

STATE EMPLOYMENT RELATIONS BOARD
FACT FINDER'S REPORT AND RECOMMENDATION

IN THE MATTER OF:

NORTHWEST STATE COMMUNITY COLLEGE

AND

NORTHWEST STATE COMMUNITY COLLEGE
EDUCATION ASSOCIATION (OEA)

Case Number: 2014-MED-04-0667

Before Fact Finder: Thomas J. Nowel
April 6, 2015

PRESENTED TO:

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the case as noted on the cover page by the State Employment Relations Board on December 9, 2014 in compliance with Ohio Revised Code Section 4117.14 (C) (3). The previous collective bargaining agreement between the parties expired on August 15, 2014, and the parties engaged in negotiations for a successor agreement beginning in April 2014. The parties reached impasse on a number of issues and then moved forward with the fact finding process. An evidentiary hearing was scheduled on January 16, 2015 at the College, and the parties engaged in discussion and mediation in an attempt to identify areas of possible agreement. Although a helpful discussion occurred, which allowed both sides to better understand areas of disagreement and possible compromise, the parties were unable to resolve issues at impasse. A second day for the evidentiary hearing was then scheduled on February 27, 2015. Although Kathryn Soards is the principal representative for the College, Consultant Joseph Klep served as the spokesperson for the Employer at Fact Finding.

Northwest State Community College is a public two year college with a main campus in Archbold, Ohio. The College offers two year degrees in a number of disciplines including business, math, science, engineering, nursing, allied health, arts and sciences and other areas of study. The Association represents approximately 57 full time professional employees, primarily members of the College faculty. The Employer and Association have been signatories to collective bargaining

agreements since the inception of public sector labor law in Ohio, 1984. The Association is the sole and exclusive bargaining agent of a “deemed certified” unit.

Those participating for the Employer at hearing include the following:

Kathryn Soards, Chief Fiscal and Administrative Officer
Joseph R. Klep, Consultant
Cindy Krueger, Vice President for Academics and Student Services
Linda H. Torbet, HR Consultant

Those participating for the Association at hearing include the following:

Michael N. McEachern, OEA Labor Relations Consultant
Jason Rickenberg, Co-President
Melissa Faber, Faculty Negotiations Team
Sherry Howard, Faculty Negotiations Team

OUTSTANDING ISSUES:

1. Article I. Recognition (Fair Share Fee)
2. Article III. Association Rights (Union Dues Checkoff)
3. Article XI. Work Year and Work Load
4. Article XVIII. Professional Salary
5. Article XIX. Non-Teaching Faculty and Professional Salary
6. Article XXI. Supplemental Benefits (Medical, Dental, Vision)
7. Article XXIV. Subcontracting
8. Article XXVIII. Hiring of Retired Bargaining Unit Members
9. Article XXX11. Duration

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is guided by the principles that are outlined in Ohio Revised Code Section 4117.14 (G) (F) (a-f) as follows.

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private

employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party. By agreement of the parties, the Fact Finder will transmit the Report and Recommendation, by way of electronic mail, on April 6, 2015.

DISCUSSION AND RECOMMENDATIONS

At hearing, the parties decided to forego an opening statement and moved directly to issues at impasse.

1. Article I. Recognition

Paragraph B of this provision of the Agreement provides for the deduction of fair share fees for those members of the bargaining unit who chose to not belong to

the Association. The Article also provides for “procedures for rebate.” The Employer proposes to eliminate the fair share fee provision of the Agreement. The Association opposes the proposal.

EMPLOYER POSITION: The Employer states that the wording of the statute is that the Agreement “may contain” a provision for the payment of a fair share fee by way of payroll deduction. The Employer argues that the word “may” indicates an option, and therefore the negotiations of fair share fee is a permissive subject of bargaining. Further, the Employer states that it may share in the liability if the Association’s internal rebate procedures are found to be out of compliance or unconstitutional. The Employer states that, in the current negotiations, it chooses to not deduct fair share fees from the pay of non members of the bargaining unit and urges the Fact Finder to find that the matter is, in any event, a permissive subject of bargaining.

ASSOCIATION POSITION: The Association states that there is no good reason to eliminate payroll deduction of fair share fees. There is no cost to the Employer, and current language includes the indemnification of the College for any cost or liability associated with a challenge to fair share fee amount. The Association states that a fair share fee provision has been included in every collective bargaining agreement since 1985, and the history of bargaining would preclude its elimination. The Association argues for the retention of the fair share fee provision.

