January 1, 2014, employees shall be subject to the same plan design, base rate and percentage of premium as the unrepresented employees. No later than June 30, 2014, the parties shall re-open the agreement solely to discuss premium contribution to be effective January 1, 2015.

An eligible employee may waive medical coverage and receive a credit of one hundred dollars (\$100) per month. **Employees who waive dental coverage will receive a monthly credit of \$8 which may be used to purchase other benefits or which may be received in cash.** ~~provided that the employee certifies coverage by a spouse at UC or another employer. The credit may be received as cash or in the paycheck, or may be applied to the cost of other benefits. The tax treatment of this option shall be in accordance with applicable taxes.~~

~~Effective January 1, 2014, 2012,~~ an eligible employee whose spouse has access to medical coverage through another employer shall pay a **fifty dollar (\$50)** ~~twenty-five dollar (\$25)~~ surcharge if the spouse opts to be covered through a UC plan rather than utilizing the coverage through the other employer.

~~1. The following Choice Benefits Plan will be provided to all bargaining unit members with an appointment level of .8 FTE or above. The Choice Benefits Plan is a cafeteria plan authorized under Section 125 of the Internal Revenue Code and is subject to all federal, state and local tax laws and any changes which may occur therein. Wherever "pre-tax contributions" are specified, they are not currently subject to federal and state income taxes but may be subject to city income taxes.~~

~~2. Eligibility~~

~~Permanent full-time employees appointed at .8 FTE or above are eligible for the Medical, Dental Plans, Employee Life Insurance, Family Life Insurance and Personal Accident Insurance and Long-Term Disability Insurance and Spending Accounts as described below.~~

~~A. Eligible family members include legally recognized spouse, domestic partner, unmarried dependent, natural, or adoptive and step children of whom the employee has permanent legal guardianship/custody are also eligible to age 19 provided the child meets dependency requirements under the IRS and lives with the eligible employee in a regular parent-child relationship. If the unmarried child is enrolled in school full time, the coverage will continue to the 23rd birthday.~~

~~B. The election option is offered annually during an enrollment period.~~

C. ~~— Description of Benefits~~

~~— The descriptions of benefits contained herein are summaries and are not intended to cover all situations. Questions regarding specific benefit coverage will be controlled by the contract between the University and the appropriate insurance carrier.~~

3. ~~— Medical Plans~~

A. ~~— Eligible employees may elect only one (1) of the following medical plans with coverage for the employee, employee plus one (1) dependent, or employee plus two (2) or more dependents. Both plans provide for coordination of benefits with other group insurance plans and may be secondary payors as a result.~~

~~An eligible employee may waive medical coverage and receive a credit of one hundred dollars (\$100) per month. — provided that the employee certifies coverage by a spouse at UC or another employer. The credit may be received as cash or in the paycheck, or may be applied to the cost of other benefits. The tax treatment of this option shall be in accordance with applicable taxes.~~

~~Effective January 1, 2012, an eligible employee whose spouse has access to medical coverage through another employer shall pay a twenty-five dollar (\$25) surcharge if the spouse opts to be covered through a UC plan rather than utilizing the coverage through the other employer.~~

B. ~~— Health Maintenance Organization~~

1. ~~— A Health Maintenance Organization (HMO) is available with a \$1 co-pay per office visit, a \$50 emergency room co-pay and a prescription drug card. The plan provides comprehensive managed care, including preventive services and health care and early disease detection through a panel of participating providers.~~

2. ~~— Members of an HMO must choose a physician from among the panel of providers for all non-emergency situations in order for the services to be covered expenses. Prescription drugs are covered with an applicable co-payment of \$7.00 for generic; \$12.00 for brand formulary; \$24.00 non-formulary per prescription at participating pharmacies. The prescription drug co-payment for mail order, 90-day supply will be of \$14.00 for generic; \$24.00 for brand formulary; \$48.00 for non-formulary. Prescription drugs are subject to exclusions and limits as defined by the plan. When away from Cincinnati, the HMO will provide equivalent health care coverage for emergency and urgent care. The University will announce to employees the HMO provider and make panel information available prior to each annual enrollment.~~

3. ~~— Effective January 1, 2011, employees will pay eight percent (8%) of the HMO premium rate as established for the plan based on the applicable level of coverage i.e. single, double, or family.~~

