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**IN THE MATTER OF FACT-FINDING
BETWEEN**

KENT STATE UNIVERSITY)	CASE NO. 2014-MED-06-0892
)	
)	
AND)	
)	
)	<u>FINDINGS</u>
)	AND
LOCAL 153)	<u>RECOMMENDATIONS</u>
AMERICAN FEDERATION OF)	
STATE, COUNTY & MUNICIPAL)	
EMPLOYEES)	

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE

**Shelby Woodall
AFSCME Representative**

FOR THE UNIVERSITY

**James Wilkins
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SUBMISSION

This matter concerns fact-finding proceedings between Kent State University (hereinafter referred to as the University or Kent State) and Local 153, American Federation of State, County and Municipal Employees (hereinafter referred to as the Union or AFSCME). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were conducted on March 4, March 6 and April 27, 2015.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse with several issues being tentatively agreed upon by the parties. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit consists of all classified operating personnel at the University's Kent, Ohio campus. There are approximately 380 bargaining unit employees who perform various services for the students, faculty and other employees at the University's main campus.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

1. ARTICLE 48, WAGES

The Union proposes 5% wage increases in each year of the three year Contract. The Union also proposes an increase in the shift differential. The Union further proposes that bargaining unit members receive an incentive increase whenever there is an increase in enrollment. The University proposes an increase of 2% beginning with the pay period which contains the date of the ratification of the new Agreement. The University further proposes an additional 1% increase on October 1, 2016. The University is proposing only a two year Agreement.

The Union contends that the wages for most of its bargaining unit are low compared to those paid to similarly situated employees at other state universities. This is especially true for those in the first three pay grades which includes food service workers and custodians. The Union maintains that the wages for employees are so low that in some instances employee wages fall below the government poverty guidelines which for a family of four is about \$24,250. The Union submitted SERB data pertaining to comparable wages paid at other state universities.

The University maintains that it could face operating budgetary difficulties if the State prohibits it from increasing tuition. The University points out that tuition and fees represent one of the primary sources of funding for its operating budget. In addition, the State has cut its appropriation to the University which also is a main source of funding. As a result, the Employer argues that because of these budgetary concerns involving State funding and a freeze on tuition increases, the University must take a cautionary approach

and can only recommend a 2% wage increase upon ratification of the Agreement and an additional 1% to be effective on October 1, 2016.

ANALYSIS - This fact-finder after carefully reviewing the evidence pertaining to the Wage issue has determined that it would be reasonable to provide bargaining unit members with a 2% increase in wages retroactive to October 1, 2014, a 2% increase effective on October 1, 2015, and a 2% increase effective October 1, 2016. Further, this fact-finder would recommend that the employees in the first three pay grades on the Wage Scale be provided with a wage structure adjustment of an additional 15 cents per hour retroactive to October 1, 2014.

The evidence shows that the 2% wage increases for the first, second and third years of the Agreement recommended herein would be in line with those provided to comparable employees at other state universities. The SERB Wage Increase Report shows for example that at Ohio University, wages will be increased by 2% in 2014 and 1.5% in 2015. Likewise, the University of Cincinnati provided 2% increases on July 1, 2014 for its employees. Moreover, the 2% wage increases recommended herein would be in line with those provided in the parties' previous Contract. There is also every indication from a review of the University's fiscal year 2015 budget that it can afford the 2% wage increases. It should be noted that the University indicated that due to increases in student enrollment, it should end fiscal year 2015 with no deficit.

This fact-finder has also recommended that there be an additional 15 cents per hour increase provided to employees in the first three pay grades. This would be

equivalent to a little over a 1% increase for these employees based upon the median hourly pay in these pay grades. There are approximately 191 employees employed in the first three pay grades which includes food service workers as well custodial workers. It was shown by the Union that the current wages provided to these employees are relatively low compared to similarly situated employee wages at other state universities. For example even with the 2% general wage increase recommended herein, the food service worker base annual earnings would be approximately \$25,147. SERB's benchmark report of earnings at other universities indicates that the amount provided to Kent State University food service workers would fall below that paid to those at Ohio University and the Ohio State University. Likewise, the SERB report indicates that the custodial workers' pay at Kent State University falls considerably below that paid at other state universities such as Ohio University and Cleveland State University. It is for that reason this fact-finder recommends that these workers receive an additional 15 cents per hour wage structure adjustment to bring their wages more in line with similarly situated employees' wages at other state universities.

This fact-finder does not find any basis for the Union's proposal to increase shift differential. There was insufficient evidentiary support provided for such an increase in shift differential. The increase in shift differential which the Union seeks would also be quite costly for the University at an estimated \$314,000 per year. Likewise, this fact-finder would not recommend the Union's proposal regarding an enrollment incentive

bonus. Again, there were no other contracts cited to support an enrollment incentive provision.