RECOMMENDATION: The Employer's argument, that a fair share fee provision is a permissive subject of bargaining, is not factually or historically accurate. The parties have freely bargained over this issue in the past, and the matter is not permissive. The Employer states that the statute indicates that a collective bargaining agreement "may contain" a fair share fee provision. The parties may also bargain over wages and seniority rights, but the may does not equate to permissive, and the history of public sector bargaining in Ohio does not support the Employer's contention in these negotiations. Evidence submitted at hearing indicates that a fair share fee provision has been included in every collective bargaining agreement between the parties since at least 1988. The statute, ORC 4117, states that the history of bargaining between the parties must be considered in fact finding and conciliation. In essence, the Employer's proposal, to end the deduction of fair share fees, finds little sympathy in the context of the statute or these negotiations. The Employer presented no evidence that a substantial number of bargaining unit employees were non members of the Association. Further, if the proposal is made as leverage regarding issues at impasse, it is suggested that this is not an approach that encourages a collaborative relationship and attempt to find common ground in negotiations. The Association proposal, to maintain current contract language regarding fair share fee, is hereby recommended.

2. Article III. Association Rights

The current collective bargaining agreement provides for the deduction of Association dues, in Paragraph D. The Employer proposes to end the deduction

provision of the Agreement during the term of the successor agreement. The Association opposes the proposal.

EMPLOYER POSITION: The Employer states that the statute, ORC 4117.09, authorizes a public employer in Ohio to deduct union dues and fees upon written authorization of employees who are in the bargaining unit. The Employer argues that the statute does not mandate the deduction of Union dues. The Employer argues further that employees have a constitutional right of freedom of association, and the College should not inhibit such freedoms by withholding Association dues from the paychecks of its faculty. In addition, the Employer states that it does not deduct membership fees or payments for other organizations, and it should not treat the Association any differently. The Employer states that freedom of association is a critical point in its position and urges the Fact Finder to recommend the end to Association dues deduction.

ASSOCIATION POSITION: The Association states that the College and its trustees may not support the relationship with it as bargaining agent for faculty at the College, but the provision to deduct Association dues has a thirty year collective bargaining history and must not now be eliminated from the Agreement. The Association states that the Employer does, in fact, make payroll deductions for other organizations such as United Way, Horizon Scholarship and other such causes pursuant to College policy and Article XX of the Agreement. The Association argues that the deduction provision of the Agreement must not be compromised.

RECOMMENDATION: The Employer has agreed to deduct Association dues in every collective bargaining agreement with its faculty dating to at least 1985 and perhaps during pre-law times. The proposal to eliminate the deduction of Association dues therefore would not be supported by the statute, and the Employer's rationale is difficult to comprehend. The deduction of union dues is a basic offshoot of recognition of the bargaining agent. The Employer presented no evidence that the Association has lost support among bargaining unit faculty. It is doubtful that members of the roster of neutrals maintained by the State Employment Relations Board could recommend a proposal of this nature. The proposition of the Employer, that it does not deduct fees for other organizations, is simply not accurate, as the Association indicates. Article XX of the Agreement lists a series of payroll deductions available to bargaining unit employees including United Way, Horizon Scholarship in addition to other deductions in which there are at least five potential enrollees. If the Employer's proposal is one of leverage, an issue of this nature creates animosity and alienation and completely detracts from the difficult economic and wage structure proposals which deserve the attention and consideration of both parties. The Employer cites its concern regarding picketing at a meeting of the board of trustees and a vote regarding intent to strike. These are a distraction to productive collective bargaining, as the Employer suggests, but the Association views this proposal as a threat to its existence. There needs to be a different and more collaborative approach. The Employer's proposal is disruptive of the collective bargaining process as envisioned by the statute. The Association's

request to retain deduction of dues and the maintaining of current contract language is recommended.

3. Article XI. Work Year and Work Load

The Employer proposes significant modifications regarding the multiple provisions of this article. The Employer proposes to add two student advising days and reducing from eight to six professional development days. Faculty who teach online courses exclusively must spend six instructional hours on campus each week. Faculty must respond to student emails within 24 hours. Faculty will also spend two days advising new students. The proposal includes a modification to the calendar provided to faculty regarding the school calendar year. Preference over part-time faculty in the selection of classes will be modified. The proposal includes new responsibilities to share classroom material with other faculty; a requirement to record lectures; faculty may be required to teach certain web based classes; and faculty may be required to engage in recruitment activities. The proposal includes a modification to the calculation of compensation for student work experience assignments. The Employer proposes a reduction of overload hours to seven credits or eleven contact hours. The proposal includes the deletion of the section which outlines responsibilities to be considered bargaining unit work.

