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IN THE MATTER OF FACT FINDING

BETWEEN

THE UNIVERSITY OF YOUNGSTOWN

AND

ASSOCIATION OF CLASSIFIED EMPLOYEES

SERB Case No(s). 2014-MED-04-0653
(Classified Bargaining Unit)

Robert G. Stein, Fact-finder

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INTRODUCTION

The parties to this matter are the Association of Classified Employees (hereinafter "Union," or "ACE") and Youngstown State University (hereinafter "Employer" "University," or "YSU"). YSU is located in Northeast, Ohio. The Collective Bargaining Agreement (hereinafter "Agreement") runs from August 16, 2011 through August 15, 2014. The bargaining unit is comprised of approximately 300 full-time employees who are employed in a variety of classifications (See Collective Bargaining Agreement, Article 2 and Appendix B). The parties came to fact-finding with approximately 24 unresolved articles each containing multiple proposed changes. Given this daunting task, the parties agreed to mediation led by the fact-finder. This effort was very successful and resulted in several tentative agreements being reached and reduced the number of unresolved issues by approximately two-thirds.

National/State/Local Economic Synopsis:

It can finally be said with certainty that the economy is improving on the national, state, and local level. If you use the Stock Market as one measure, things are greatly improved, but for many Americans, a better metaphor is "the bleeding has subsided and the patient's (a.k.a. economy) condition is stable with signs of further improvement." Circumstances post 2008 are not nearly the same as they were prior to the recession's onset. Painful lessons learned in its aftermath have caused local governmental operations to be more closely scrutinized in terms of costs and efficiency. In Ohio a catalyst for this change in managerial thinking resulted from severe cuts in state funding to local governments that have forced public employers to do more with considerably less. But in much of northern Ohio, structural problems in the economy began well before 2008. Over 400,000 manufacturing jobs in Ohio have disappeared in the last 12+ years, many of which paid a livable wage along with good benefits. Gone are the years when recovery from a recession in northern Ohio could expect to be fostered by a structurally strong manufacturing base that for decades supported a viable middle class who were mainstays in Ohio's consumer based economy. The improvement for Americans is uneven; some people survived, recovered very well or even thrived since the end of the "great recession," others did not and either remained unemployed, underemployed, and were forced to utilize their savings to survive following job losses. A vast majority of the improvement in the economy continues to be skewed to the wealthy, while middle and lower income wage earners have experienced stagnation or net erosion in the purchasing power of their wages. Fortunately, inflation has been kept in check during the past several years softening the impact on wage earners who have seen little or no growth in their earnings. Economic and political pressure to address wage stagnation, particularly at the minimum wage levels continues.

Locally, Mahoning County has during the last several decades overcome a great deal economically. While many local governmental entities experienced severe reductions in state revenue and in locally generated revenue due to the Great Recession, the Mahoning County and other neighboring counties in northeast Ohio have been through much more and for far longer. State universities in Ohio, while directly impacted by the economy, have their own unique set of issues. The parties proffered differing perspectives on the University's financial situation during mediation and at the fact-finding hearing. They are incorporated in the introductory portion of the parties' opening post-fact-finding submissions are listed below as is the fact-finder's perspective.

There are nine (9) remaining unresolved issues after several days of mediation that proved to be successful in pairing down the considerable number of issues at impasse. They are:

- Article 3: Wages
- Article 15: Leaves
- Article 16: Layoffs
- Article 17: Vacations
- Article 21: Retirement
- Article 22: Insurance Benefits
- Article 25: Subcontracting
- Appendix A: Included Bargaining Unit Positions
- Appendix B: Excluded Bargaining Unit Positions

The items specifically addressed by the fact finder in this report are based upon the evidence and arguments proffered by the Union and the Employer. The recommendations contained in this report conform to the statutory criteria that all fact finders must follow, but are somewhat limited in their utility in that there is a lack of statutory direction in terms of assigning each relative weight.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the determinations contained in this report are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Code. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private sector employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

UNION'S POST HEARING REPORT INTRODUCTION:

"Our unit has given up enough. . We have lost 25% of our membership, have been taking home less money every year due to the rise in insurance, gave up the ability to accumulate vacation at the rate other units accumulate it at until several years later, took less sick leave accrual, allowed our step increases to be frozen, even those that were an arbitration award, and all of us are doing more with less. In addition, other members have taken dramatic pay cuts due to the two rounds of abolishment.

We truly have nothing left to give. As I stated prior to beginning this process, I do not want to take a less than zero contract back to the membership. Our contract was completely concessionary in 2011 to give the University a chance to get their financial house in order. They did not change their spending habits. We are unable to continue to help an entity who refuses to help themselves."

UNIVERSITY'S POST HEARING REPORT INTRODUCTION:

"Youngstown State University (the "University") is a State university organized and established under Revised Code Chapter 3356. The University also is a "public employer" as defined by Revised Code Section 4117.01(B).

The Youngstown State University-Association of Classified Employees ("ACE") is a Board-certified bargaining unit representative of the University's non-supervisory classified employees, consisting of blue collar, clerical and other office employees. ACE represents for collective bargaining purposes approximately 320 of the University's non-supervisory classified employees.

The relationship between YSU and ACE has been governed by a series of collective bargaining agreements, the most recent of which covered the period August 16, 2011 to August 15, 2014. The parties initially entered into a 45-day contract extension, which expired on September 30, 2014, and they have extended informally the labor contract while they participate in the various steps of the agreed-upon dispute resolution process.

Through both direct negotiations and most recently with the assistance of the Fact-Finder in the agreed-upon role as mediator, the parties reached tentative agreement on 25 of 32 Articles and nine of twelve Appendices (with the parties agreeing to two Appendices). They are as follows:

Article 1: Agreement and Recognition

Article 2: Scope of Unit

Article 4: Retained Rights

Article 5: Union Rights

Article 6: University/Union Relations and Responsibilities

Article 7: Employee Discipline

Article 8: Personnel Files

Article 9: Grievance Procedure

Article 10: Work Schedules

Article 11: Holidays

Article 12: Overtime

Article 13: Evaluations

Article 14: Vacancies. Transfers and Promotions

Article 18: Health and Safety

Article 19: Non-Discrimination

Article 20: Classification and Position Audits

Article 23: Union Financial Security

Article 24: No Strike/No Lockout

Article 26: Separability

Article 27: Miscellaneous

Article 28: Intermittent Employees

Article 29: Seniority

Article 30: Term of Agreement

Article 31: Student Employees

Article 32: Intellectual Property Rights

Appendix C: Grievance Form

Appendix D-1: Evaluation Form (New)

Appendix D-2: Evaluation Form (Old)

Appendix E: Search Committee Assessment Form

Appendix F: Recruitment and Selection Procedures

Appendix G: Authorization for Payroll Deduction

Appendix I: Classification Position Information Form

Appendix J: Available Parking

Appendix K: Distinguished Service Award Form

Although not raised by either the Fact-Finder or the parties during the fact-finding hearing, the University requests that the Fact-Finder take the usual step of incorporating by reference and otherwise including these tentatively agreed-upon Articles and Appendices in his Report and Recommendation, so that the parties may approve or reject the entire proposed labor contract when they vote on the Report and Recommendation.

On November 13, 2014, the parties participated in the fact-finding hearing, which addressed the following unresolved Articles and Appendices:

- Article 3: Wages
- Article 15: Leaves
- Article 16: Layoffs
- Article 17: Vacations
- Article 21: Retirement
- Article 22: Insurance Benefits
- Article 25: Subcontracting
- Appendix A: Included Bargaining Unit Positions
- Appendix B: Excluded Bargaining Unit Positions

The Fact-Finder requested that each party submit a post-hearing brief in Word, which would list the specific language proposals along with a summary of the rationale in support of its proposals and in response to the other party's proposals or in opposition to the party's proposals.

THE UNIVERSITY'S FINANCIALLY-DISTRESSED STATUS

As mentioned when the hearing commenced, the Fact-Finder is not confronted with one of those public employers he increasingly sees, which has weathered the worst of the Great Recession of 2008, has "turned the corner" financially, shows the initial signs of financial and economic improvement and tenuous stability, and strives to be financially careful to avoid repeating past errors of unpreparedness for the next inevitable economic downturn. To the contrary, the University regrettably has not emerged from the serious financial troubles it experienced three years ago. Rather, the situation has deteriorated even further.

As laid out in great detail during a joint bargaining session in the presence of the Fact-Finder, discussed repeatedly during the mediation process, and reiterated during the hearing, the University faces a structural deficit in its General Fund of more than $10,000,000.00. (YSU Ex. 1, at 13; YSU Ex. 2, at 3; YSU Ex.5) Contrary to ACE's repeated, unsubstantiated assertions throughout this process, the deficit is not the result of "reckless spending" (unless one concludes that the 2008-11 YSU-ACE labor contract fits that description), overpaid administrators or an overstaffed Administration. The source of the problem largely is not on the expenditure side of the budget. As discussed during the financial presentation, academic departments and other operating areas have stayed within the budgets they have been allocated and oftentimes reduce their expenditures to help alleviate the bleak financial picture.

Abundant evidence supports the conclusion that the source of the problem is on the revenue side. Put simply, the University receives less money from its two largest funding sources: student tuition and State subsidies. Projected General Fund Revenues for FY2015 will be nearly $4,000,000.00 less than the prior year. (YSU Ex. 2, at 5) During the past four fiscal years (FY2012-15), YSU has experienced an aggregate deterioration in revenue of $25,000,000.00 from those two funding sources. (YSU Ex. 1, at 12; YSU Ex. 2, at 5; YSU Ex. 3)

Tuition, fees and other student charges comprise 71.2% of the University's General Fund revenues, which is a percentage that has increased almost every year since FY2010. (YSU Ex. 1, at 3, 4, 10; YSU Ex. 2, at 7-8) During FY2012-15, the University has suffered an aggregate deterioration of $16,500,000.00 in tuition revenue. (YSU Ex. 1, at 6, 12; YSU Ex. 2, at 5; YSU Ex. 3)

The primary cause comes as no surprise: student enrollment has fallen each year during that timeframe. During the last four academic years (2011-14), the University has suffered a cumulative student enrollment decline of 17.4%, over 2,600 students and over 1,900 FTE. (YSU Ex. 1, at 5: YSU Ex. 2, at 4; YSU Ex. 3) Even more disturbing is that there is no sign that this decline has bottomed out. Fall 2014 student enrollment fell 6.2% below Fall 2013 enrollment – the largest drop during the four-year period of declines. (YSU Ex. 1, at 5; YSU Ex. 3) If anything, the University fears that it is in an enrollment freefall.

A secondary cause involves the tuition level, itself. YSU's current tuition level is the third lowest among State universities (behind only Shawnee State and Central State, which receive highly favorable State funding not provided to the University). (YSU Ex. 2, at 6; YSU Ex. 7) The University would generate an additional $15,000,000.00 in revenue if it charged the statewide average. (YSU Ex. 1, at 9)

This ranking reflects the University's presence as an open-application institution in an economically-depressed area, its desire to provide an essential education (needed to eliminate or avoid unemployment) for people who might otherwise not be able to afford one, and State-imposed caps (indeed, a two-year freeze) on tuition increases. (YSU Ex. 1, at 8) On the last point, YSU has increased tuition to the maximum amount in the last six fiscal years (FY2010-15), following a two-year tuition freeze in FY2008-09), and a near-maximum increase during the year before the freeze (FY 2007). (YSU Ex. 1, at 8) Now, it faces the distinct possibility of an ill-advised, but politically popular, State-imposed five-percent tuition rollback to be assessed against all State universities.

The other major revenue source for the General Fund (26.1%) comes from State appropriations, specifically, State Share of Instruction ("SSI"). (YSU Ex. 1, at 3, 4; YSU Ex. 2, at 7) This, too, has suffered a precipitous decline. In FY2001, SSI accounted for more than one-half of the University's General Fund revenues. (YSU Ex. 2, at 7) The University experienced significant reductions in SSI for five consecutive fiscal years (FY2010-14), including a

$7,000,000.00 reduction in just one year (FY 2012), and an aggregate loss of $8,500,000.00 during FY2012-15. (YSU Ex. 1, at 10, 12; YSU Ex. 2, at 5). The decline is even more telling when one factors in SSI per FTE student and also controls for inflation. (YSU Ex. 2, at 8) This "streak" finally was broken during the current fiscal year, when the University received a modest increase of slightly less than $500,000.00, or else the aggregate loss during that time period would have approached (if not exceeded) $9,000,000.00. (YSU Ex. 1, at 10)

There are multiple reasons for this SSI funding decline. They include: (1) static statewide SSI appropriations; (2) increased costs of academic programs; and (3) a shift in the funding formula components away from mere classroom attendance to degrees awarded/ graduation rates and course completions, where YSU lags behind the statewide averages (45% vs 62% in graduation rate, and 82% vs. 90% in course completions). (YSU Ex. 1, at 11) On the last item, the University is turning the corner on increasing graduation rates and course completions, but it still must cover a significant gap.