4. ~~— Effective January 1, 2012, employees will pay ten percent (10%) of the HMO premium rate as established for the plan based on the applicable level of coverage i.e. single, double, or family.~~

C. ~~— Point of Service (POS)~~

1. ~~— A UCR Point of Service (POS) is available, providing comprehensive care, including some preventive care as well as the treatment of illness or injury.~~

2. ~~— When participants receive services from approved doctors and facilities, most services are fully covered (except for those which require co-payments).~~

~~A (\$15) co-pay per office visit and a \$75 emergency room co-pay per emergency room visit will apply. When participants receive services from non-panel~~

~~providers, they share in the cost through deductibles, co-payments and co-insurance.~~

~~Prescription drugs will be covered with a co-payment of \$8.00 for generic drugs; \$15.00 for brand formulary; \$30.00 brand non-formulary per prescription, at participating pharmacies. Prescription drugs are subject to exclusions and limits as defined by the plan.~~

~~D. Medical Coverage Plan Premiums and Credits~~

~~1. The difference between the University contribution and the cost for the plan elected by the employee will be paid by the employee through pre-tax payroll deductions. Plan costs and employee contributions are determined annually by the University and/or the Plan and communicated to participants during the annual enrollment period.~~

~~2. The University's maximum monthly contribution for Medical Coverage will be equal to 100% of the HMO premium for the selected enrollment level.~~

~~4. Dental Plans~~

~~Eligible employees may select any one of five (5) dental plans for employee, employee plus one (1) dependent, or employee plus two (2) or more dependents as described below:~~

~~A. Option 1 – No Coverage~~

~~Employees may elect to waive dental coverage. However, if an employee waives dental coverage in a given year, the employee may only elect Option B the following year.~~

~~B. Option 2 – Basic~~

~~After an annual deductible of \$50 per person, \$150 per family, this plan pays 80% of covered preventive, diagnostic, and restorative services and 60% of covered prosthodontic services to a yearly maximum of \$500 per person. Orthodontia is not covered.~~

~~C. Option 3 – Ortho~~

~~This dental plan provides 100% coverage for preventive and diagnostic services and, after an annual deductible of \$50 per person or \$150 per family, pays 80% of covered restorative services, 60% of covered prosthodontic services and 50% of covered orthodontic services to a yearly maximum benefit of \$500 per person and to a lifetime orthodontic limit of \$1,000 per person.~~

~~D. Option 4 – High~~

~~This dental plan provides 100% coverage for preventive and diagnostic services and, after an annual deductible of \$25 per person or \$75 per family, pays 80% of other covered services to a maximum of \$1,000 per person each year. Orthodontia is not covered.~~

~~E. Option 5 – High Ortho~~

~~This dental plan provides 100% coverage for preventive and diagnostic services and, after an annual deductible of \$50 per person or \$100 per family, pays 80% of other covered services (restorative and major services) to a maximum of \$2000 per person each year. Orthodontia services are covered at 60% (dependent children under the age of 19 only and to a lifetime orthodontic limit of \$2000).~~

~~A new dental plan selected during the open enrollment will not cover certain on-going treatment. The definition of ongoing treatment differs by service. For example, if your child has begun orthodontia treatment prior to the enrollment in the Ortho or High Ortho option, orthodontia services would not be covered for that child.~~

~~F. Dental Plan Premium and Credits~~

~~1. The University will contribute a monthly amount for each employee enrolled in dental insurance, equal to the employee only premium for Dental, Option B. The employee will, if necessary, pay the difference in any excess monthly premium cost for the option chosen through salary reduction.~~

~~2. Employees who waive dental coverage will receive a monthly credit of \$8 which may be used to purchase other benefits or which may be received in cash.~~

~~3. If a managed care dental plan and/or managed care component is made available to other University employees during the life of this agreement, the plan will be made available to this bargaining unit as a replacement and/or enhancement for one or more of the dental options outlined in this section.~~

~~G. If the University decides to add a dental maintenance organization (DMO) option to the employee benefits plan, it shall notify the Union of its intention. Before issuing a request for proposal (RFP), the parties shall meet to discuss the potential specifications of the plan and the Union may make recommendations concerning providers and plan design. The University retains the right to determine the final plan design and vendors to whom the RFP will be issued. The University retains the right to decide the final plan design and selection of the DMO provider. The University will offer the plan to employees eligible for dental coverage under this section, subject to the same terms and conditions as the plan is offered to unrepresented employees. The University will notify the Union of the DMO provider selection prior to employee notification and implementation.~~

5. Flexible Spending Accounts

In accordance with applicable law, employees may make pre-tax contributions to either or both of two flexible spending accounts. Participants shall elect contribution(s) to the account(s) during the annual enrollment period and may not change their contributions unless they have a change in family status.