The Association initially made proposals to this article but, at hearing, declared that it was now requesting current contract language regarding all sections of Article XI.

EMPLOYER POSITION: The Employer states that its modifications to Article XI are based on the placement of the student as central to the mission of the College. The Employer contends that current contract language allows the Association to reject an academic calendar. The Employer argues that the Association possesses a veto over basic management rights. Nevertheless, the Employer states that its proposal does not increase the total number of days faculty members must work but instead moves to a student focus. This is the basis of the Employer's proposal to require faculty to spend more time on campus and involved in student advising and consultation. This is especially important regarding faculty who teach online courses who otherwise would have little or no face-to-face contact with their students. The Employer's proposal to reduce overload hours is based on the average hours allowed by community colleges which are most comparable to Northwest State Community College including Central Ohio Technical College, Terra Community College and others in Ohio (see Employer Exhibit 5). The Employer states that faculty may presently work a double load, in essence two jobs, and this detracts from the quality expected by students and the public. The Employer argues that the definition of bargaining unit work, as contained in the article, limits its ability to properly manage. The Employer states that its proposed changes to Article XI should be part of the recommendation of the Fact Finder.

ASSOCIATION POSITION: Initially the Association proposed a number of modifications to Article XI. In light of the Employer's re-working of the article, the Association withdrew its proposals at the fact finding hearing and advocated for

current contract language. The Association suggested that the Employer would prefer to hire adjunct faculty and reduce the number of bargaining unit employees. The Association states that it is time for the College to hire additional faculty. This would resolve certain issues such as excessive overload hours and other concerns expressed by the Employer regarding Article XI. The Association states that it cannot support the Employer's proposed changes to this article.

RECOMMENDATION: The Employer's assertion that the process must be student focused makes complete sense, and this goal is undoubtedly a shared goal because the faculty are likewise dedicated to the success of their students. Moving one or two days from the list of professional development days to time spent with students sounds reasonable, but no evidence was submitted at hearing regarding the tasks or programs in which faculty are engaged during their professional days. It is therefore difficult to present a recommendation regarding this issue which otherwise appears to be a reasonable request, and this proposal impacts Article XI in a number of areas. Other proposals regarding response time to email messages from students and student advising time appear to be reasonable although, again, it is uncertain what the trade-off might entail. This is also true of proposed face-to-face time with students who engage in online course work and study. As a lay person, this proposal is appealing. But it is difficult to determine the impact of reducing overload hours and what it would mean regarding quality of instruction. Comparisons made by the Employer to other community colleges indicate that faculty at Northwest State engage in many more overload teaching hours than their

peers. The Employer has proposed a significant reduction of hours. Faculty are, of course, concerned regarding lost income and the Association is concerned regarding what individuals might replace bargaining unit employees. Bargaining this proposition incrementally may be a better approach and may allow for data collection and review of experiential results. Additional Employer proposals to this article include the assignment of recruiting responsibilities, recording of lectures and the sharing of classroom materials. The Employer's proposals represent a significant cultural shift. Issues of this magnitude require time, listening, hard work and collaboration. In a review of collective bargaining agreements between the parties since 1988, the provision regarding Work Year and Work Load has been modified and expanded through the collective bargaining process. Changes have occurred incrementally by agreement of the parties through the collective bargaining process. Article XI has evolved from one Agreement to the next over the past twenty-five years and by the mutual agreement of the parties. The bargaining of a complete overhaul of this article in one negotiation cycle is a daunting task given the bargaining history. This does not mean it should take another twenty-five years to modernize and improve this provision. Technology has changed. Student needs have evolved. Expectations of the public are different. This is especially true based on an economy which demands new skills in a narrowed workplace.

There has been little communications between the parties regarding the Employer's proposal, and there clearly are uncertainties regarding many facets of the proposed modifications. Changes must come about through the collective bargaining process, and it is imperative both parties to the negotiations have equal

input. The starting point is the common goal of the Employer and Association to provide a high quality education and experience for students, business interests and community.

The recommendation therefore is the retention of current contract language for the duration of the successor Agreement. In addition, a new section of the Article is recommended as follows.