Needless to say, this financial distress has taken its toll not only on the public's perception, but on the segment of the public that matters a great deal to the University from a financial standpoint: the potential investors. Moody's recently downgraded the University's bond rating from A1 to A2. (YSU Ex. 1, at 23; YSU Ex. 4) The key reasons for the downgrade are the University's general fund deficits with no near-future improvement, reduced tuition revenue and restrictions on increasing tuition due to State-imposed caps, and reduction in reserve funds to cover operating deficits. (YSU Ex. 4) To belabor the obvious, a lower bond rating results in higher interest rates when the University needs to issue bonds, which increases costs to the University, which aggravates the University's already distressed financial position, which leads eventually to a vicious downward spiral that the University absolutely needs to avoid.

Rather than accept this overwhelmingly compelling evidence, ACE chooses to deny the existence of the deficit or blame the problem on grossly inaccurate assertions. These assertions are barely worth mentioning, much less refuting once and for all.

ACE first attempts to "hide" the $10,000,000.00+ General Fund structural deficit by folding it into the other reserve accounts (which have surpluses) and then proclaiming that the

University does not have a deficit, a tactic it employed both during the financial presentation and the fact-finding hearing. The University wishes it were only that easy to address the deficit. Even taking seriously (for a very brief moment) ACE's assertion, it fails to alleviate the problem. First, it requires the University to deplete all of its reserves in the space of one fiscal year (including the reserve funds for health benefits), and all of the interest and investment income that arises from those reserves. Second, depleting those reserves obliterates what is left of the University's bond rating, which depends largely upon the University having sufficient reserves to make the principal and interest installment payments. Third, it "solves" the problem for only one fiscal year, because the deficit is structural, meaning that the conditions which created the deficit remain. Finally, and perhaps most importantly, State law requires the University to maintain appropriate reserves; one-half of the State law financial ratio analysis involves an appropriate primary reserve ratio. (S.B. 6; YSU Ex. 1, at 20-21) The downside implications of a poor financial score (which is a certainty if the reserves are depleted), include:

- being placed under State "fiscal watch";
- loss of management control to the State;
- loss of federal and State funding;
- negative publicity to the University, leading to further enrollment decline.

(YSU Ex. 1, at 22)

ACE next asserts that the deficit exists because of a combination of "reckless spending," overstaffed administration, and overpaid administrators. The University has heard these claims for years, and none of it is accurate, with one possible exception that hits closer to home than ACE would like.

As Vice President of Finance and Administration Neal McNally explained during the financial presentation, the University's academic departments and administrative offices have not spent recklessly; rather, they have stayed within the budgets allocated to them; the problem is insufficient revenues. That said, the one notorious example of "reckless spending" would be ACE's own 2008-11 labor contract, which cost more than $8,000,000.00. (YSU Ex. 6, at 1)

The University's Administration is not overstaffed compared to its sister State universities. The University's Faculty-to-Staff ratio of 1:1.12 (with "staff" consisting of management and non-faculty employees) is the second lowest (only Shawnee State's is lower, by only .02), and it is well below the statewide average of 1:1.93. (YSU Ex. 7) In addition, of the 159 management positions that exist among State universities, 100 (62.9%) do not exist at YSU. (YSU Ex. 8, at 4)

Finally, the University's management staff is not overpaid. Far from it, when compared to other State universities – indeed, of the 59 management positions that exist at the University – 48 (81.4%) have salaries that are less than the statewide averages. (YSU Ex. 8) During the hearing, ACE referred to certain unnamed administrators receiving unspecified increases. They failed to identify a single, concrete example. Thus, when required finally to go beyond the mantras and rhetoric and put its evidence on the table, ACE was found wanting.

<u>THE UNIVERSITY'S EFFORTS TO REDUCE ITS STRUCTURAL GENERAL FUND DEFICIT, AND THE ROLE OF ECONOMIC CONCESSIONS IN THAT EFFORT</u>

The University acknowledges that it cannot alleviate its $10,000,000.00+ General Fund deficit overnight, and that it also cannot do so entirely through economic concessions from its employees. Rather, the University has developed and implemented a broad plan that encompasses all operational aspects to eliminate the deficit within the next two fiscal years. (YSU Ex. 1, at 14, 16; YSU Ex. 2, at 12-14; YSU Ex. 5) Under this plan, the University hoped to reduce the deficit by $4,000,000.00 in FY2015. (YSU Ex. 2, at 3, 18, and App. F) However, this plan assumed only a three-percent student enrollment decline, while the actual enrollment decline was slightly more than twice that much. (YSU Ex. 2, at 3, 4) This plan also assumed a wage freeze for FY2015. (YSU Ex. 2, at 3)

Specific immediate budget-reduction measures outside of economic concessions include the following:

- layoffs (20 positions) in FY2014-15;
- eliminating 62 FTE faculty and staff positions in FY2014-15;
- holding vacant another 30 staff vacancies;
- reducing Faculty staffing, through attrition, by 25 positions, compared to FY2011;

- reducing departmental operating budgets, including supplies and business travel, by 12 percent;
- reducing utility costs by participating in a demand-response energy program;
- reorganizing several administrative offices;
- implementing a convenience fee in FY2012 to reduce banking fees and credit card processing costs; and
- doubling the time period (from one to two weeks) for check runs.

(YSU Ex. 1, at 14-15, 17; YSU Ex. 2, at 3, 9-10, 12-14)

Long-term strategies include the following:

- continuing operational efficiencies, including the low management staffing and compensation levels, streamlining and automating business practices, and the low faculty-to-staff ratio;
- improving student success and retention, with the goal of increasing the University's SSI share (but conceding that other State universities are engaging in the same goals);
- increasing student enrollment levels;
- eliminating vacant positions; and
- retrenchment.

(YSU Ex. 1, at 18)

Although the University knows it cannot eliminate the deficit entirely through economic concessions from employees, it also knows that it cannot eliminate the deficit by avoiding any concessions. Rather, the University needs significant concessions. This situation cannot be avoided; personnel costs encompass over 70 percent of the University's General Fund budget, over $106,000,000.00. (YSU Ex. 1, at 13; YSU Ex. 2, at 9, 19)

The need for economic concessions drives the University's bargaining agenda for this contract cycle. This includes both ACE and the Faculty.

The Faculty already agreed to concessions during the 2011-14 labor contract term, and they are poised to do the same during this contract cycle. It accepted reductions in summer school pay and extended teaching service ("ETS") for retirees that resulted in a net savings (factoring in a 2% across-the-board increase in 2013-14) of over $1,300,000.00. (YSU Ex. 6) Faculty also have reached tentative agreement (already approved unanimously by the Trustees and scheduled to be voted upon by the Faculty on Monday, November 24) that results in another reduction in summer school pay and the elimination of the ETS program. They have used these concessions to fund one-time incentive payments based upon rank, one-time lump sum retirement incentive payments, and 0.5 and 2-percent across-the-board increases in the second and third years, respectively. Even still, the University potentially will realize cost reductions of several hundred thousand dollars over the three-year contract term.

ACE, by contrast, has not experienced these economic concessions during the past six years, their claims to the contrary notwithstanding. The 2008-11 labor agreement cost the University over $8,000,000.00 (compared to $3.3-million for the Faculty during the same time period). During the 2011-14 contract term, ACE received the same compensation freezes as the Faculty during the first and second years, but it did not suffer any wage reductions. (YSU Ex. 6) It also received the same 2-percent across-the-board increase that the Faculty received, at a cost of $375,000.00. (YSU Ex. 6) Thus, ACE's last two labor contracts have cost the University an aggregate of almost $8,500,000.00, while the aggregate cost of the last two Faculty labor contracts has been less than one-quarter of that amount. (YSU Ex. 6)

The University's administration likewise has made concessions, on top of the already low compensation levels they receive. As discussed below, administrators participated during the past two years in extensive numbers in a voluntary vacation give-back program (far exceeding the participation of ACE bargaining unit members) that netted several hundred thousand dollars in budgeted savings. (See infra at 23) Also as discussed below, administrators pay the largest percentage of the health care premiums. (See infra at 30; YSU Ex. 20)

As painful as it is, ACE needs to make its concessionary contribution. YSU's proposals facilitate that result in two ways. Some proposals seek to secure immediate cost reductions (*i.e.*, within the current or next fiscal/calendar years) to assist with the University's effort to eliminate the $10,000,000.00 operating deficit within two years. The remaining proposals provide long-term benefits. They seek to reduce expenditures over the course of several years, with the intent of reducing costs (or at least, reduce anticipated cost increases) and providing long-term financial stability and an avoidance of past and current structural expenditures.

Still, the University recognizes that there is a limit to what it reasonably can seek from employees. Accordingly, none of its proposals will result in a permanent loss of base wage compensation for any current ACE bargaining unit employees.

GENERAL OVERVIEW BY THE FACT-FINDER:

In May 1, 2014 the Center on Budget and Policy Priorities, one of the top think tanks in the United States that deals with fiscal policy and budget programs, with an emphasis on low to moderate income families and individuals produced a report entitled, "*States Are Still Funding Higher Education Below Pre-Recession Levels" by Michael Mitchell, Vincent Palacios, and Michael Leachman (http://www.cbpp.org/cms/?fa=view&id=4135).* The Center's focus is low to moderate income families and individuals, and why it appears so relevant to the instant dispute is that many of the students at YSU come from moderate financial backgrounds. The findings and conclusions in this report are reflective of what universities in Ohio are facing, and in particular what Youngstown State University has endured and will continue to have to withstand in at least the near future. Although there is variance among states a sample of the following findings from the report underscore the problems faced by most state universities in the country and in Ohio:

> *"During and immediately following recessions, state and local funding for higher education has tended to plummet, while tuition has tended to spike. During periods of economic growth, funding tended to largely recover while tuition stabilized at a higher level as the share of total higher education funding.*
>
> *This trend has meant that over time students have assumed much greater responsibility for paying for higher education. In 1988, public colleges and universities received 3.2 times as much in revenue from state and local governments as they did from students. They now receive about 1.1 times from states and localities as from students." (p. 15-16)*

Then factor in the fact that for the past ten or so years incomes of middle and lower income families have remained stagnant. According to the Report, "*Since 1973, average inflation-*

adjusted public college tuition has more than tripled, but median household income has barely changed, up merely 5 percent" In contrast during this same period income for the top 1% of the wealthiest families has risen over 180%.

But the good news is higher education is predicted to take on even greater importance in the future. The Georgetown Center on Education and the Workforce projects that *"by 2020, 65 percent of all jobs will require at least some college education...up from 59 percent in 2007, 56 percent in 1992, and 28 percent in 1973."* Those colleges and universities best positioned economically to provide this education and to make the necessary investments in personnel and capital to accommodate this demand will have the advantage. While the economic recovery is gaining moment on many fronts, state funding to higher education, which has been cut an average of 23% since the Great Recession has seen little growth in state university support of late. The fact is state revenue dollars face stiff competition from other pressing matters. According to the Report:

"State lawmakers face the simultaneous challenges of adequately funding higher education while supporting other important state priorities. Elementary and secondary education, like higher education has been cut in most states in recent years. (see www.cbpp.org/cms/index.cfm?fa=view&id=4011) Health care services require states' continued support given rising health costs. The nation's system of roads and bridges is deteriorating …the need of public investments is acute, and states have limited ability to cut back on public safety or human services without risking real harm to communities."

The study indicates that the above listed expenditures typically account for some 80% of state expenditures with the remainder going for environmental protection, court system costs and other areas. In face of this competition higher education faces real challenges in gaining additional state funding severely cut during the last recessionary period.

It is with this view of the current reality that the Fact-finder analyzes the remaining issues in dispute balanced by the fairness inherent in shared sacrifice by those who must endure in order to eventually thrive.

MAIN ISSUES: Parties' Positions, Discussions, Recommendations:

The Union's and the Employer's detailed position and rationale on each of the unresolved issues can be found in their respective Pre-hearing Statements and in evidence in the record. However, in summary (verbatim extracts from their each party's documentation) the position of each party on the open issues is as follows:

ISSUE 1 ARTICLE 3 WAGES

UNION:

3.1 Wages

We will take 0-0-0 IF our steps are reactivated (or thawed). Administration has received increases. (See Exhibit 4). FOP received 2% in 2013 and 2% in 2014. (See Exhibit 5)

- We have had wages frozen for the last 3 years. Our entire membership has been taking home less money each year. This effects our retirement and the ability to support our families. Minimum wage keeps going up, the cost of living keeps going up, however, we are taking home less.
- The actual deficit for FY14, though budgeted at 6.4 mil, was actually less than $8,000.00. (See Exhibit 1 and Exhibit 2)
- Though enrollment has decreased, completion rates and quality of students have increased. State funding is now based on completion of courses and programs. (See Exhibit 2 and Exhibit 3)
- Historically our enrollment has been fairly stable The two years we had peak enrollment were the anomalies. The administration is still budgeting based on the anomaly.
- Administration has been showing (budgeting) a deficit for years. This is a fabrication to lead everyone to believe that there is a larger deficit than it truly is.
- We gave up longevity in 2008 to save the University money. Where an individual with years of senority would be getting huge increases every year now they only get 1/5%. (See Exhibit 6)
- The A/B conversion steps were an arbitration award converting from multiple pay scales to one scale. (You had already received a copy of this arbitration award.)

