FACTFINDING REPORT AND RECOMMENDATIONS

In The Matter OF

SEIU, District 1199 (Full time & Part time Office & Tech)

-and-

University of Cincinnati

Mollie H. Bowers
Factfinder

Representing the Union:	Joshua Norris, SEIU, District 1199 Public Division Director
Representing the University:	William T. Johnson, Senior Director, Labor Relations
Date of Hearing:	August 6, 2013
Report Issued:	August 12, 2013

BACKGROUND

The parties to this dispute are the SEIU, District 1199 (the Union) and the University of Cincinnati (the University). The facts of this case are undisputed. There are between 233 and 238 employees in the bargaining unit. The parties negotiated a collective bargaining Agreement that is effective from July 1, 2011 through June 30, 2014. That Agreement contains language pertinent to this case as follows:

Article 27 Wages

Section 2.

A. There will be no wage increases in the first year of this Agreement.

> B. The parties shall re-open negotiations no later than April 1, 2012, for the purpose of negotiating this article for the second and third years of this Agreement.
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> **Article 28** **<u>Insurance Benefits</u>**
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> **<u>Section 1. Insurance Plans</u>**
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> 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.** For 2012 only, bargaining unit members will be provided the same insurance benefits at the same premium percentage as 2011. See the Human Resources Benefits website for details on the plans. The parties shall re-open negotiations no later than April 1, 2012, **for the purpose of negotiating premiums for calendar years 2013 and 2014.** (emphasis added)

Wages and health care premiums are the two issues at bar in this proceeding.

According to the record, the parties did not begin negotiations concerning the above-cited re-openers until July 17, 2012. Including that date, twelve (12) negotiations sessions were scheduled, of which seven (7) were cancelled. There is no question about the University's ability to pay, there are no exigent circumstances, no comparables were provided, etc.

ISSUES

I. Article 27 Wages

Union Position:

Members of the bargaining unit earn, on average, $16.84 per hour. The University proposed a 1% increase, effective on July 1, 2012 and offered a 2% increase effective on January 1, 2013. The Union rejected these increases and asked for a 3% increase retroactive to July 1, 2012 and another 3% increase retroactive to January 1, 2013. According to the Union, these modest increases for the hard working members of the bargaining unit represent an insignificant cost to the University, especially when viewed in relation to the funds that the University had and was willing to expend for executive compensation. Former president Williams was provided in excess of $1.3 million in two severance packages. Incoming president Ono is paid $369,00 in salary, received a signing bonus of $100,000, and the University paid off the mortgage of $172,000. on Ono's former home in Atlanta. Additionally, the University had funds ready to pay the incoming football coach $1.6 million. The Union also stressed that not only were funds readily available to make these transactions, but also that enrollment and other factors make it evident that the University's financial picture looks even better for the coming year. Finally, the Union stated that the modest increases that it has asked for represent only the amount necessary for bargaining unit employees to maintain the *status quo* where income is concerned because of increases anticipated in the premiums owed for health care benefits.

University Position:

The University did not dispute any of the claims made by the Union. The sum and substance of its position was that, whether negotiated at the table or recommended by a Factfinder, the Board of Trustees was adamant that it would not approve an increase exceeding 3% for employees in this bargaining unit. The University's last, best, and final offer was that these employees be afforded a 1% increase in the base hourly rate, exclusive of longevity, on July 1, 2012, and a 2% increase in the base hourly rate, exclusive of longevity, on July 1, 2013.

Recommendation:

Unfortunately, the positions of the parties in this dispute represent a trend, by no means limited to academia, where executive compensation is given inordinate precedence, regardless of performance, over compensation for those who keep the machinery of the organization working so that it can sustain itself. The percentage pay increases that the Union has requested are neither outlandish nor do they represent a windfall to bargaining unit employees. This is especially true since those employees, given the contract language and this dispute, have received no pay increase at all since 2010. The Board of Trustees had adopted an arbitrary stance, not based on ability to pay now or in the future, that these employees are only 'entitled' to a 3% increase. The Factfinder rejects the Board's and the University's position and recommends that employees in this bargaining unit receive a 3% increase retroactive to July 1, 2012, and a 1% increase retroactive to July 1, 2013. The Factfinder adopts the University's language that "The pay range maximum as stated in Appensix 2 [of the collective bargaining Agreement] shall not limit an individual employee's across the board increase".

II. Article 28 Insurance Benefits

Union Position:

According to the Union, the University is attempting to use the re-opener on benefits to obtain through Factfinding that which it did not achieve through the bargaining process. The express purpose for re-opening negotiations, stated in Article 28, is to negotiate **premiums** for the 2012 and 2013 calendar years. Until the Factfinding occurred, on August 6, 2013, the University had provided absolutely no indication of what the premium costs would be that it was proposing that bargaining unit employees pick up for 2012 and 2013. "In effect, the employer is demanding that the BU employees agree to costs that they have absolutely no knowledge of and trust that management will not unduly or erroneously increase these costs to the employees." When the costs were presented at Factfinding, the Union noted that, first, the increases in costs were significant (e.g. from 14% to 19-20%) for Point of Service (POS) coverage.