I. Special Labor Management Committee

The parties agree to form a special labor management committee regarding issues included in Article XI of the Professional Agreement. Both parties may submit ideas and issues to the Labor Management Committee. The work of the Labor Management Committee will consider the various proposals submitted by the Employer and Association during negotiations for this successor Agreement and any other ideas and concepts; to enhance the student experience at the College; to address evolving approaches and technology; and to ensure that the interests of bargaining unit employees are also the interests of the College. The committee will meet once each month beginning no later than ninety days following execution of the successor Professional Agreement. The committee will conclude its work no later than 120 days prior to the expiration of the collective bargaining agreement. The parties may meet more than monthly based on mutual agreement. By agreement of the parties, an interest based approach to deliberations of the committee may be adopted by the parties. In this instance, the parties will contact the Federal Mediation and Conciliation Service or the State Employment Relations Board to request a facilitator who will provide the training and facilitation necessary in an interest based process. The outcomes of the special labor management committee will be presented to the Employer and Association bargaining teams at the commencement of the 2017 negotiations. The parties may agree to modifications or additions to Article XI during the term of this Agreement by mutually agreed side letter or memorandum of understanding.

While the parties may be reluctant to submit their issues to the labor management committee process, the utilization of an interest based approach often produces good outcomes of mutuality within a non-adversarial environment.

Proper facilitation and training in the process are keys to success. The College and Association are strongly urged to consider this progressive approach.

4. Article XVIII. Professional Salary

The Employer proposes the abolishment of the current step pay system which guarantees an annual step increase of approximately 1%. The Employer proposes to freeze all bargaining unit employees in their current placement on the step schedule permanently. New employees, coming into the bargaining unit, will be paid based on a new wage system without annual steps, and wage will be determined by merit, education, certification, industry experience and the essential value of the area of study to the College. Following the adoption of the new pay system, the parties will bargain only for across the board increases as annual step increases will no longer exist. The Employer proposes increases for all bargaining unit employees as follows. 0% for the first year of the Agreement; 1% increase effective August 16, 2015; 1% effective August 16, 2016.

The Association opposes the proposal of the Employer regarding the elimination of the pay step schedule and the freezing of current employees in their current step. The Association proposes to move current faculty, effective August 16, 2014, to the step they otherwise would have been on following the three year freeze of wages which was bargained during the last negotiations. The Association proposes to increase the base pay for current and new bargaining unit employees. The Association proposes wage increases for all bargaining unit employees and added to the pay schedule as follows. 3% wage increase effective August 16, 2014;

3% wage increase effective August 16, 2015; 3% wage increase effective August 16, 2016.

EMPLOYER POSITION: The Employer wishes to adopt a pay schedule which is compatible with its needs for certain classifications of faculty and instructors but also based on its revenue stream. The State of Ohio provides for funding and subsidies based on course offerings which are available and of value to students and the community. Based on the funding stream, the Employer receives higher subsidies for math, engineering, nursing and other programs than courses, for example, in liberal arts. The Employer argues that its pay structure should reflect this economic reality, but at the same time rewarding certification, higher education and industry experience. The achievement of a Master Degree or PhD will be reflected in a higher wage. The Employer states that this is in contrast to the current wage structure which involves 40 steps and which automatically provides for an approximate increase of 1% each year. The Employer states that current members of the bargaining unit will suffer no harm as they will be frozen on their current step, but the Employer also states that most current faculty are paid at a higher rate than what the new system would provide (Exhibit 6 a). And in addition, the Employer states, bargaining unit employees will receive two 1% wage increases during the term of the successor Agreement.

The Employer states that its funding is dependent on the state legislature, and there is a move to reduce per student funding based on a change in formula. In addition, a 2% cap on tuition increases may be imposed next year and a 0% cap the

following year. The Employer is forced to budget in a conservative manner as the College has lost enrollment over the past several years following the dissipation of the recession. The College has realized a 9% loss of enrollment from 2014 to 2015. The Employer states that it may be forced to revise its current budget. The Employer states that recent legislation has mandated a budgetary reserve. Although the 2015 budget will be balanced, there may be departmental cutbacks. In addition, funding is dependent on students completing their courses of study. The Employer states that it is not arguing an inability to pay but rather that it is imperative to live within the limitations of its budget and current revenue streams.

The Employer states that, based on community colleges across the state and especially those which compare most closely to Northwest State, current faculty salaries are 6% higher than the mean, and the SERB wage survey indicates that the Association's proposal of three 3% wage increases is excessive and not in line with negotiated public sector wage increases across the state. The Employer states that the Association's wage proposal would be the equivalent of a 15% increase based on roll-up costs and compounding.