3.2 Reduced Wage Scale

We do not want to regress back to multiple wage scales.

- They are cumbersome to manage. This is the reason they were abandoned previously.
- No other unit has multiple tiers.

- This creates discontent amongst bargaining unit members.
- Makes it more difficult to find qualified personnel due to a low rate of pay.
- Undermines the Class Plan Arbitration award, which the administration has yet to implement the arbitrator's award.

3.5(B) Reduction of Wages when bumping is taking place.

We want to see this section as spelled out in the OAC: "be placed in the step closest to their current rate of pay, but not to exceed his/her current rate of pay."

- We have members loosing up to 12K and 7K per year.
- This was placed into the contract as a means to further the impact of bumping.
- No other unit takes a pay cut when bumping.

EMPLOYER:

<u>Article 3 – Wages: Wage Freeze and Lower Starting Wages for Certain Classifications</u>

3.1 All Bargaining Unit Members:

A) Effective with the pay period that includes August 16, 2014~~1~~, the wages of all bargaining unit members shall be frozen at their current step for the duration of this agreement.

B) Effective with the pay period that includes August 16, 2014~~1~~, bargaining unit members will not receive an annual step adjustment for the duration of this agreement.

C) The following provision shall be deferred for the life of this agreement:

Bargaining unit members previously on the 2005-08 A/B salary schedule who have steps remaining under that contract, as of August 15, 2014~~1~~, shall receive an additional step adjustment of two steps on the new schedule for each step remaining on the previous schedule. Such step adjustments will be in addition to the regular annual step increase identified in (B) above, and will be administered annually in the year he/she would have received the step adjustment effective under the 2005-08 labor agreement effective with the pay period that includes the anniversary of the labor agreement. Such increases will continue annually until such bargaining unit member either exhausts the steps he/she would have been entitled to under the "old" A/B salary schedule, or such member is promoted or reclassified.

3.2 Following the application of Section 3.1 above and effective with the pay period that includes August 16, 2014~~1~~, the University will compensate each newly hired classified bargaining unit member using the entry rate for each pay grade, except that, effective July 1, 2015, the starting pay rates for the following classifications shall be reduced by the following amounts:~~.~~

Account Clerk 1:	$2.14
Account Clerk 2:	$3.73
Administrative Assistant 1:	$2.00
Administrative Assistant 2:	$2.49
Executive Secretary 1:	$2.45
Executive Secretary 2:	$1.74
Secretary:	$2.22

~~**3.3** Following the application of Section 3.1 above and effective with the pay period that includes August 16, 2013, the University will compensate each classified bargaining unit member using the entry rate for each range and the employee's applicable step index multiplier as identified in Exhibit 1, reflective of a two percent (2.0%) increase over FY11. Bargaining unit members will not receive an increase in compensation in years 2011 and 2012 of the Agreement.~~

3.4 No change, but renumbered to Section 3.3.

3.5 No change, but renumbered to Section 3.4

3.6 **Educational Increment:** No change, but renumbered to Section 3.5.

3.6~~7~~ **Shift Differential:** Each member of the bargaining unit who is regularly scheduled to begin a workday from 3:00 p.m. until 10:59 p.m. will be paid a night shift differential of 25 cents for all hours worked. Each member of the bargaining unit who is regularly scheduled to begin a workday from 11:00 p.m. until 6:59 a.m. will be paid a shift differential of 35 cents per hour for all hours worked. If the University modifies such shifts due to operational needs the differential pay will apply to the new schedule only if the new schedule falls within the hours of 3:00PM or from 11:00PM until 6:59AM.~~-~~ **NOTE: ACE approved, 7/2/14.**

3.8 No change, but renumbered to Section 3.7.

3.9 **Distinguished Classified Civil Service Awards:** No change, but renumbered to Section 3.8 and parties approved new Appendix K application form

3.9~~10~~ **Holiday Pay:** No change to introductory paragraph.

A-D) No change.

When a paid holiday falls on a day when a full-time bargaining unit member is not normally scheduled to work, the following guidelines shall apply:

A) No change.

B) A paid holiday that is not worked by an employee shall be considered hours "actually worked" by an employee for purposes of overtime compensation eligibility for the workweek when the holiday occurs. **NOTE: ACE approved, 7/2/14**

3.10~~1~~ **Emergency Closings:** When the University closes due to an emergency, pay for members of the bargaining unit shall be determined as follows:

A) No change.

B) Bargaining unit members who are scheduled to work, but who are directed by the University not to report to work due to an emergency closing, shall receive straight pay as though they had completed their scheduled hours. In order to be paid for an emergency closing, employees must work their last scheduled work day before and after the closure. **NOTE: ACE approved, 7/2/14**

C-G) No change.

3.12 OPERS Salary Reduction Pick-Up: No change, but renumbered to Section 3.11

3.13 Alternative Retirement Program (ARP): No change, but renumbered to Section 3.12.

There are two unresolved items that the University proposes. One addresses immediate cost reductions, while the other provides long-term financial relief.

Full Wage Freeze

The University proposes a freeze during the three-year contract duration on all current base pay rates, annual step increases, A/B conversation step increases, and appendices related to base pay or any incremental compensation increases. Freezing steps avoids a base pay roll-up of 4.5% over three years (and possibly more, when the multiple step increases for employees covered by the A/B conversion are factored in), avoiding a cost increase of $619,128 or more. Even still, the University seeks less from ACE than it negotiated with the Faculty, which will result in an overall compensation cost reduction of several hundred thousand dollars.

This proposal differs from the University's initial proposal of permanently eliminating all annual and A/B conversation step increases. The University made this modification because it considers this proposal to address short-term cost containment, even though external comparables justify eliminating the step increases. Only Shawnee State has step increases for its hourly employees, and those steps are much more modest than the elaborate and costly schedule in the current contract that virtually guarantees an employee at least a 1.5% base wage increase every year for as long as they work at the University. However, the University opts to leave to another day (when perhaps the University's financial condition is healthier) the final resolution of this subject.

ACE's proposal of an across-the-board base wage freeze but restoring the annual and A/B conversion step increases is not a freeze at all. Rather, it requires automatic wage increases for every employee of at least 1.5%, at cost to the University of more than $600,000 during the life of the new labor contract.

ACE further claims that it obtained step increases in exchange for phasing out longevity increases, claiming that the step increases are less costly. Even if that is true, the University simply no longer can afford either wage feature. Moreover, longevity increases of the type that once existed for ACE bargaining unit members are unique among State universities. Only Miami University has any form of longevity increases for its hourly employees, and that is limited to a one-time payment at the tenth year of service.

ACE then attempted unsuccessfully to compare itself to the Faculty and FOP bargaining units regarding their compensation increases. There is no comparison.

The Faculty funded their one-time bonuses and retirement incentives and modest second and third-year increases with concessions in other areas (*i.e.*, a second significant reduction in summer school pay and eliminating (after reducing in the 2011-14 labor contract) the ETS program for retirees), and as a result, the University should realize significant savings. ACE has made no such concessions, either in this new contract or the most recent one.

Although FOP bargaining unit members received an additional increase in their current contract (which expires next year) that no other employees (including the Faculty and APAS) received, there is no comparison with ACE. The members of the University Police Department have more difficult working conditions than ACE members. In addition, their size is less than one-tenth of the ACE bargaining unit, so any increased wage costs are slight by comparison to a comparable wage increase for the ACE bargaining unit.

Reducing Starting Rate for Select Classifications

The University's other wage proposal has a long-term beneficial impact, and it does not affect current bargaining unit members at all. The University proposes to reduce the initial hiring rates in seven job classifications. These lower rates would apply only to persons hired after July 1, 2015; therefore, no current employees would be affected. The seven classifications affected encompass approximately thirty percent of the current bargaining unit employees, so the potential positive impact upon the University's compensation costs could be significant in years to come as employee turnover occurs.

The University makes this proposal because the overall wages of many current bargaining unit employees is excessively above any comparison, either local market rates or the rates from other State universities. This has been true for nearly a decade. Data were used from a comprehensive hourly pay study assessing approximately 190 positions at all state Universities; current starting pay rates at Kent State University; and two surveys conducted by Human Resources.

- a recent comparison of classified positions at all State universities confirmed that the average base wages of all but a handful of the job classifications in the ACE bargaining unit exceeded significantly the statewide averages for those classifications (YSU Ex. 9);

- another recent comparison of the seven classifications included in the University's proposal showed that the average base wages in these classifications exceeded the statewide averages from between $1.74-$3.99 (YSU Exs. 10);

- surveys conducted by Human Resources in 2011 and updated in 2014 of four of the seven classifications for several comparably-sized (nearly all public) employers in the northeastern Ohio area showed that the average base wages in those classifications exceeded the study-wide average from between $1.66-$5.50. (YSU Ex.12)

There is absolutely no market-based justification for these excessive differences. Indeed, the market rates for the Mahoning Valley are heading the opposite direction. Total wages have fallen 3.5% after inflation since 2007; the region has not even recovered from the recession of 2000, much less the more recent recession in 2007. (YSU Ex. 13)

If the University wished to alleviate the problem immediately, it would have to reduce the wages of current ACE members. The University prefers to avoid that option, if that is possible.

Instead, the University prefers at this time to address the matter on a gradual, long-term basis and not impact the wages of current employees. The University hopes that other proposals might stimulate employee turnover during the initial years of the new contract, which will result in increased hiring at significantly lower wage rates toward the end of the contract term.

Without any meaningful statistical or market-based support, ACE responded simply that it opposes two-tiered wage systems because of the impact upon employee morale. One can be assured, however, that employee morale would be much worse if the wages of current employees were reduced to more reasonable, market-based rates **or if the University was forced into significant layoffs**.

DISCUSSION:

The financial hole in which the University finds itself shapes and limits its ability to prepare itself for the future, which will hopefully result in greater demand for its services. Moreover, its economic future cannot be divorced from the economic region in which it is located. The reduction in student enrollment during the last four (4) years is especially troubling, particularly when compared to the relative success of nearby competitors, such as Kent State University, where enrollment has increased at its main campus during the last eight (8) years. While it looks like Youngstown is making somewhat of an economic comeback the following statistics from the United States Census covering calendar years 2009 to 2013 (http://quickfacts.census.gov/qfd/states/39/3988000.htm) demonstrate the magnitude of this challenge as compare to the rest of Ohio:

	Youngstown	Ohio
Median Household income:	$24,454	$48,308
Median Value of Owner Occupied Housing:	$46,600	$130,000
Persons below the Poverty Level %:	36.4%	15.8%

And while this type of economic disadvantage is not new to Youngstown and the Mahoning Valley in general, the significant shift in recent years from state assistance to more reliance on student tuition, especially for students who come from modest to average economic backgrounds has dramatically increased the pressure on state universities located in economically depressed areas. The University provided convincing evidence that it needs to take concerted action and it needs to take it sooner rather than later. It's a real balancing act to do all the things necessary to stay attractive and competitive as an institution of higher learning, while at the same time reducing structural debt. The proposal by YSU to lower the starting rate for select positions demonstrates just how much starting wages among these classifications differ from nearby, competing state universities. (See Univer. Ex. 10) In the current round of negotiations the parties approached most matters in dispute with the sober reality (as evidenced by their efforts in mediation to resolve numerous issues) that the University needs to reduce its debt in order to be successful. The disagreements came about over the extent of the University's economic plight and how much has to be sacrificed by ACE bargaining unit employees verses other all other employees in the University. The Union asserts it has given enough and does not want to take back to its membership less than zero. The problem the fact-finder finds with this response is from what starting point is zero calculated? The Employer points to the 2008-2011 contract in which the ACE unit did considerably better than other University employees. ACE responds by arguing its bargaining unit made concessions in the 2011 negotiations and gave back gains made in 2008. It is also noted that one of the bargaining units, FOP, received increases in 2013 and 2014, while others went without raises, yet what was known about the University's finances in the spring of 2012? Subsequent state budget cuts and the additional decline of student enrollment by 13.7% from the fall of 2012 through the fall of 2014 enrollment, where not known when this contract was bargained more than 2.5 years ago. (See Univer. Ex. 3) Timing often dictates perspective and fortune in collective bargaining. When this Fact-finder arrived on the scene the "ship" was taking on water at an accelerated rate and listing, compelling a clearheaded-response by "all hands." (See Univ. Exs. 1, 2, and 4 Moody's downgrading of YSU's bond rating)

After much consideration of all the facts it seems apparent that the University has much to do to "right the ship" and unfortunately this will require extended sacrifice on the part of employees during the life of the next Agreement. In order for sacrifice to have a chance to be accepted as fair, it must be accomplished on the principle of equity of sacrifice. With such diversity among university employees this will require calculations of approximate equity that will likely have to be accomplished in an asymmetrical sense, among all bargaining and non-bargaining unit employees (including management employees). For example, labor cost reductions for faculty may come about in an entirely different manner than cost reductions for employees represented by ACE, or the FOP. The Employer's proposal is recommended based upon the facts and the statutory criteria to which all fact-finders must adhere. All modifications of the Article are noted in **blue throughout this report**.