Second, a very small number of employees currently have the HDHP. If employees chose to change their election from the POS to the HDHP their cost would only be increased from .5% to .6% for that plan. The University was clearly trying to steer the majority of bargaining unit employees to adopt the HDHP plan. Given the low wages (less than $40,000.00 per year) of most bargaining unit employees and the lack of wage increases in over two (2) years, the Union asserted that employees simply could not afford the costs that the University now said were fixed based on its agreement with Humana, the healthcare provider.

As important to the Union as cost *per se*, is the fact that the University "is demanding that the employees forego their legal and contractual right[s] to bargain over these costs". Article 28 expressly provides that the re-opener is solely for the purpose of negotiating the premium cost of the healthcare benefits provided. Under Ohio Code, Section 4117, these costs are clearly and unambiguously a mandatory subject of bargaining. Thus, neither the Agreement nor the law empowers the University to unilaterally impose known or unknown premium costs on employees by simply refusing to bargain over this subject.

Finally, the Union stressed that the University also has not maintained the "same benefit levels" as required by Article 28, Section 1. The Director of Benefits gave specific testimony that the benefits have changed **and** that the Health Maintenance Organization (HMO) option will no longer be available to any employees. Further evident from the University's information, presented for the first time at Factfinding, was that co-pay amounts for certain services would be increased whereas before these services were paid 100% after the deductible was met.

University Position:

The University insisted that it had to take significant steps now to contain healthcare costs. The POS option would remain with a \$100.00 deductible for the employee only and a \$200.00 deductible for the employee and a dependent. The HDHP would have a \$1,500.00 deductible for the employee only and a \$3,000.00 deductible for an employee and a dependent, regardless of earnings. The University said it would establish a Healthcare Saving Account (HSA) whereby employees who elected the HDHP only would receive \$800.00 toward the deductible for the employee only and \$1,600.00 toward the deductible for an employee and a dependent. Part of each of these contributions would be made on January 1, 2014, with the remainder paid in monthly increments beginning in mid-year. The HSA would be able to be rolled over, earn interest, and employees could take the money with them when they retired. Its use would only be tax free if the money was spent for health care purposes. Employees could make contributions to the HSA. The University was going to find out what the caps would be.

The University noted that while the Union might protest these changes, the facts show that among five (5) unions, including the SEIU, bargaining unit employees had paid the lowest percentage for both POS and HMO healthcare. According to the University, it is understandable that the necessary changes would now seem to be more drastic to employees in bargaining units represented by other Union.

According to the University, the Union should accept all the proposals because it agreed, in negotiations, "to be covered by the same plan design changes as the unrepresented employees and other unions". All of the changes proposed by the University have been accepted "by nearly every other bargaining unit at the [U]niversity", save the AAUP where negotiations are currently on-going.

Recommendation:

The Factfinder cannot recommend in favor of the University's position for the following reasons. First, although she understands the University's reasons for trying to establish a 'one size fits all' approach to healthcare benefits, nowhere in Article 28 does it state that the Union agreed to be bound by the same changes as the unrepresented employees and the other unions accepted. In fact, the Union denies that it made such an agreement.

Second, Article 28, Section 1 expressly states that "the same benefit levels remain unchanged". The University has made no attempt to disguise the fact that benefit levels have been changed and that this is a *fait accompli*. Now it is attempting to use the re-opener on insurance benefits to force these changes on the Union in violation of Article 28.

Third, it is specifically and unambiguously stated, in Article 28, Section 1, that the purpose of the re-opener is to negotiate "premiums for calendar years 2013 and 2014". The University has not engaged in negotiations. It did not even provide the Union with data regarding premiums until the Factfinding proceeding. Then, this information was presented on a 'take it or leave it' basis, meaning that rejection by the Union would give the University the right to unilaterally impose the premiums and the benefit changes on bargaining unit employees without having to bargain in good faith. This tactic is completely inconsistent with the law set forth in the ORC, Section 4117 which establishes healthcare premium share as a mandatory subject of bargaining and with the plain language of the collective bargaining Agreement. The Factfinder will not and cannot endorse this tactic to strip the Union of its rights. She recommends that the University return to the bargaining table and, for the first time, commence re-opened negotiations for the purpose of determining healthcare premiums for calendar years 2013 and 2014.

Date: August 12, 2013 Mollie H. Bowers

Mollie H. Bowers, Factfinder