The Employer states that it is unrealistic to grant a wage increase during the first year of the successor agreement due to the "me-too" provision in the OEA non-teaching labor agreement with the College. Further, the Employer states that the Association delayed negotiations which negates any good reason to negotiate retroactivity. The Employer proposes a three year Agreement which commences on the date of execution by the parties. The Employer asks that the Fact Finder closely

review its overall wage proposal which creates a competitive and fair system of compensation as the forty step schedule has become obsolete and unworkable.

ASSOCIATION POSITION: The Association states that it agreed to a wage freeze during the previous negotiations, and bargaining unit faculty received no increases for three years including a freeze in step advancement. The Association also states that it has waived the “me-too” provision in its support staff collective bargaining agreement. The Association cites data which indicates that the College has experienced an increase in enrollment over the past several years. In addition, the Employer enjoys a healthy financial outlook as annual carry-over funds have increased over the past several years. The Association cites financial records which indicate end of 2014 net assets of \$28,488,135. Expendable net assets at the end of 2014 are \$9,341,715. The Association states that, although there has been a modest decrease in student population more recently, cash assets continue to increase. The Association argues that it is difficult to project future revenue streams based on future legislative or administrative action. The Association reminds the Fact Finder that bargaining unit faculty received no increase in wages for three years. The Employer is now reaping the savings. The Association argues that the Employer is able to afford its wage proposal including the restitution of lost step increases.

The Association states that the proposal to abolish the step schedule is unrealistic. The history of bargaining is clear that both parties consistently negotiated over the step schedule (Exhibit 3, pg. 1). The parties bargained a 20 step program in 1989; a 30 step program in 1991; a 35 step program in 1995; and 40

steps in 2006. At times the parties bargained an increase in the step schedule in lieu of an across the board wage increase for faculty. The Association suggests that the wage step schedule at the College is similar to that which is in place in comparable community colleges. The Association states that the Employer, at hearing, provided no evidence that the model it has on the table is replicated in any other community college in Ohio. The proposal would result in a loss of income for faculty who were hired with the expectation of progressing through the step schedule and receiving the resulting increases. The Association states that establishing wages based on specific categories of courses lacks equity. For example, an instructor in a writing course may receive a lower wage than one teaching in an engineering program, but the ability to write is critical in all disciplines.

The Association argues that it did not delay the negotiations, and it expected the completion of bargaining prior to the expiration of the previous Agreement. Its proposal for retroactivity is justified especially in light of the three year wage freeze and the waiver of the “me-too” provision. The Association states that its wage proposal is affordable. The Employer’s proposal lacks equity and would result in a loss of income, in the long run, for all bargaining unit employees.

RECOMMENDATION: The Employer’s wage plan is intriguing and open for close analysis. The Association proposal, following a three year wage freeze, is compelling as well. The Employer’s proposal represents a dramatic change in approach and culture. This is not to demean the proposal and representatives who have developed the model. But it is not surprising that a significant shift in culture

would meet with resistance and questioning. Further, the proposal, in its current format, leaves little room for adjustment and bargaining. Evidence indicates that it has not been modified through the bargaining process since it was presented early in the negotiations. And this is the problem. Any wage proposal or model is open to negotiations. This is what the statute envisions. Wages and pay schedules are mandatory subjects of bargaining. There is a clear history of bargaining between the parties over wages and the current structure going back thirty years. The parties mutually developed the current 40 step wage schedule. They freely negotiated additional steps along the way, 20 in 1989, 30 in 1991, 35 in 1995, and 40 in 2006. And based on the process of collective bargaining, the parties undoubtedly had good reason to develop a pay schedule with additional steps over time. The give and take, the quid pro quo, of the bargaining process. To completely abandon the model is a difficult proposition for the Association which feels it had no input in its development. It is important for the parties to understand that the gap must be bridged through the collective bargaining process, and this may take time, more time than a six month period of renewal negotiations for a successor Agreement. It is difficult for a fact finder to recommend a change of this magnitude when it is clear that little or no serious negotiations have occurred related to the Employer's proposal. No blame cast on either party. The Employer's proposal and modifications to the pay system may present opportunities to both parties, but this will take time. The continued existence of a 40 step wage schedule should be open for discussion as it may have become cumbersome. There are approaches to collapsing a lengthy step schedule while preserving equity. The Employer's

proposal, to freeze current employees in their current pay step, poses its own problems over time, for example, faculty members earning different wages for basically doing the same work with same or similar years of service. The Employer's proposal is tantamount to a two tier wage plan. New bargaining unit employees earning less over time as compared to senior faculty with no ability to "catch-up." Two tier wage systems, which do not provide for catch-up, often result in morale issues over time. But these are the issues over which the parties must bargain. It is not appropriate for a fact finder to guess at what might work. This is especially true knowing the parties' history of bargaining over wages.