RECOMMENDATION

3.1 All Bargaining Unit Members:

A) Effective with the pay period that includes August 16, 2014, the wages of all bargaining unit members shall be frozen at their current step for the duration of this agreement. *****

B) Effective with the pay period that includes August 16, 2014, bargaining unit members will not receive an annual step adjustment for the duration of this agreement. **Steps adjustments shall be reinstituted (become unfrozen) on the last day of the Agreement. ***

***Regarding A) and B) above….In order to preserve the principle of equity of sacrifice, the above recommendations for freezing wages will hold providing the administration as a whole does not receive a general wage increase during the life of the Agreement (this does not apply to individual equity adjustments based upon market conditions), and no other striking (non-conciliation) bargaining unit receives a percentage increase in wages during the life of the Agreement. If any other striking (non-conciliation) bargaining unit receives a wage increase either through negotiations or fact-finding, then the ACE bargaining unit shall receive the same wage increase effective on that same date.**

C) The following provision shall be deferred for the life of this agreement, **but shall be reinstituted on the last day of the Agreement:**

Bargaining unit members previously on the 2005-08 A/B salary schedule who have steps remaining under that contract, as of August 15, 2014, shall receive an additional step adjustment of two steps on the new schedule for each step remaining on the previous schedule. Such step adjustments will be in addition to the regular annual step increase identified in (B) above, and will be administered annually in the year he/she would have received the step adjustment effective under the 2005-08 labor agreement effective with the pay period that includes the anniversary of the labor agreement. Such increases will continue annually until such bargaining unit member either exhausts the steps he/she would have been entitled to under the "old" A/B salary schedule, or such member is promoted or reclassified.

3.2 Following the application of Section 3.1 above and effective with the pay period that includes August 16, 2014, the University will compensate each newly hired classified bargaining unit member using the entry rate for each pay grade. **Employees hired after July 1, 2015 shall receive a starting salary as provided below:**

Account Clerk 1:	**$2.14**
Account Clerk 2:	**$3.73**
Administrative Assistant 1:	**$2.00**
Administrative Assistant 2:	**$2.49**
Executive Secretary 1:	**$2.45**
Executive Secretary 2:	**$1.74**
Secretary:	**$2.22**

3.3 Delete

3.4 No change, but renumbered to Section 3.3.

3.5 No change, but renumbered to Section 3.4

3.6 Educational Increment: **No change, but renumbered to Section 3.5.**

3.7 Shift Differential: Each member of the bargaining unit who is regularly scheduled to begin a workday from 3:00 p.m. until 10:59 p.m. will be paid a night shift differential of 25 cents for all hours worked. Each member of the bargaining unit who is regularly scheduled to begin a workday from 11:00 p.m. until 6:59 a.m. will be paid a shift differential of 35 cents per hour for all hours worked. If the University modifies such shifts due to operational needs the differential pay will apply to the new schedule **only if the new schedule falls within the hours of 3:00PM until 10:59PM or from 11:00PM until 6:59AM.**

3.7 No change, but renumbered to Section 3.7.

3.8 Distinguished Classified Civil Service Awards: **No change, but renumbered to Section 3.8 and parties approved new Appendix K application form**

3.9 Holiday Pay: No change to introductory paragraph.

A-D) No change.

When a paid holiday falls on a day when a full-time bargaining unit member is not normally scheduled to work, the following guidelines shall apply:

A) No change.

B) A paid holiday that is not worked by an employee shall be considered hours "actually worked" by an employee for purposes of overtime compensation eligibility for the workweek when the holiday occurs.

3.10 Emergency Closings: When the University closes due to an emergency, pay for members of the bargaining unit shall be determined as follows:

A) No change.

B) Bargaining unit members who are scheduled to work, but who are directed by the University not to report to work due to an emergency closing, shall receive straight pay as though they had completed their scheduled hours. In order to be paid for an emergency closing, employees must work their last scheduled work day before and after the closure.

C-G) No change.

3.11 OPERS Salary Reduction Pick-Up: No change, but renumbered to Section 3.11

3.12 Alternative Retirement Program (ARP): No change, but renumbered to Section 3.12.

ISSUE 2 ARTICLE 15 LEAVES

UNION:

15.3 Accumulation of sick days.

We would like to have our 4.6 accumulation rate returned.

- Our intermittents receive 4.6
- It is statutory
- APAS accumulates 1 ¼ days per month (15 days per year)
- FOP accumulates 4.6 hours per 80 hours and receives 4 personal days
- OEA accumulates at the rate of 4.6.
- Administration accumulates at the rate of 4.6 (See Exhibit 7)

15.26(B) Notice to use personal time.

We want current contract language.

- Personal issues such as pipes breaking or furnace breaking cannot be planned.
- They are personal days for a reason. It is personal.

EMPLOYER:

Article 15: Leaves – Maintain Sick Leave Accrual, Reduce Personal Leave Accumulation and Enhance Personal Leave Notice Requirements

15.1 Definitions: For purposes of Sections 15.2-15.14 and 15.7-15.26, the following definitions shall apply

A) **Child:** biological, adopted, foster, stepchild, ward or child of person standing in loco parentis until the end of the month were said child turns 26 ~~who is under 23, or 23~~ or older if incapable of self-care due to disability. **NOTE: ACE approved**

B-H) No changes

Sick Leave:

~~15.2 Sick leave is authorized absence with pay due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to other employees, and visits to or treatment by medical providers that cannot be scheduled outside of the employee's normal working hours.~~ It is the expectation of the University and the Union that the utilization of sick leave benefits shall occur when an employee is sick to the extent that he or she is unable to perform their regular job duties. Sick leave shall not be used in place of other paid leaves. The sole purpose of sick leave is to provide income continuance to an employee for time lost due to illness or injury. **NOTE: ACE approved, 10/15/14**

If a bargaining unit member is going to be absent for more than five (5) consecutive days for the above-mentioned reason(s), he/she shall be required to provide written verification for the use of leave for the sick leave to be approved. Sick leave is also authorized for an illness in the bargaining unit member's immediate family and/or domestic partner when the bargaining unit member's presence is reasonably necessary for the health and welfare of the bargaining unit member or affected family member. A physician's certification of the family member's illness shall be required if the bargaining unit member is absent for more than three (3) consecutive days. Such certification shall be submitted to the ~~Chief Human Resources Officer~~ immediate supervisor or his/her designee. Whenever possible, the bargaining unit member will inform the department head in advance of scheduled appointments of the employee and immediate family members of the employee with a doctor, dentist or other medical provider when the employee's presence is reasonably necessary. **NOTE: ACE approved, 10/15/14**

If an employee is afflicted or known to be exposed to a contagious disease, and the presence of that employee would jeopardize other employees as determined writing by a physician through an investigation, that employee shall take sick leave and other pertinent leave. **NOTE: ACE approved, 10/15/14**

15.3 No change. **NOTE: ACE proposed increasing the accrual rate to 4.6 hours per pay period (15 days/year)**

15.4 No change. **NOTE: The parties agreed that the University shall implement a policy to address sick leave abuse.**

15.5 To the extent permitted by law, where the ~~Chief Human Resources Officer~~ immediate supervisor reasonably believes an employee is abusing sick leave and notifies the bargaining unit member of such belief, the bargaining unit member may be required to furnish to the Chief Human Resources Officer a certificate from a licensed physician for any subsequent absences.

Any action taken by the University regarding use of sick leave shall not be arbitrary, capricious or discriminatory in nature.

1-2. No change.

15.6-15.15 No change

Other Leaves:

15.15 Military Leave No change.

15.16 FMLA Leave: FMLA leave shall run concurrently with any paid leave of absence available to a bargaining unit member for care and treatment of such serious health condition unless otherwise specified by this Article. Sick leave accrual must be exhausted before taking an unpaid FMLA leave. Eligible bargaining unit members shall be entitled to receive leave under the Family and Medical Leave Act (FMLA) to receive care for: (a) birth of a child and to care for the newborn child; (b) placement with the bargaining unit of a child for adoption or foster care; (c) a bargaining unit member's own serious health condition (including pregnancy) or to care for the bargaining unit member's child, spouse, or parent with a serious health condition; (d) qualifying exigency arising out of the fact that the bargaining unit member's spouse, child, or parent is a covered military member on active duty, or has been called to active duty, in support of a contingency operation; (e) or care for a covered service member with a serious injury or illness if the bargaining unit member is the spouse, child, parent, or next of kin of the service member. The University shall administer FMLA leave in accordance with law. **NOTE: ACE approved, 10/15/14.**

15.17-15.25 No changes

15.26 Personal Leave:

A) No change.

~~B) When possible, employees will provide seven (7) days' notice to the appropriate department head/supervisor and may use personal leave credit for absence due to mandatory court appearances, legal or business matters, family emergencies, unusual family obligations, medical appointments, weddings, religious holidays not listed in Article 11 (Holidays), or any other matter of a personal nature. Such requests will be granted by the supervisor.~~ Employees shall provide seven (7) days' notice to the appropriate department head/supervisor for the use of personal days. In the event of a family emergency, unforeseen family obligations, or similar emergency situations, personal leave may be requested and such requests shall not unreasonably be denied. Personal days shall not be scheduled for those days or weeks for which vacation time is not permitted. Unused personal leave at the end of the last pay period in a calendar year that cannot be carried forward under Subsection (E) shall convert to sick leave effective January 1 of the following calendar year.

C-D) No change.

E) The Chief Human Resources Officer shall allow employees to elect one of the following options with respect to the unused balance of personal leave credit:

1. Carry forward the balance. The maximum credit that shall be available to an employee at any one time is ~~240~~ 120 ~~hours~~ 24.0 hours, after which any accrued personal leave shall be converted to sick leave pursuant to Subsection (B). ~~or~~ Employees who have personal leave balances in excess of this limit as of the date of ratification of this Agreement shall have their excess balances converted immediately to sick leave pursuant to Subsection (B).

2. ~~Convert the balance to accumulated sick leave to be used in the manner provided by Section 15.2.~~

After extensive negotiations, with the equally extensive assistance from the Fact-Finder in his role as mediator, the University presented only three proposals regarding leaves during the fact-finding hearing, all addressing personal leave. The University proposes reasonable restrictions upon the use of personal leave.

The University first proposes that employees provide seven calendar days' notice of intent to use personal leave on a non-emergency basis. This allows administrators to schedule the work accordingly to reduce disruptions and inefficiencies. The University recognizes that there might be situations in which the seven-day notice requirement cannot be satisfied because of emergencies, unforeseen family obligations, and similar emergency situations. In those instances, the University is subject to a rule of reasonableness in either granting or denying the leave request.

The University next proposes that personal leave not be used in instances when vacation leave cannot be used. If employees cannot use vacation days for operational reasons, then employees should not be permitted to circumvent that restriction and create the very operational problems that the vacation use restriction prevents.

Finally, the University proposes lowering the cap on accumulated personal leave use from the current 240 hours to a much more reasonable and typical 24 hours. Employees with personal leave balances currently above that cap would not lose their accrued paid time off. Rather, they would have their excess personal leave converted immediately to sick leave, where it either can be used as sick leave or retained until the sick leave balance is cashed out upon retirement. The University presents four reasons to support its proposal.

First, the accumulation of any paid time off (including sick and vacation leave), must be budgeted, for both use and potential payout. The excessively high accumulation balance for unused personal leave (the equivalent of 30 full-time workdays) places a strain on an already distressed budget. Lowering these limits correspondingly lowers the amount of funds that must be encumbered to cover the potential liability and thereby reduces the deficit.

Second, the amount of paid time off ACE bargaining unit members receive already is very high. This use of paid time off creates operational inefficiencies that need to be avoided in these times of tight staffing.

Third, the current cap was "negotiated" during the 2008 negotiations under highly irregular circumstances, involving a former Chief Human Resources Officer of highly questionable integrity (who resigned under a cloud of controversy after the 2008 negotiations concluded). The prior accumulation cap was 24 hours, and the University requests that the damage be undone and this prior cap be restored.

Finally, these reductions are the least discomforting to employees. It does not result in a loss of any weekly compensation; it simply requires employees to take less time off.

ACE proposes increasing the sick leave accrual rate from the equivalent of eleven days per year to fifteen days. The University opposes this proposal and requests no language change. ACE's claim of internal parity is flatly false. While APAS and the Faculty accrue fifteen sick leave days per year, they do not have any separate accrual of personal days. Instead, employees can use up to four sick leave days per year as personal days. ACE employees have four dedicated personal leave days, which they can convert to sick days if they do not use them. While temporary ACE employees now accrue (for the first time) fifteen sick leave days per year, they do not have any personal days. All of these employees receive fifteen paid days off per year. ACE wants nineteen. There is no justification for it. Only FOP has this benefit. As discussed above, there is no comparison between the working conditions of the University Police Officers and classified employees. Finally, the annual value of four additional sick days is $63,360, which is something to be avoided when the University attempts to reduce a $10,000,000.00 General Fund deficit.