Funds which are withheld must be reimbursed for expenses incurred in the calendar year in which they are withheld or, under current IRS rules, the unused funds will be forfeited.

Flexible Spending Accounts

Health Care Account

An eligible employee may elect to have a specified amount withheld on a pre-tax basis from each pay, up to annual maximum **amount**, of \$2400, to be used for reimbursement of medical expenses which are not covered by insurance. Eligible expenses are those currently recognized as deductible for federal tax purposes.

Dependent Care Account

An eligible employee may elect to have a specified amount withheld on a pre-tax basis from each pay, up to an annual maximum **amount**, of \$2500 for those filing single federal tax return or \$5000 for joint filing, to be used for reimbursement of

dependent care expenses which are specified by IRS rules, but which are not claimed under the federal tax credit.

Optional Insurance

Optional employee life insurance, family life insurance, accidental death and dismemberment coverage, and long-term care coverage will continue to be made available for employee purchase.

~~6. Group Term Life Insurance~~

~~A. Employee Coverage~~

- ~~Option 1 - 1 times base annual salary~~
- ~~Option 2 - 2 times base annual salary~~
- ~~Option 3 - 3 times base annual salary~~
- ~~Option 4 - 4 times base annual salary~~
- ~~Option 5 - 5 times base annual salary~~
- ~~Option 6 - 6 times base annual salary~~
- ~~Option 7 - \$5,000~~
- ~~Option 8 - \$50,000~~

~~B. Employee Life Insurance Premiums and Credits~~

- ~~1. The University will contribute toward employee life insurance coverage a monthly amount equal to the covered employee's monthly premium cost for Option 1. Should the employee select a more costly option, the employee will be required to contribute pre-tax the excess premium cost by salary reduction.~~
- ~~2. An employee selecting Option 7 will receive a monthly credit equal to the difference between the premium costs for Option 1 and 7 which may be used to purchase other benefits.~~

~~C. Family Life Insurance~~

- ~~1. An employee may purchase life insurance coverage with after tax dollars for spouse and children in the amounts stated below, not to exceed 50% of the employee's coverage:~~

Insurance for Spouse	Options for Children
Option 1 - no coverage	Option 1 - no coverage
Option 2 - \$ 5,000	Option 2 - \$ 2,000
Option 3 - \$10,000	Option 3 - \$ 5,000
Option 4 - \$25,000	Option 4 - \$10,000

~~D. Personal Accident Insurance~~

- ~~1. An eligible employee may purchase Accidental Death or Dismemberment Insurance (either single or family coverage) with after tax dollars in the amounts stated below:~~

- ~~Option A - \$ 50,000~~
- ~~Option B - 100,000~~
- ~~Option C - 150,000~~
- ~~Option D - No Coverage~~

~~7. Employee Long Term Disability Insurance~~

- ~~A. An eligible employee may purchase Long Term Disability Insurance which will provide for 65% of pay if the employee becomes totally disabled. The benefits are payable after four (4) months of disability. Evidence of insurability is required if the employee does not enroll in LTD coverage when first eligible; coverage would then become effective upon acceptance by the insurance company.~~

~~B. If the employee elects LTD coverage, the University will contribute 50% of the cost of the LTD coverage with the remainder paid by the employee through after-tax payroll deduction. Employees who waive LTD coverage will not receive any additional credits.~~

~~8. Long Term Care Insurance~~

~~An eligible employee may purchase group Long Term Care insurance, which provides for skilled and custodial nursing care, home nursing care and adult day care. Evidence of insurability is required if the employee does not enroll when first eligible, and is required for enrollment of the spouse, parents or parents-in-law.~~

~~9. Effective January 1, 2007, and continuing for the length of the Agreement, the University will contribute seven dollars and twenty-five cents (\$7.25) per month per bargaining unit employee for hearing aid and vision care I coverage provided by the Ohio AFSCME Care Plan.~~

~~10. Choice Benefit Plan Participation~~

~~A. Coverage eligibility in the benefits program will become effective the first of the month following twenty eight (28) days of employment, subject to plan requirements for evidence of insurability.~~