The Association proposal, to maintain current contract language regarding Article XVIII is recommended including Appendix A and B except as follows.

In contract year 2014-2015 (effective August 16, 2014) the increase to the base salary will be 2%. (The Employer's initial concern regarding the "me-too" provision was justified, but the Association's Memorandum resolves this concern.)

In contract year 2015-2016, the increase to base salary is 2%.

In contract year 2016-2017, the increase to base salary is 2%.

Evidence indicates that the Employer is able to fund the recommended increases, which compare well to trends across the state, and this is especially practical following the three year wage freeze.

The Association's proposal to place faculty on the step they otherwise would have been on if not for the wage/step freeze negotiated in the previous Agreement is not recommended. There is no evidence that there was an agreement between the parties to place employees back into the higher steps when the freeze ended and

no expectation that this would occur. Nevertheless, it is recommended that bargaining unit employees move to the next step on the wage schedule effective August 16, 2014 and that annual steps continue for the duration of the Agreement.

The Association notes in its pre-hearing position statement that a grievance is pending regarding steps. No evidence came into the hearing regarding this issue. There is no recommendation regarding this matter.

Language regarding the previous wage freeze should be deleted from this article.

In addition to the wage recommendations contained herein, the following recommendation is made regarding new Paragraph I.

I. The parties agree to meet in labor management meetings during the third year of the collective bargaining agreement, beginning in August 2016, to consider and discuss the wage schedule with the goal of updating and reviewing a system which may reduce or substitute the 40 step wage model with an updated and progressive system. The parties may contract with a wage and classification specialist to assist and provide advice in the development of the pay system which meets the interests of both the Employer and Association. The work of the labor management committee will be submitted to the respective negotiating committees at the commencement of negotiations for a successor agreement in 2017. By mutual agreement, the parties may modify the wage schedule during the term of the Agreement.

5. Article XIX. Non-Teaching Faculty and Professional Salary

Both parties presented proposals regarding the bargaining unit status of certain non-traditional faculty positions and non-teaching positions. During hearing at Fact Finding, the parties reached and signed a tentative agreement regarding this issue.

The Employer proposes to place non-teaching faculty on the wage schedule it has proposed pursuant to Article XVIII with an elimination of the wage step schedule. The Employer's wage increase proposal is consistent with that proposed for Article XVIII, two one percent increases during the term of the successor agreement.

The Association's proposal regarding wages is consistent with that which is proposed in Article XVIII.

EMPLOYER AND ASSOCIATION POSITIONS: The rationale is consistent with that submitted for Article XVIII.

RECOMMENDATION: The recommendation regarding wages for this portion of the bargaining unit is the same as that which has been recommended regarding Article XVIII. This includes the 2% wage increase effective August 16, 2014; 2% wage increase effective August 16, 2015; and 2% wage increase effective August 16, 2016. The recommendation, as found in Article XVIII, includes the resumption of step increases beginning August 16, 2014 but no inclusion of lost steps during the three year wage freeze. Reference to the wage freeze in this article is to be deleted.

6. Article XXI. Supplemental Benefits

The Employer proposes to maintain the current health insurance plan during 2015. During contract years 2016 and 2017, the Employer proposes to move to a cafeteria style health care plan for hospitalization, dental and vision benefits. All

medical plans offered by the Northern Buckeye Health Plan (NBHP) will be available to bargaining unit employees. The plans include hospitalization, dental and vision coverage. Each employee will be provided with \$1000.00 toward the purchase of the selected health care plan. Employees who select a high deductible plan will be provided with \$900.00 to be deposited into a Health Savings Account with an additional amount of \$100.00 per month. In the case of both spouses being employed by the College, only one will be provided with family coverage.

The Association proposes to maintain the current health insurance plan during 2015. The Association rejects the Employer's proposal to provide insurance through the Northern Buckeye Health Plan in 2016 and 2017. The Association proposes instead the option of a High Deductible Plan to be provided through Access+1A, the current health insurance carrier. The Association proposes that the Employer provide a \$900.00 allowance for employees who select the high deductible plan. In the case of both spouses being employed by the College and who select the high deductible plan, the Employer will provide the \$900.00 allowance plus \$100.00 per month for a total family HSA allowance of \$2000.00 annually. The Association proposes an increase from \$450.00 to \$600.00 for placement into the Section 125 account on the first day of January of each year of the Agreement.