DISCUSSION:

Several provisions of this Article were agreed to in negotiations or mediation that preceded fact-finding. In this instance relevant internal comparable data is a factor when evaluating the sick leave and personal leave benefits. Employers for sake of administration often attempt to keep core benefits, such as personal leave, the same for all bargaining units. Therefore, a fair quid pro quo approach is to raise the rate sick leave is earned to a commonly recognized standard for state employees, including university employees, and to lower personal leave carry over balances to mirror what other YSU bargaining units have in their agreements. .

RECOMMENDATION

Article 15: Leaves – Maintain Sick Leave Accrual, Reduce Personal Leave Accumulation and Enhance Personal Leave Notice Requirements

15.1 Definitions: For purposes of Sections 15.2-15.14 and 15.7-15.26, the following definitions shall apply

A) **Child:** biological, adopted, foster, stepchild, ward or child of person standing in loco parentis **until the end of the month were said child turns 26** or older if incapable of self-care due to disability.

B-H) No changes

Sick Leave:

It is the expectation of the University and the Union that the utilization of sick leave benefits shall occur when an employee is sick to the extent that he or she is unable to perform their regular job duties. Sick leave shall not be used in place of other paid leaves. The sole purpose of sick leave is to provide income continuance to an employee for time lost due to illness or injury.

If a bargaining unit member is going to be absent for more than five (5) consecutive days for the above-mentioned reason(s), he/she shall be required to provide written verification for the use of leave for the sick leave to be approved. Sick leave is also authorized for an illness in the bargaining unit member's immediate family and/or domestic partner when the bargaining unit member's presence is reasonably necessary for the health and welfare of the bargaining unit member or affected family member. A physician's certification of the family member's illness shall be required if the bargaining unit member is absent for more than three (3) consecutive days. Such certification shall be submitted to the **immediate supervisor** or his/her designee. Whenever possible, the bargaining unit member will inform the department head in advance of scheduled appointments of the employee and immediate family members of the employee with a doctor, dentist or other medical provider when the employee's presence is reasonably necessary.

If an employee is afflicted or known to be exposed to a contagious disease, and the presence of that employee would jeopardize other employees as determined in writing by a physician through an investigation, that employee shall take sick leave and other pertinent leave.

15.3 Each member of the bargaining unit earns sick leave at the rate of **four and six tenths (4.6) hours each eighty (80) hours of service.** Sick leave is cumulative without limit. Each member of the bargaining unit shall receive a report of his/her sick leave balance each pay period.

15.4 No change. **NOTE: The parties agreed that the University shall implement a policy to address sick leave abuse.**

15.5 To the extent permitted by law, where the **immediate supervisor** reasonably believes an employee is abusing sick leave and notifies the bargaining unit member of such belief, the bargaining unit member may be required to furnish to the Chief Human Resources Officer a certificate from a licensed physician for any subsequent absences. Any action taken by the University regarding use of sick leave shall not be arbitrary, capricious or discriminatory in nature.

1-2. No change.

15.6-15.15 No change

<u>Other Leaves:</u>

15.15 Military Leave No change.

15.16 FMLA Leave: FMLA leave shall run concurrently with any paid leave of absence available to a bargaining unit member for care and treatment of such serious health condition unless otherwise specified by this Article. **Sick leave accrual must be exhausted before taking an unpaid FMLA leave.** Eligible bargaining unit members shall be entitled to receive leave under the Family and Medical Leave Act (FMLA) to receive care for: (a) birth of a child and to care for the newborn child; (b) placement with the bargaining unit of a child for adoption or foster care; (c) a bargaining unit member's own serious health condition (including pregnancy) or to care for the bargaining unit member's child, spouse, or parent with a serious health condition; (d) qualifying exigency arising out of the fact that the bargaining unit member's spouse, child, or parent is a covered military member on active duty, or has been called to active duty, in support of a contingency operation; (e) or care for a covered service member with a serious injury or illness if the bargaining unit member is the spouse, child, parent, or next of kin of the service member. The University shall administer FMLA leave in accordance with law.

15.17-15.25 No changes

15.26 Personal Leave:

A) No change.

Employees shall provide seven (7) days' notice to the appropriate department head/supervisor for the use of personal days. In the event of a family emergency, unforeseen family obligations, or similar emergency situations, personal leave may be requested and such requests shall not unreasonably be denied. Except in situations described in the prior sentence, personal days shall not be scheduled for those days or weeks for which vacation time is not permitted. Unused personal leave at the end of the last pay period in a calendar year that cannot be carried forward under Subsection (E) shall convert to sick leave effective January 1 of the following calendar year.

C-D) No change.

E) The Chief Human Resources Officer shall allow employees to elect one of the following options with respect to the unused balance of personal leave credit:

1. Carry forward the balance. The maximum credit that shall be available to an employee at any one time is **24.0 hours**, **after which any accrued personal leave shall be converted to sick leave pursuant to Subsection (B). Employees who have personal leave balances in excess of this limit as of the date of ratification of this Agreement shall have their excess balances converted immediately to sick leave pursuant to Subsection (B).**

ISSUE 3 ARTICLE 16 LAYOFFS

UNION:

Article 16 – Layoff and Recall

We are willing to look at reworking this article to accomplish our intent.

- Our intent is to protect jobs.
- People need adequate notification. Individuals do not have time to plan for the changes that will be occurring in their life with an abolishment or layoff with only 14 to 21 days notice. It takes at least a few weeks to even get an appointment with OPERS.
- In the last two rounds of bumping there was never a situation in which any individual had to bump another in the same area.
- We cannot agree to issues that are undefined. (i.e., restructuring)

EMPLOYER:

Article 16: Layoff and Recall – Reduce Layoff Notice Period; Temporary Furlough Days Program

16.1 No changes.

16.2 No changes.

16.3 Individual Notification: Each bargaining unit employee who may be laid off or displaced will be given advance written notification by the University. Such written notice must be mailed by certified mail to the employee's last known address on file within the official personnel file of the University. Such notice shall be mailed at least ~~sixty-three (63)~~ twenty-one (21) calendar days before the effective date of layoff or displacement. The date the letter is mailed shall be the first day of the ~~sixty-three (63)~~ twenty-one (21) day period. ~~In cases where it is determined that an employee's address on file prohibits the delivery of certified mail, advance notice will be hand-delivered to the employee at work. If hand-delivered, such notice shall be given at least sixty (60) calendar days before the effective date of lay off or displacement. The date the letter is delivered shall be the first of the sixty (60) day period.~~ If the aforementioned efforts are taken to notify the employee, such notice shall be considered complete regardless of whether the employee actually receives the notice.

16.4 Voluntary Reduction in Force: When the University determines to reduce the work force, other employees within the affected classifications may volunteer, in writing, to be reduced in force (laid off) without consideration of retention points. If granted by the University, the Office of Human Resources shall report to the Ohio Department of Job and Family Services that it has "laid off" the employee and shall not contest the employee's eligibility for unemployment compensation. Nothing in this section shall be construed to constitute a waiver of such employee's recall rights unless the employee voluntarily waives such recall rights in writing. The ability to volunteer to be reduced in force may be exercised during the ~~sixty three (63)~~ twenty-one (21) day notice period referenced in Section 16.3 above. The ~~sixty three (63)~~ twenty-one (21)~~days notice~~days' notice requirement of reduction in force shall be waived for employees granted voluntary reduction in force.

16.5 No changes to introductory paragraph.

A-D) No changes.

E) **Bumping Rights:** An employee whose position has been abolished may exercise the right to bump another employee only within the positions under the same Dean or non-academic Vice President's area of responsibility.

16.6 No changes.

16.7 No changes.

16.8 Mandatory Furlough

A) Effective January 1, 2015 and/or January 1, 2016, the University may at its discretion implement a plan providing for mandatory furloughs of employees to achieve reductions necessitated by institutional budget deficits. The implementation of a mandatory furlough policy shall not be considered a layoff of staff within the meaning of Article 16 or as the term may be used elsewhere in this Agreement.

B) Any mandatory furlough plan implemented shall be limited in duration to the minimum number of days necessitated by the institutional budget deficits and only after the University has explored other cost-cutting alternatives and the means of initiating mechanisms for generating additional revenue.

C) The maximum number of furlough days allowed for the duration of the agreement shall not exceed ten (10) unpaid days per fiscal year. The University will provide the Union at least forty five (45) days advance notice of the intended implementation of the furlough plan and supporting financial information. At the request of the Union, the parties shall bargain over the impact of the furlough plan on bargaining unit employees, including the method of scheduling unpaid time off. Furlough days shall not impact the employee's eligibility for or continued enrollment in the University health, vision, dental, and life insurance plans.

D) The University will provide the affected employee and the Union with at least thirty (30) days advance notice of the intended implementation of a mandatory furlough. Nothing in the foregoing shall prohibit the parties from meeting to discuss the possibility of allowing additional unpaid furlough days in any fiscal year(s) to avoid or reduce the impact of massive layoffs.

E) The University shall schedule five (5) furlough days consecutively and three (3) additional furlough days at its discretion, considering holidays and weekends. Employees may select two (2) discretionary furlough days on a Monday or a

Friday. Any furlough days determined necessary by the University will be scheduled for the least disruption to student and employee services.

F) This mandatory furlough program shall be discontinued after December 31, 2016.

The University proposed four material changes to Article 16. Two are economically based, and two are based upon improving operational efficiency.

Layoff Notice Period

The first economically-based proposal involves reducing the layoff notice period from the current 63 days if service is via certified mail (60 days if via hand delivery) to 21 days (an increase from the University's initial proposal of 14 days, which also is the notice period under the State civil service laws). The current layoff notice period costs the University money it cannot afford, particularly when the layoff is for lack of funds. Specifically, had the most recent round of layoffs had a 21-day layoff notice period instead of the currently-required 63 days, the cost savings would have been $88,704 or $8,064 per layoff. Thus, the University had to lay off an additional two employees solely to meet the cost of the current layoff notice period.

ACE responds that employees need the longer notice period to adjust to the layoff, either because they must transfer to a different position or leave the employment with the University. ACE's desire to assist such employees, however well-intentioned, means that more people will get the benefit to adjust to the longer notice period. As difficult as any layoff is, the University must be permitted to minimize the number of affected employees – something that it cannot do with a notice period that is more than four times the statutory requirement.

Furlough Days

The second economic proposal involves the right to impose up to ten furlough days in calendar years 2015 and 2016, either in contract language or in an M.O.U. format. Furlough days provide the most direct and immediate positive impact upon the University's $10,000,000 General Fund deficit. The approximate cost savings of ten furlough days is $650,000 annually, or $65,000 per furlough day.

Furlough days have gained increasing use since the start of the Great Recession as a temporary measure to address budget deficits. The advantage to both employers and employees is that cost savings are realized without layoffs and the resulting permanent loss of staffing to employers and the loss of total compensation and benefits (especially health benefits) for affected employees. Furlough days also "spread the pain" among the entire bargaining unit, instead of forcing a handful of employees to shoulder the full burden and pay the ultimate cost. Finally, to underscore the temporary nature of the furlough days, the University's proposal includes a built-in sunset provision, mandating that the furlough days last a maximum of two calendar years. The University hopes that after two years other cost savings or revenue enhancements will begin to take effect, thus relieving the need for furlough days.

The University's furlough days' proposal includes several components that protect employee interests. The University must give ACE 45 days' notice of its intent to implement furlough days; it must bargain the impact of the furlough days; it must provide financial information supporting the need for furlough days; and it must provide to employees and ACE 30 days' notice of the implementation of any furlough days. The furlough days' program also permits flexibility on when the furlough days would occur, including some employee choice.

ACE opposes the furlough days' program, contending initially that they are being singled out because the University does not have a similar program for any other employee group. ACE's opposition is unjustified. Furlough days would not be practicable for Faculty; besides, Faculty already have agreed tentatively to potential concessions of approximately $600,000, about the same level of savings as ten furlough days for ACE bargaining unit employees. The University must wait until next year to negotiate a furlough days' program for the APAS bargaining unit, when their labor contract expires. Furlough days also cannot be implemented for the FOP bargaining unit, because that is a 24/7 operation. Finally, the University's administrators already have contributed hundreds of thousands of dollars in a voluntary vacation giveback program, and there is an existing policy in place to impose furlough days on the non-represented employees, Policy No. 3014.00, which the Trustees passed in December 2011.

ACE suggests that the University should just continue the voluntary furlough program. This suggestion is disingenuous, as ACE has outright opposed the voluntary program by filing a baseless grievance when the University extended the program to all employees.[1] To date only a handful of ACE bargaining unit members have contributed to the program, with the vast majority of contributions coming only from administrators.[2] The University lacks any confidence that it will even remotely approach the necessary cost savings from a voluntary program for ACE bargaining unit members.