~~B. Coverage for an employee returning from layoff, (recall) and/or military service shall be reinstated effective the first of the month following the employee's return to work.~~

~~C. In accordance with applicable law and the University's flexible benefits plan, an employee must notify the Human Resource Service Center and complete required documents within thirty one (31) days of a change in family status in order to change plans or level of coverage. Such changes will be effective as of the date of change in family status, provided timely application is made by the employee and the change is permitted by the plan.~~

~~D. If an employee is on an authorized non-medical leave without pay, the employee may continue medical coverage at the employee's own expense. The employee must request continuation of medical coverage through the Human Resource Service Center upon granting of such leaves.~~

~~E. Failure to pay or discontinuance of payment of premiums will result in termination of coverage.~~

~~F. Employees who terminate coverage and who satisfy any due payments may renew membership on the first of the month following return to work and completion of a new enrollment.~~

~~G. The University will continue medical coverage for employees who are either on a paid leave or medical/disability leave without pay for twelve (12) months, provided the employee is enrolled at the start of such leave, and provided the employee pays the employee portion of the premium rate.~~

~~H. In the event the University changes insurance carriers or changes to or from being self-insured, the coverage subsequently provided shall be comparable to the coverage currently provided.~~

~~11. Insurance Discussions~~

~~A. The University agrees to provide written notice to the Union at least sixty (60) days in advance of significant changes being made to the medical coverage. The Union will notify the University, in writing, if they wish to meet and discuss the changes.~~

- B. *The University shall recognize and provide paid release time for one (1) existing steward to be appointed by the Union per Article 5, to serve as a liaison with the Service Center. Where necessary, a monthly meeting will be scheduled with the Service Center Executive Director or designee to discuss unresolved benefits issues. Release time for this meeting shall be in addition to release time provided under Article 5.*
- C. *Once per year, prior to the annual enrollment period, representatives of the University will meet with representatives of the Union to exchange information on administration and cost of the medical insurance program.*
- D. *The University shall provide an annual report to the Union regarding the financial condition of the Flexible Spending Accounts. This report shall include, but shall not be limited to administrative cost, amounts of employee forfeitures and experience losses.*
- E. *Issues surrounding insurance benefits shall be raised to the Labor/Management Committee, which pursuant to Article 24, may appoint an ad hoc task force to study the issue and/or make recommendations.*
- F. *In addition to the above, the University will provide the Union with utilization and cost data, and other relevant information on a monthly basis.*

Wellness Program

During the term of this Agreement, the university may implement a wellness or healthy life-style program. Such a program may include a combination of activities that are designed to increase awareness, assess risks, educate and promote voluntary behavior changes to improve the health of an individual, encourage modifications of his/her health status and enhance his/her personal well-being and productivity, with a goal of preventing illness and injury.

ARTICLE 22
WAGES, CLASSIFICATION AND COMPENSATION

Like many public universities in Ohio and elsewhere, the University is experiencing reduced financial support from the state and federal governments. Many employee groups at the University, both represented and unrepresented, have received little or no wage increases in recent years. The University proposed three percent over the course of the agreement; one percent in 2013 and two percent in 2014. The lack of a recent market survey of bargaining unit positions was also discussed.

It is recommended that wage increases of three percent be awarded over the course of the agreement; however, it is recommended that two percent be awarded in 2013 and one percent be awarded in 2014. The language appears in bold below.

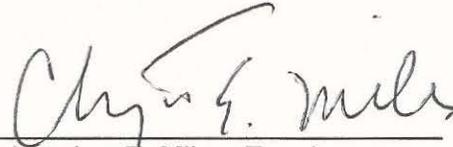
8. ***Effective on the first day of the pay period which includes July1, 2013, 2010, bargaining unit employees in an active pay status shall receive an increase of two percent (2%) over the hourly base rate of pay.***

*Effective on the first day of the pay period which includes July 1, 2014, 2011, bargaining unit employees in an active pay status shall receive an increase of **one percent (1%)** ~~two percent (2%)~~ over the hourly base rate of pay.*

The University will conduct a market wage survey for all bargaining unit positions commencing in the third year of the agreement. The results of the survey shall be implemented no later than June 30, 2015.

CONCLUSION

In conclusion, the Fact Finder submits the Findings and Recommendations as set forth herein.



Christopher E. Miles, Esquire
Fact Finder

February 13, 2013

Exhibit "A"