EMPLOYER POSITION: The Employer states that its proposal for the second and third year of the Agreement expands health care options for employees. The Employer argues that not all employees have the same health insurance needs. The Employer states that its administrators are being placed on the plan proposed for

the bargaining unit. The Employer states that the high deductible plan along with the proposed HSA contribution may allow for no employee health insurance costs. The Employer states that monthly premium costs for employees are on the low side when compared with employees at various community colleges in Ohio (Exhibit 22). The Employer states that it is willing to provide \$1000.00 for each employee on the new plans during the second and third years of the successor Agreement. The Employer urges adoption of the new health care plans in 2016 and 2017.

ASSOCIATION POSITION: The Association states that it is opposed to a cafeteria style health care plan. Health care insurance costs for the Employer have remained comparatively low, and there is no reason to move to a completely new approach and provider. Nevertheless, the Association argues, employee costs for health care have increased during a time in which bargaining unit members have realized no increases in salary. Benefits as a percent of salary have increased over the past several years. The Employer's plan for 2016 and 2017 will increase costs for employees. The Association states further that non bargaining unit employees have been offered significantly more by the Employer compared to the \$1000.00 allowance proposed in the instant case. The Association advocates for its proposal for the second and third year of the Agreement.

RECOMMENDATION: The Employer's proposal is complex, and it represents a change in culture and approach regarding health care benefits for bargaining unit employees. The Association's opposition to the proposal stems from a reluctance to

adopt a plan with uncertainties and with the potential for higher costs for bargaining unit employees following the three year wage freeze. Moving from a traditional health care plan to a cafeteria approach requires education and a collaborative discussion. Evidence at hearing indicates that this has not taken place at the bargaining table. If the offered Northern Buckeye Health Plans are indeed beneficial for employees, the Employer must be certain to provide the information and education. There is no evidence that a representative from Northern Buckeye discussed the new plan format with members of the Association's negotiating committee. The movement to a plan of this format requires careful planning and partnership with the bargaining unit. Such collaboration would be expected well before the commencement of negotiations for a collective bargaining agreement, but there is no evidence that this has occurred. Such discussions and collaboration would be critical as the Ohio Educations Association represents two bargaining units at the College and therefore a significant percentage of employees. Many employers and unions have moved to permanent joint health care committees to analyze and discuss changes and improvements to health insurance packages. The parties at the College are advised to consider this approach.

The Association states that the Employer has offered non bargaining unit administrators the health care plan which is proposed in these negotiations except that the allowance is greater than the \$1000.00 offered during bargaining. At hearing, the Employer admitted that administrators will receive a higher allowance. The Employer stated further that it would have offered the bargaining unit a higher amount if it had been willing to agree to other unresolved issues. This is a problem

for the fact finder as it would be important to understand the bottom line regarding an issue of this nature in order to develop a recommendation that might bring the parties to settlement. Not only does the Association not have complete information regarding the health care issue, but the fact finder is also left in the dark over the bottom line issue of employee cost. By the time parties are at fact finding, this information is essential in the development of a recommendation. This neutral has observed parties to the bargaining process develop a cafeteria health care plan option with a negotiated Employer allowance or contribution. Such plans have the capacity to provide a health care plan which benefits employees and the Employer. The key is a collaborative approach and collective bargaining. There is no evidence that this has occurred to any great degree in these negotiations.

The recommendation mirrors the Association's proposal to maintain the current health care plan during 2015 and beyond with the addition of a High Deductible Plan in 2016 and 2017 as follows.

Article XXI. Supplemental Benefits

A. Group Benefits

Group health insurance will be Access+1A with the spousal rule in effect (except for unit members who opt in 2016 and/or 2017 for the HDHP – High Deductible Health Plan – see below). Annual Employee contributions for Access+1A are based on the amounts listed below.

2015-2017 Rates:

Single: \$22/Pay

Family: \$95/Pay

Employees will receive a \$450 contribution to their Section 125 account on January first of each year the contract is in place. This account may be used by the employee to offset any increased out-of-pocket expenses.

During the open enrollment periods for 2016 and 2017, unit members may opt to substitute a High Deductible Health Plan (HDHP) for Access+1A. Any employee who chooses this option will be given an allowance of \$900 per covered employee to be applied toward the purchase of the employee selected HDHP. Any remaining amount not used toward medical insurance premiums will remain in the employee's Health Savings Account (HSA) pursuant to IRS regulations.