Method of Service of Layoff Notice

The University's first operational proposal permits service of the layoff notice only by certified mail, and eliminates either the option or the requirement of service via hand-delivery. This avoids a problem the University confronted with its most recent layoffs, resulting in the University having to repeat the layoff notice period. Service via certified mail is the accepted method of serving important notices; and it minimizes the University's necessary resources to achieve the notice, which is especially appropriate when the layoffs are economically-based. This method of service succeeds if employees satisfy their responsibility of providing current, up-to-date contact information. If employees fail to fulfill that simple responsibility, or worse yet, they evade certified mail service by refusing to pick up the notice, then the University should not have to expend additional resources to complete formally the notice process. Instead, the notice should be deemed completed once these reasonable measures have been taken.

[1] ACE contends that they grieved the voluntary program because they claimed that it was not voluntary. ACE challenged the University's issuance of a form to employees so that could indicate whether they wished to participate in the program. According to ACE, the University wrongly asked employees to indicate "YES" or "NO" to a question that inquired about employee interest in participating. The University is at a loss to understand how it is to learn about employee interest without asking them. Thus, ACE's grievance lacked any merit, and it suggests that ACE simply wanted to deter its bargaining unit members from participating.

[2] Following the hearing the University was able to confirm ACE bargaining unit member participation in the program. In FY2012, 198 employees participated in the program – none were ACE bargaining unit members – for a total savings of $371,104. The program was not offered in FY2013. When the University reinstituted the program in FY2014, 128 employees participated, only 15 of which (11.7%) were ACE bargaining unit members, for a total savings of $203,198.

Limitations on Bumping Rights

The University's second operational proposal involves limiting the scope of bumping rights from the current, campus-wide scope to one limited to the area of an academic Dean or a non-academic Vice President. This proposal serves two important purposes. First, it reduces the inherent disruption caused by bumping employees. Second, it ensures that employees who exercise their bumping rights have a reasonable chance of adjusting to the new position because they will be assigned to the same working area. During negotiations, the University recognized that narrowing the scope any further (e.g., the department level) would lead to problems, such as too small a pool of employees and the possibility of manipulation; hence, the willingness to expand the scope to the College or non-academic Vice President level.

ACE's Proposals

From the outset of these negotiations, ACE has proposed a return to the language negotiated in the 2008-11 labor contract, which the parties agreed in 2011 to replace with the current language (which largely restored the pre-2008 contract language). The University rejected this proposal from the start, and it never intends to change that response. The ACE proposal effectively makes layoffs impossible to implement. ACE would be better off simply proposing that layoffs be eliminated.

DISCUSSION:

The University proposes that on an impermanent basis it may need the flexibility to reduce financial costs that are driven by unknown events such as revenue reduction, lower tuition mandates dictated by the state legislature, be further reductions in student enrollment, and other unknown events. This again is a matter where equity of sacrifice needs to be considered. From the facts the faculty over the next three years committed to approximately $600,000 dollars in concessions in the recent round of bargaining in 2014, yet as of this writing an total agreement with the faculty has yet to be consummated apparently over the issue of health care. With ACE, the Employer argues it is seeking similar costs savings through the possibility of furlough or the implementation of cost saving days in order to minimize layoffs in the event necessary cost reductions are not accomplished by other means. One cost savings day for the ACE bargaining unit equates to approximately $65,000 in savings. I concur with the Employer that given the unique employment circumstances of professors, cost reduction days are impractical. However, in the case of hourly employees they have been commonly utilized in recent times as a last resort by public employers in Ohio. Moreover, they have the unique aspect of being temporary and not permanently reducing salary or benefit levels. The state of Ohio during the past several years needed to respond to the downturn in the economy with the implementation of Cost Saving Days. This term was used, rather than furlough days, which conveys a vacation, holiday, or rest and relaxation time. No matter what word is used, such days are not vacation days, but have proven to be a less painful (to the employee) way for a public employer to maintain services while temporarily lowering structural labor costs Mandating of such time for state employees and many other county or city employees in Ohio came as a result of the Great Recession that began in 2008, the impact of which still plagues state universities.

The Employer makes a persuasive case for reducing the amount of notice for layoff, but from what is commonly found in public sector contracts in Ohio it falls short of adequate notice of layoff and it represents a reduction of 2/3 regarding this life changing event for an employee and his/her family. Sixty-two (62) days is a much longer period of time and is also uncommon when viewed in terms of what the public and private sectors generally practice. The Union is opposed to any loss of notice days and also stressed concerns over employees who are affected and want to consider retirement as an alternative. They need adequate time for personal planning, which normally requires employees to make an appointment with the state retirement system in Columbus.

The facts also indicate the University is undergoing an organizational transitional period, which is not unusual with the advent of a new President and or financial conditions that require consolidation and cost saving measures. From the facts and what is known regarding the future of higher education in Ohio, program consolidation and other streamlining in the name of efficiency is expected and is necessary. It is not unusual in the public sector for unions and management to agree to limit bumping to areas where employees perform like work under a commonly managed structure. Under this need the Employer's desire to limit bumping to areas of responsibility managed by a Dean or Vice President is not unusual and still provides employees with reasonable bumping rights in lieu of layoff, which hopefully will be minimized with the safety value of furlough or cost reductio days.

RECOMMENDATION

Article 16: Layoff and Recall – Reduce Layoff Notice Period; Temporary Furlough Days Program

16.1 No changes.

16.2 No changes.

16.3 Individual Notification: Each bargaining unit employee who may be laid off or displaced will be given advance written notification by the University. Such written notice must be mailed by certified mail to the employee's last known address on file within the official personnel file of the University. Such notice shall be mailed at least **thirty (30)** calendar days before the effective date of layoff or displacement. The date the letter is mailed shall be the first day of the **thirty (30)** day period. If the aforementioned efforts are taken to notify the employee, such notice shall be considered complete regardless of whether the employee actually receives the notice.

16.4 Voluntary Reduction in Force: When the University determines to reduce the work force, other employees within the affected classifications may volunteer, in writing, to be reduced in force (laid off) without consideration of retention points. If granted by the University, the Office of Human Resources shall report to the Ohio Department of Job and Family Services that it has "laid off" the employee and shall not contest the employee's eligibility for unemployment compensation. Nothing in this section shall be construed to constitute a waiver of such employee's recall rights unless the employee voluntarily waives such recall rights in writing. The ability to volunteer to be reduced in force may be exercised during the **thirty (30)** day notice period referenced in Section 16.3 above. The thirty (30) days' **notice** requirement of reduction in force shall be waived for employees granted voluntary reduction in force**. If an employee notifies the Employer of an intent to retire in lieu of layoff, said employees shall be granted up to three (3) days of paid leave during the thirty (30) day notice period to consult with the state retirement system.**

16.5 No changes to introductory paragraph.

A-D) No changes.

E) **Bumping Rights: An employee whose position has been abolished may exercise the right to bump another employee only within the positions under the same Dean or non-academic Vice President's area of responsibility.**

16.6 No changes.

16.7 No changes.

16.8 **Temporary Cost Reduction Days to Avoid or Minimize Layoffs***

A) **In order to avoid or minimize layoffs for financial reasons, the Employer shall have the option of utilizing cost reduction days (CRDs). Effective January 1, 2015 and/or January 1, 2016, the University may at its discretion implement a plan providing for CRDs of employees to achieve reductions necessitated by institutional budget deficits. The implementation of the CRD policy shall not be considered a layoff of staff within the meaning of Article 16 or as the term may be used elsewhere in this Agreement.**

B) **Any CRD plan implemented shall be limited in duration to the minimum number of days necessitated by the institutional budget deficits and only after the University has explored other cost-cutting alternatives and the means of**

initiating mechanisms for generating additional revenue.

C) The maximum number of CRD days allowed for the duration of the agreement shall not exceed ten (10) unpaid days per fiscal year. The University will provide the Union at least sixty (60) days advance notice of the intended implementation of the furlough plan and supporting financial information. At the request of the Union, the parties shall bargain over the impact of the CRD plan on bargaining unit employees, including the method of scheduling unpaid time off. CRD days shall not impact the employee's eligibility for or continued enrollment in the University health, vision, dental, and life insurance plans.

D) The University will provide the affected employee and the Union with at least thirty (30) days advance notice of the intended implementation of CRD days. Nothing in the foregoing shall prohibit the parties from meeting to discuss the possibility of allowing additional unpaid furlough days in any fiscal year(s) to avoid or reduce the impact of massive layoffs.

E) The University shall schedule five (5) CRD days consecutively and three (3) additional CRD days at its discretion, considering holidays and weekends. Employees may select two (2) discretionary CRD days on a Monday or a Friday. Any CRD days determined necessary by the University will be scheduled for the least disruption to student and employee services.

F) This mandatory furlough program shall be discontinued after December 31, 2016.

***CRDs days shall, if implemented, be conducted in a manner that spreads the total amount of cost reduction over all pay periods in a year. (For example, if 3 CRD days are implemented in a calendar year, then an employee's annual salary is temporarily reduced by the monetary equivalent of 3 days and the impact of said reduction is spread over an entire year's worth of pay periods).**

ISSUE 4 ARTICLE 17 VACATIONS

UNION:

Article 17 – Vacations

We initially wanted to have the state standards reinstated. We would settle for current contract language.

- We had this previously until the last contract. They increased the years service that we had to work prior to accumulating at a higher rate and now they want to go after additional time.
- Other units earn at a grater or equal rate as our current contract language. (Exhibit 7 & Exhibit 8)

EMPLOYER:

Article 17: Vacation – Reducing Accrual and Accumulation

17.1 Effective August 16, 2014~~1~~, each full-time and part-time member of the bargaining unit will earn annual vacation leave according to his/her number of years of service with the University. Remainder of paragraph unchanged.

Vacation accrual shall be credited as follows for full-time employees:

Length of University Service	Hours Earned Per 80 Hour Pay Period	Annual Amount per 2080 hours
Less than 1 year	None	None
1 year but less than 7	3.1 hours	80 hours
7 years but less than 13	4.6 hours	120 hours

13 years but less than 22	6.2 hours	160 hours
22 years but less than 25	7.7 hours	200 hours
25 years or more	9.2 hours	240 hours

Effective January 1, 2015 the vacation schedule shall be capped at twenty two (22) years of service and accrual of 7.7 hours per 80 hour pay period.

3rd paragraph unchanged

Members of the bargaining unit hired on or after August 15, 2014~~1~~ do not earn and may not take vacation during their first year of service at YSU. . . . Vacation leave may accumulate to a maximum of that earned ~~in three (3)~~ two (2) years of service. Vacation in excess of this maximum is eliminated from the bargaining unit member's vacation leave balance, except that members of the bargaining unit who had vacation balances above the current maximum before August 16, 2014 shall be permitted to draw down their vacation leave balance below the maximum level, provided that: (1) the member of the bargaining unit uses all of the vacation leave accrued during that particular year and each year thereafter; and (2) the bargaining unit member uses at least forty (40) hours of vacation time above the accrual during each year until the balance falls below the maximum level. Thereafter, the bargaining unit member shall be subject to the rules and conditions under the Section for cash payout upon reaching the maximum amount allowed. Each member of the bargaining unit will receive a report of his/her vacation balance and maximum permitted amount of accrued vacation each pay period.

Excluding members of the bargaining unit who had vacation balances above the current maximum before August 16, 2014, ~~I~~if an employee's vacation leave credit has reached the maximum amount allowed or will reach the maximum amount allowed during the next pay period, and the employee has been denied the use of vacation leave, the employee will be paid for the amount of leave that was requested and denied. Employees are entitled to payment not to exceed the amount of vacation denied during a specific pay period. In order for payment to occur, employees must request such payment and the denial of vacation must have occurred during the preceding twelve (12) months. Any vacation leave for which an employee receives payment shall be deducted from the employee's vacation leave balance.

If a vacation request is denied, the University agrees to make every effort to grant the employee's vacation request(s) during the fiscal year in which the request was initially denied.

17.2 No changes.

17.3 No changes.

17.4 No changes.

17.5 No changes.

17.6 No changes.

17.7 No changes.

17.8 No changes.

17.9 Upon termination of employment, payment for accrued but unused vacation leave shall be made at the member's rate of pay at the time of termination, subject to the accrual limits stated in this article and up to a maximum accumulation of two (2) years and provided the member had at least one (1) year of continuous service with the University.

17.10 In the event of a bargaining unit member's death, any earned but unused vacation for which the member was eligible to be compensated up to a maximum accumulation of two (2) years will be paid at the rate of pay at the time of death to the next of kin or the estate of the deceased member.

17.11 No changes.

17.12 Annually, in the month of September, the Chief Human Resources Officer shall allow bargaining unit employees to carry forward the balance up to the limits specified in Section 17.1~~elect one (1) of the following options~~ with respect to the unused balance of vacation credit:

~~Carry forward the balance up to the limits specified in Section 17.1.; or~~

~~Convert up to eight (80) hours to accumulated sick leave to be used in the manner provided in Section 15.2.~~

~~If no action is taken by the employee such time will carry forward as vacation time.~~

The University has proposed eliminating the sixth week of vacation and reducing the vacation carry forward from a three-year accrual to a two-year accrual. No other State university provides six weeks' annual vacation leave.

Both proposals generate significant and immediate cost savings. Reducing the maximum from three to two years could reduce the compensated absence liability by as much as 33 percent for employees who accrue five weeks or less, and as much as 44 percent for employees who accrue six weeks. The cost savings are approximately $319,278 annually in reduced budgeting liability. Eliminating the sixth week could result in savings of up to $143,675. (YSU Ex.15)

As discussed above, this concession has the slightest impact upon employee compensation levels. Employees do not experience even a temporary reduction in compensation; they only are asked to give up some time off.

To address the employees who have vacation balances upon the two-year maximum – which would be 400 hours, if the sixth week of vacation time is eliminated – the University proposes a program that allows employees to draw down their balances by using their maximum annual accrual and use 40 hours above the maximum until their balances fall below the maximum. This actually allows employees who have lost their sixth week of vacation time to regain it for at least one or more years. The only restriction would be that employees could not cash out any accumulation above the two-year maximum.

ACE responded that they are being singled out because no one else is being asked to make these concessions. As discussed above, the University must wait until next year to seek the same concessions from APAS and the FOP bargaining units. The Faculty already made their concessions, both in this round of negotiations and in the last round, while ACE has yet to make the necessary concessions. The Administration already has donated hundreds of thousands of dollars of vacation time, while ACE challenged the program by filing a grievance.

Finally, the University proposed to exchange the reduced vacation accumulation and accrual by establishing a Winter Leave between the Christmas and New Years' Day. (YSU Ex. 14) This program also would also result in a cost-saving and operational efficiency to the University from the campus-wide shutdown of buildings and the ability to clean and maintain buildings when no employees are present.

DISCUSSION:

The Employer points out that as a matter of external equity, 6 weeks of vacation is outside the bounds of convention among state universities in Ohio. In viewing a sampling of state universities in Ohio the facts bear this out. (e.gs.Ohio University/AFSCME, CSU/SEIU, OSU/CWA, Wright State/Teamsters, University of Cincinnati/SEIU, Central State/AFSCME) What is also clear from viewing several state university contracts is that ACE bargaining unit employees have a competitive edge in terms of working long enough to reach 5 weeks or 200 hours of vacation. Many bargaining unit employees at other state universities do not earn 200 hours of vacation time until they reach 24 or 25 years of service. (e.gs. CSU./SEIU, OSU/CWA, Wright State/Teamsters, University of Cincinnati/SEIU, Central State/AFSCME) At YSU reaching the 200 hours benefit requires 22 years of service. Vacation planning for many employees requires advanced planning, and in cases of cruises, family reunions, etc. it is not unusual for said planning to exceed more than a year, and in the case of tours this often involves down payments made in advance and penalties if changed. And, while it is clear the University is seeking to reduce its costs, a reasonable transition to what is commonly provided at state universities in Ohio. However, the facts do not support reduction of the carryover of vacation leave. Even though state universities in Ohio generally cap their vacation benefit at 5 weeks or 200 hours, they generally permit a carryover of 3 weeks in their collective bargaining contracts. (egs. UA/FOP, OSU/CWA, OU/AFSCME) This is also the case with contracts covering state employees. (ORC 124.13 provides for a maximum of 3 years, which is included in most of the collective bargaining agreements in the state of Ohio, e.g. see State of Ohio/OCSEA, State of Ohio/SEIU, State of Ohio/OSTA, State of Ohio/FOP)

RECOMMENDATION

Article 17: Vacation – Reducing Accrual and Accumulation

17.1 Effective August 16, 2014, **… current contract language.**

Vacation accrual shall be credited as follows for full-time employees **through December 31, 2015)**:

Length of University Service	Hours Earned Per 80 Hour Pay Period	Annual Amount per 2080 hours
Less than 1 year	None	None
1 year but less than 7	3.1 hours	80 hours
7 years but less than 13	4.6 hours	120 hours
13 years but less than 22	6.2 hours	160 hours
22 years but less than 25	7.7 hours	200 hours* (delete 1/1/2016)
25 years or more	9.2 hours	240 hours* **(delete 1/1/2016)**

Effective January 1, 2016 the vacation schedule shall be capped at twenty-two (22) years of service and accrual of 7.7 hours per 80 hour pay period. It shall be as follows:

17.1 Effective August 16, 2014, **… current contract language.**

Effective January 1, 2016 Vacation accrual shall be credited as follows for full-time employees):

Length of University Service	Hours Earned Per 80 Hour Pay Period	Annual Amount per 2080 hours
Less than 1 year	None	None
1 year but less than 7	3.1 hours	80 hours

7 years but less than 13	4.6 hours	120 hours
13 years but less than **22**	6.2 hours	160 hours
22 years	**7.7 hours**	**200 hours**

3rd paragraph **current contract language.**

Members of the bargaining unit hired on or after August 15, 2014 do not earn and may not take vacation during their first year of service at YSU… **continuation of current contract language…**

If a vacation request is denied, the University agrees to make every effort to grant the employee's vacation request(s) during the fiscal year in which the request was initially denied.

17.2 **Current Contract Language**

17.3 **Current Contract Language**

17.4 **Current Contract Language**

17.5 **Current Contract Language**

17.6 **Current Contract Language**

17.7 **Current Contract Language**

17.8 **Current Contract Language**

17.9 Upon termination of employment, payment for accrued but unused vacation leave shall be made at the member's rate of pay at the time of termination, subject to the accrual limits stated in this article and provided the member had at least one (1) year of continuous service with the University.

17.10 In the event of a bargaining unit member's death, any earned but unused vacation for which the member was eligible to be compensated will be paid at the rate of pay at the time of death to the next of kin or the estate of the deceased member.

17.11 Permanent part-time bargaining unit members who hold concurrent intermittent position(s) will accumulate vacation leave based on all hours in active pay status.

17.12 Annually, in the month of September, the Chief Human Resources Officer shall allow bargaining unit employees **to carry forward the balance up to the limits specified in Section 17.1.**

ISSUE 5 ARTICLE 21 RETIREMENT

UNION:

Article 21 – Retirement

We would like to see current contract language.

- Other units earn, or cash out, at a greater or equal rate as the current contract language. (Exhibit 9)

EMPLOYER:

Article 21: Retirement – Reduce Sick Leave Payout upon Retirement

21.1-21.4 No changes.

21.5 **Sick Leave Conversion:** A bargaining unit member who retires with ten (10) or more years of University service is entitled to convert to cash payment part of his/her accrued but unused sick leave. Payment is based upon the bargaining unit member's hourly rate of pay immediately prior to retirement.

Effective upon ratification of this Agreement, ~~T~~the retiring bargaining unit member shall receive payment for twenty-five percent (25%) of the first five hundred (500) hours (or portion thereof) of accrued but unused sick leave; forty percent (40%) of the second five hundred (500) hours (or portion thereof); and fifty percent (50%) of the third five hundred (500) hours (or portion thereof). ~~All accrued sick leave shall be eliminated from a bargaining unit member's record upon sick leave conversion. Such payment shall be made only once to an individual. Sick leave conversion does not apply to any separation or termination other than retirement. "Retirement" as used in this section refers to retirement under the provisions of one of the Ohio public retirement systems at the time of separation and requested sick leave conversion.~~

Effective July 1, 2015, the retiring bargaining unit member shall receive payment for twenty-five percent (25%) of the first three hundred (300) hours (or portion thereof) of accrued but unused sick leave; thirty-five percent (35%) of the second three hundred (300) hours (or portion thereof); and forty-five percent (45%) of the third five hundred hours (or portion thereof).

Effective July 1, 2016, the cash payment of accrued but unused sick leave shall be twenty-five percent of accrued but unused sick leave not to exceed 416 hours.

All accrued sick leave shall be eliminated from a bargaining unit member's record upon sick leave conversion. Such payment shall be made only once to an individual. Sick leave conversion does not apply to any separation or termination other than retirement. "Retirement" as used in this section refers to retirement under the provisions of one of the Ohio public retirement systems at the time of separation and requested sick leave conversion.

~~**21.6 2008 – 2011 ERIP Participant Sick Leave Conversion:** Any bargaining unit member who participates in the ERIP as defined in the 2008 – 2011 agreement and subsequently retires during the term of this agreement, and before January 1, 2012, is entitled to convert to cash payment part of his/her accrued but unused sick leave as defined in the 2008 – 2011~~

~~agreement:~~

~~Payment is based upon the bargaining unit member's hourly rate of pay immediately prior to retirement. The retiring bargaining unit member shall receive payment for thirty percent (30%) of the first five hundred (500) hours (or portion thereof) of accrued but unused sick leave; forty-five percent (45%) of the second five hundred (500) hours (or portion thereof); and sixty percent (60%) of the third five hundred (500) hours (or portion thereof). All accrued sick leave shall be eliminated from a bargaining unit member's record upon sick leave conversion. Such payment shall be made only once to an individual. "Retirement" as used in this section refers to retirement under the provisions of one of the Ohio public retirement systems at the time of separation and requested sick leave conversion~~

The University has proposed reducing the accrual of sick leave hours of payout at retirement from 575 to 416 hours. This represents an upward modification of the University's initial proposal to reduce the sick leave payout to 240 hours. Indeed, the University's initial proposal is consistent with the maximum payout levels at all but one other State University. (YSU Ex. 16) The University's current proposal tracks the same payout formula used for the Faculty labor contract.

The amount of cost savings to the University cannot be calculated with precise certainty because the sick leave payouts fluctuate year-to-year, based upon the number of employees who retire. During the hearing, the University provided data on the amount of cost savings during the past five years (FY2010-14) if the maximum payout had been reduced to 300 hours and 240 hours. (YSU Ex. 17) Adjusting the data to reflect the cost savings from a reduction to 416 hours would be as follows:

ACE Sick Leave Cash Payouts

	Actual	If Max Reduced to 416	
	Payouts	Estimate	Savings
FY 2010	$2,667	$1,931	($736)
FY 2011	$83,871	$60,722	($23,148)
FY 2012	$415,194	$300,601	($114,594)
FY 2013	$1,797	$1,301	($496)
FY 2014	$44,070	$26,442	($17,628)

The largest savings would have been in FY2012, when the University offered an early retirement incentive buyout. There exists a distinct possibility of a greater than usual employee turnover during the current and next fiscal year in response to the necessary economic concessions; therefore, the University could experience significant cost savings approaching an early retirement event.

ACE responds, yet again, that it is being singled out. The University has the same responses, which are discussed above and do not bear repeating.

DISCUSSION:

If the University is to remain competitive, its benefits architecture and costs must eventually come into line with its prime competitors (other state universities in Ohio, particularly northern Ohio). On the basis of these important external comparable universities, only one other state university, Central State University, has a sick leave buyout that exceeds .25% up to 240 hours, or 30 days of pay. It pays 1/3 up to 320 hours. All other state universities in Ohio pay a maximum of 25% up to 240 hours and most significantly among these state universities are nearby direct competitors such as Kent State University and the University of Akron who cap their sick leave payout at retirement at 240 hours, or a maximum of 30 days. However, it is also clear that other YSU bargaining units are even more out of line than the ACE bargaining unit. The APUS bargaining unit currently can cash out a maximum of 675 hours (approx. 84 days). Others in line with ACE, are the FOP, who's members can cash out 575 hours (approx. 72 days) the OEA/faculty, who's members at retirement can cash out 416 hours (approx. 52 days). The structural deficit problem identified by the Employer is real and to ignore it in the face of the current deficit problems that YSU must address will further weaken its competitive position. The problem did not occur in a short period and in fairness it should be addressed over a reasonable amount of time. It is also noted that ACE only accounts for a disproportionally smaller portion of this deficit when all employees at YSU are considered. Yet, that fact does not justify the status quo in a situation where this benefit is so far afield from it nearby competitors and when the University has to make dramatic changes just to be on a competitive footing with all of the state universities. Early in this report (Section 15.3) the Union benefited from this comparison (both internally and externally) that restored the rate of sick leave accumulation to 4.6 hours, bringing it in line with what commonly exists at other state universities. Using the same logic it is reasonable to move in this direction regarding sick leave cash out at retirement. When it comes to gaining or expanding benefits (e.g. extending benefits to same sex couples), the same comparable argument is legitimately made by unions, with one argument being it makes their university more competitive visa via other universities in terms of recruiting talent. For the past several years ago this same neutral has found this argument to be very persuasive at YSU other universities in and outside of Ohio. What the University is proposing is this same argument in reverse. A healthier benefits structure will strengthen the competitive position of YSU and hopefully will place it in a better position to reduce its structural debt. As some other readily comparable changes recommended in this report, the principle of shared sacrifice is a contingency among like (striking) bargaining units.

RECOMMENDATION

Article 21: Retirement – Reduce Sick Leave Payout upon Retirement

21.1-21.4 **Current Contract Language**

21.5 Sick Leave Conversion: A bargaining unit member who retires with ten (10) or more years of University service is entitled to convert to cash payment part of his/her accrued but unused sick leave. Payment is based upon the bargaining unit member's hourly rate of pay immediately prior to retirement.