Additionally, for any employee or family (in the case of situations where both spouses are employed by the college) that selects HDHP, \$900 will be deposited in January into a Health Savings Account (HSA) and throughout the year an additional \$100 per month will be added to the HSA for an annual total of \$2000 per year per family. The HSA belongs to the employee and is portable at whatever time the employee chooses to leave employment with the college.

The recommendation includes current contract language in the remainder of Article XXI.

7. Article XXIV. Subcontracting

The Employer proposes language to allow for the subcontracting of bargaining unit work. If said contracting of bargaining unit work results in the layoff of bargaining unit employees, the Employer will meet and confer with the Association. The Association opposes the proposal and asks to maintain current contract language.

EMPLOYER POSITION: The Employer states that it wishes to reassert its right to contract out bargaining unit work which it feels is a management right. The Employer states that it would be willing to discuss the subcontracting out of any bargaining unit work, but it does not support the Association having veto power. Nevertheless, the Employer states that it does not anticipate the elimination of

bargaining unit positions. Its proposal essentially would be utilized for teaching assignments which cannot be taught or covered by bargaining unit members. The Employer asks the fact finder to return this basic management right to the College.

ASSOCIATION POSITION: The Association states that the current provision of the Agreement works well. There has been little controversy or problem regarding the language as currently written. The Association states that the current provision has been incorporated in the collective bargaining agreement since 1988, and, based on history of bargaining, the fact finder is precluded from recommending the Employer's proposal to subcontract bargaining unit work.

RECOMMENDATION: The Association's argument, that the history of bargaining is a critical factor regarding the subcontracting provision of the Agreement, has merit. Evidence is clear that the current subcontracting provision has been in the Agreement since 1988. There is no compelling reason to adopt the Employer's proposal as there were no specific examples presented at hearing to indicate the need to use outside employees to perform bargaining unit work. The Employer stated that it could not anticipate the specific replacement of bargaining unit faculty and indicated that its proposal was "diminimus." There is no reason therefore to recommend the proposal of the Employer. The recommendation is to maintain current contract language in Article XXIV.

8. Article XXVIII. Hiring of Retired Bargaining Unit Members

The Employer proposes to adopt its new wage model based on its Article XVIII proposal. The Association proposes current contract language.

EMPLOYER POSITION: The Employer states that this proposal is consistent with its Article XVIII proposal regarding wages for all bargaining unit employees.

ASSOCIATION POSITION: The Association objected to the new wage model proposed by the Employer and therefore opposes it regarding this provision of the Agreement.

RECOMMENDATION: In addition to the Employer's proposal regarding the new wage model, the proposal also included a number of minor modifications. These were not addressed at hearing by either party. The recommendation is current contract language consistent with the recommendation presented for Article XVIII.

9. Article XXXII. Duration

The Employer proposes that the term of the Agreement cover the period from the ratification and execution of the Agreement through and including August 15, 2017.

The Association proposes current contract language except for the change in dates, August 16, 2014 through August 15, 2017.

EMPLOYER POSITION: The Employer proposed no wage increase for school year 2014 to 2015 and believes that the Association stalled negotiations. The Employer therefore argues that the effective date of the successor Agreement should be upon ratification/execution.

ASSOCIATION POSITION: The Association has argued for a wage increase beginning in 2014 and the resumption of step increases and therefore states that the successor agreement should commence on August 16, 2014.

RECOMMENDATION: Based on the recommendation of a wage increase beginning in August 2014 and the history of previous collective bargaining agreements commencing on September 1 or mid August, the recommendation is for the term of the Agreement to commence on August 16, 2014 and end on August 15, 2017 as follows.

Article XXXII. Duration

This Agreement represents the entire understanding of the parties with respect to all matters and supersedes all prior agreements and understandings entered into between the parties. This Agreement covers the period from August 16, 2014 through and including August 15, 2017.

CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties, all facts presented at hearing and the exhibits submitted during the evidentiary hearing. In addition, the Fact Finder has given consideration to the positions and

arguments presented by the parties regarding each issue at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the specific recommendations contained in this Report and Recommendation, all tentative agreements, which were reached between the parties, are hereby incorporated in this Fact Finding Report and Recommendation. Any issues or sub-issues not addressed during negotiations are also intended to remain current contract language for the purposes of this Report and Recommendation.

Respectfully submitted and issued at Cleveland, Ohio this 6th Day of April 2015.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 6th Day of April 2015 a copy of the foregoing Report and Recommendation of the Fact Finder was served by way of electronic mail upon Kathryn Soards, representing Northwest State Community College; Michael N. McEachern, representing the Northwest State Community College Education Association; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

Thomas J. Nowel
Fact Finder