Effective August 16, 2014 through August 15, 2016, a retiring bargaining unit member shall receive payment for twenty-five percent (25%) of the first five hundred (500) hours (or portion thereof) of accrued but unused sick leave; forty percent (40%) of the second five hundred (500) hours (or portion thereof); and fifty percent (50%) of the third five hundred (500) hours (or portion thereof).

Effective August 16, 2016, the cash payment of accrued but unused sick leave shall be twenty-five percent of accrued but unused sick leave not to exceed 416 hours.*

***This reduction is contingent upon a similar reduction (in terms of % or reduction or reaching the same number) being adopted by the other striking unit (APUS) during the life of its next contract with YSU.**

All accrued sick leave shall be eliminated from a bargaining unit member's record upon sick leave conversion. Such payment shall be made only once to an individual. Sick leave conversion does not apply to any separation or termination other than retirement. “Retirement” as used in this section refers to retirement under the provisions of one of the Ohio public retirement systems at the time of separation and requested sick leave conversion.

ISSUE 6 ARTICLE 22 INSURANCE BENEFITS

UNION:

We would like our proposal of no ceiling and no floor, increase % or salary by 0.027% for everyone. If not this scenario, then the equivalent of what the faculty initially proposed as we worked on it together.

- Better distributes FIE among members.
- Offers a stipend to those individuals who opt out of our insurance to help pay for additional cost to take spouses or another insurance.
    - This is done in various companies as an incentive to reduce the number of individuals covered, thereby reducing the liability.

5.1(C)1.b Coordination of benefits.

We want the number 25 (which was because of how faculty work) changed to 30 to meet ACA standards. The word AND should be changed to OR

- The 25 is because of how faculty work.
- Meets ACA standards.
- Members are already paying more in a family to carry double coverage on the spouses, this helps to not over penalize members. (Exhibit 10)

EMPLOYER:

<u>Article 22 and Appendix H: Insurance Benefits – Adoption of Changes Recommended by Expert Consultants and Tentatively Agreed Upon by the Faculty</u>

(See YSU Ex. 18)

The University proposes the same health insurance benefits program for which it reached tentative agreement with the Faculty bargaining unit. This proposal largely was developed by consultants from Findley Davies, who are experts in the field of health benefits administration and financing. The proposal provides a freeze on premium payments during the first year (until July 1, 2015), stable or even reduced health insurance premiums, caps on any increased premiums during the 2nd and 3rd years, better dental/vision coverage at a lower cost, a different aggregate premium cost sharing formula based upon the average of prior annual actual costs, a formula for addressing instances when the health benefits reserves are too large or too small, and an adjustment to the income-based formula for individual employee premium payments that benefits a significant portion of the ACE bargaining unit.

The income-based formula warrants special mention. Under this program, the ACE bargaining unit as a whole pays less than any other employee group, while members of the administration pay the most. (YSU Ex. 20) This favorable treatment blunts ACE's repeated contention that its members sacrificed under the 2011-14 contract because they paid more for health benefits. So did every other University employee, and all paid more as a group than the ACE bargaining unit members. Moreover, the University's proposal adjusts the current floor/ceiling formula of 11%/21% of the premium to 9%/19%. Because ACE bargaining unit members tend to make less than other employee groups, they stand to benefit from the lower floor. (YSU Ex. 19) Indeed, the bargaining unit as a whole will pay less than they do under the current formula. (YSU Ex. 19, at 5)

ACE responds with proposals that are financially reckless and irresponsible, and border upon the nonsensical, which has been explained to them repeatedly, all to no avail. They include eliminating the floor and ceiling and increasing the threshold for spousal coordination of benefits requirements from 25 hours to 30 hours. The expert consultants have recommended against these demands in the strongest terms. The University did not need such a recommendation, knowing the immediate detrimental impact of ACE's demands.

Eliminating the floor and ceiling on premium payments would force the bargaining unit's highest paid employees to pay a huge percentage of the premium. Such a financial obligation would interfere with the University's recruitment and retention efforts. For reasons already explained to ACE, their irrational and unsupported demand is "dead on arrival." The University never would implement such a change for any other employee group. To implement such a change for just the ACE bargaining unit would require creating a separate risk pool for just that bargaining unit. This adjustment would work to the detriment of the ACE bargaining unit, by greatly reducing the risk pool and potentially exposing the group to spikes in premiums if there is an unusually large cost increase from one or more bargaining unit members who need extraordinary medical services. The University cannot understand why ACE would continue to insist upon these demands in the face of such overwhelming and unbiased evidence. Suffice it to say, the time for such demands has ended.

Finally, ACE stated repeatedly that the Faculty does not represent them. That fact does not, and will not, make a difference in this instance. For a variety of financial and administrative reasons, the University must have one health benefit plan for all of its employees. The Faculty set the pattern when they reached tentative agreement first. The University urged ACE repeatedly to set the pattern by reaching agreement first. ACE declined to do so, insisting upon the same demands that the University never would accept. Now ACE must accept the consequences of its actions.

DISCUSSION:

In the experience of this neutral, health care coverage is often considered by many employees to be one of their most valued benefits, sometimes exceeding wages in importance. And being such, it was one of the most contentious issues between the parties in negotiations. Yet, by all reasonable measures what the parties have in place is a very good plan that provides broad coverage with very reasonable out of pocket expenses and from the evidence provided in mediation and fact-finding it has been managed very well. A theme throughout this report has been the need for the University to regain competitive footing with other state universities. This appears to be one major cost area where the University is achieving that goal and where bargaining unit employees have benefited from sound decision making on the part of the University. Moreover, the University's new proposal at fact-finding, which proposes a new 9% to 19% floor to ceiling range, lowers the percentage paid for health care by the ACE bargaining unit in the aggregate. (13.1% vs 13.2%) Concerns expressed by the bargaining unit over whether the University pays its full 15% share, while understandable as fertile ground for a polemic, particular in a university setting, fails the "seeing the forest for the trees" test. It detracts from the fact that the University's proposal provides improved coverage (e.g. dental, vision improvements) to an already comprehensive plan, includes very reasonable single digit caps on premium increases over the next two years, and delivers it at a lower aggregate cost to the bargaining unit when compared to other employee groups in the University.

RECOMMENDATION

The University's proposal on health care coverage as found in University Ex. 18 is recommended.

ISSUE 7 ARTICLE 25 SUBCONTRACTING

UNION:

Article 25 – Contracting

We want current contract language.

- Current contract language already allows the administration to do what they want, making their proposal punitive.
- The only thing it eliminates is communication and collaboration.

EMPLOYER:

<u>Article 25: Subcontracting – Permit Subcontracting that Results in Layoffs</u>

~~**25.1** The University retains the right to contract for services. However, the University agrees that it will not layoff members of the bargaining unit in the exercise of this right.~~

~~**25.2** If the University decides to contract a service and that contract will result in the elimination of bargaining unit position(s), the University will:~~

~~A) Inform the Union of its intent to contract.~~

~~B) Provide the Union with relevant information about the decision to contract.~~

~~C) Allow the Union the opportunity to research the subject and submit a recommendation to the University.~~

~~D) Provide a reasonable amount of release time for up to two (2) bargaining unit members, appointed by the President of the Union, to research the subject and prepare a recommendation.~~

~~**25.3** The Union will be granted a reasonable opportunity to demonstrate that bargaining unit employees can competitively perform work, which has been previously contracted out, including access to available information regarding costs and performance audits. In considering the granting, renewal or continuation of competitively bid contracts for work normally performed by bargaining unit employees, to the extent feasible, the University will examine information provided by the Union regarding whether or not such work can be performed with greater efficiency, economy, programmatic benefit or other related factors through the use of bargaining unit employees rather than through renewal or continuation of the contract or initial contracting out of work.~~

~~The University retains the sole right to make the final determination as to whether or not to contract services.~~

25.1 The University retains the right to contract for services. It is not the intent of the University to contract out or subcontract bargaining unit work that will result in the layoff of bargaining unit members for reasons other than to create greater efficiencies; achieve cost savings; participate in initiatives for shared services arrangements, council of governments, the Inter University Council, other public-public or public private partnerships and consortium; to improve operational effectiveness, or as otherwise may be described in Article 4.

25.2 Prior to making a decision made to contract or subcontract out work that will result in the layoff of bargaining unit members, the Union shall be given upon request, the opportunity to meet with the University and to discuss what options/alternatives may be available to maintain the work in the bargaining unit.

25.3 Whenever possible the University shall give the Union sixty (60) calendar days advance written notice of its intent to contract or subcontract out work that will result in the layoff of bargaining unit members. Within ten (10) working days of notice from the University, the Union, shall be given, upon request, the opportunity to meet with the University and discuss what options or alternatives may be available to maintain the work in the bargaining unit. The meeting shall take place within five (5) working days of the Union's request unless otherwise agreed by the parties. Within ten (10) working days of the parties' meeting, the Union may provide alternatives to the University's intended action for its consideration. The University will give serious consideration to the Union's alternative solution in reviewing its intended action.

25.4 In addition to the above, the Union shall have the right, upon request, to negotiate the impact of the intended actions of the University to contract or subcontract out bargaining unit work that will result in the layoff of bargaining unit members.

25.5 In the event of a dispute, relating to the terms of this Article, the Union shall have the right to file a grievance pursuant to Article 9.

25.6 The University retains the sole right to make the final determination as to whether or not to contract services that do not result in the layoff of bargaining unit members.

25.47 It is not the intent of the parties to limit the University's right to contract for major project(s) requiring outside expertise and/or that fall beyond the scope of regular bargaining unit work and/or workload.

As part of a long-term effort at savings and operational efficiency, the University proposes to enhance its ability to seek an operational analysis from an independent source and implement any recommendations for shared services and/or contracting for reasons of efficiency and/or cost savings. The current contract language prohibits any subcontracting that will result in layoffs. In today's economic and fiscally tight situation, significant, necessary cost savings and operational efficiencies might require layoffs. The University cannot have its hands tied. This avoidance is especially pertinent if the University requested an audit, and restrictive contract language prohibited implementing key recommendations. Indeed, the University would be disinclined even to request an audit unless it possessed the authority to implement any changes or had a procedure in place to facilitate that result. Thus, the suggestion that the University's proposal is not ripe does not hold true. It makes no sense otherwise to go down the path of outsourcing or shared services arrangements.

The University's proposal includes specific safeguards when the subcontracting results in layoffs. These procedures ensure that ACE has the opportunity to know the basis for the subcontracting, can offer alternatives that achieve the same cost savings, and challenge the University's basis for the decision, including the opportunity to arbitrate the claim.

The University offered examples of other instances of shared services agreements involving other State universities. (YSU Exs. 21-23) The University certainly would be interested in devoting resources in exploring similar arrangements, but only if it had the authority to enter into those arrangements.

DISCUSSION:

The current language appears to provide the University with considerable flexibility to subcontract out work where necessary. The facts do not support a change in language at this time.

RECOMMENDATION

Maintain Current Contract Language

ISSUE 8 & 9 APPENDIX A & B INCLUDED/EXCLUDED BARGAINING UNIT POSITIONS

UNION:

Appendix A & B

These appendices need a lot of work which we began. Appendix B should contain only those individuals who should be considered "Unclassified Excluded" based upon their fiduciary responsibility to administration.

- Waiting for a report from SERB.
- Was told that it was requested as late as Monday, November 10th by Allan.
- Told today it was not.
- No classifications have been submitted for a number of years per George.
- As we have a modified state plan we cannot agree to so many unknowns.
- Newly created or eliminated positions need to be added or subtracted.
- Status quo is not acceptable.
- It has been mandated by law that the Board of Trustees file their rules, regulations, and policies they will follow in assuming the responsibilities of the Department of Administrative Services. This was put into law over one year ago.

EMPLOYER:

Appendices A&B: Bargaining Unit Inclusions/Exclusions

The University proposes that the necessary work on updating the description of the included bargaining unit positions and any excluded positions not delay ratification of a new agreement. Such efforts can occur after ratification, with the parties filing a joint clarification petition with SERB if they succeed in reaching agreement on these changes.

ACE proposes that the contract remain open until the parties reach agreement on the bargaining unit description. This makes no sense. This could delay closing the contract for several weeks or months, which assumes that an agreement will occur. The parties have engaged in a four-year dispute on this subject, with no less than three SERB decisions being issued, two of which have been appealed by both parties to court. There is no indication that an agreement will occur at any time in the foreseeable future.

DISCUSSION:

It has been well established that this issue comes under the exclusive jurisdiction of the parties or SERB. And, while it was legitimately included in mediation, it received little or no discussion. It now is before the Fact-finder and is beyond his scope of authority. It is a matter for either the parties or SERB to render a decision.

RECOMMENDATION

Maintain Current Contract Language

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as 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 December 2014 in Portage County, Ohio.

____
Robert G. Stein, Fact finder