RECOMMENDATION

It is the recommendation of this fact-finder with respect to Wages that there be an across the board 2% wage increase retroactive to October 1, 2014, another 2% increase on October 1, 2015, and another 2% wage increase on October 1, 2016. Further, it is recommended that there be an additional 15 cents per hour increase in wages for the first three pay grades retroactive to October 1, 2014 which will be considered to be a wage structure adjustment.

ARTICLE 48, WAGES

Effective October 1, 2014 - Two percent (2%) wage increase.

Effective October 1, 2015 - Two percent (2%) wage increase.

Effective October 1, 2016 - Two percent (2%) wage increase.

Effective October 1, 2014 - Wage structure adjustment of an additional 15 cents per hour increase for the first three pay grades.

Shift Differential - Current language, no change.

New Enrollment Incentive Provision - Not recommended.

2. ARTICLE 45, HEALTH INSURANCE

The Union proposes that during the life of the Agreement the premium paid by employees for medical insurance remain the same as the 2014 rate paid by unit members. Further, the Union proposes an expansion of the domestic partner benefit and that two representatives of the bargaining unit be allowed to be on the University healthcare committee.

The University proposes that the method of calculating employees' contributions to healthcare premiums that were utilized in 2014 remain unchanged for the remainder of 2015. Therefore, employees would continue to pay a monthly amount which will be calculated with the contribution at the median University salary level equal to 17% of the cost of coverage for the 90/70 PPO, 15% of the cost for the 80/60 PPO, and 13% of the cost of coverage for the 70/50 PPO. In 2016, the University proposes that the monthly contribution be increased to 19% of the cost of coverage for the 90/70 PPO, 17% of the cost of coverage for the 80/60 PPO, and 15% of the cost of coverage for 70/50 PPO. Further, the University proposes that the parties enter into reopener negotiations in July 2016 to negotiate all benefits set forth in Article 45 with the intention that such changes take effect on January 1, 2017.

ANALYSIS - After carefully reviewing the record presented regarding health insurance, this fact-finder would recommend that the current contribution rate for employees for healthcare premiums remain the same for the remainder of 2015 as well as for the second year of the Contract, 2016. Likewise, there would be no change in health

insurance plans offered currently under Article 45 for the first two years of the Contract. However, this fact-finder has determined that it would be reasonable to provide for a reopener on health insurance in July 2016 with the intent that any negotiated changes in employee contribution towards premiums or in plan design be implemented on 01/01/17.

This fact-finder finds that the current monthly contribution rates paid by employees for healthcare premiums is in line with that paid by similarly situated employees at other state universities. For example, the current contribution rate of 17% of the cost of coverage for the 90/70 PPO is similar to that paid by employees at the other universities. Moreover, there was insufficient basis established by the University to increase the monthly premium contribution rates for healthcare premiums during the second year of the Contract. As a result, this fact-finder recommends that the current method of calculating employee contributions for healthcare premiums utilized in 2014 remain unchanged for the remainder of 2015 as well as for 2016.

However, it was shown that for the third year of the Contract, there are many uncertainties facing the University with respect to health insurance plans. As the University indicated, it may be necessary to implement changes in plan design in order to avoid the Cadillac taxes under the ACA. The University officials further indicated that they anticipate an increase in medical insurance costs at some point during the life of the new Agreement. For that reason, this fact-finder finds it appropriate to recommend that the parties enter into reopener negotiations in July 2016 to negotiate all benefits set forth in Article 45 with the intention of any changes taking effect on January 1, 2017. Included

in the reopener would be the negotiations over any change in employee monthly contributions towards healthcare premiums for the final year of the Contract.

With respect to the Union's proposed change in the Domestic Partner Benefits Provision, this fact-finder finds that there was insufficient basis established for the changes proposed by the Union. This fact-finder would suggest that the parties review the Union's proposal in more detail to determine if it is possible to expand the domestic partner benefit. This fact-finder also does not find that there was any basis established for the healthcare committee proposal made by the Union.

RECOMMENDATION

It is the recommendation of this fact-finder with respect to Health Insurance that the current employee premium contributions remain the same for the first two years of the Contract. It is further recommended that there be a reopener on insurance in July 2016 for the purposes of negotiating all benefits set forth in Article 45 with the intention that any changes would take effect on January 1, 2017.

ARTICLE 45, HEALTH INSURANCE

For the remainder of 2015 as well as for 2016, the employee contribution rate towards healthcare premiums shall remain the same as the 2014 rate paid by the employees.

Reopener shall take place in July 2016 to negotiate all benefits including employee contribution rates set forth in Article 45, with the intention that any changes would take effect on January 1, 2017.

Domestic Partner Benefits - Current language, no change.

Healthcare Committee - No new provision as proposed by the Union.

3. ARTICLE 1, RECOGNITION AND DEFINITIONS

The University proposes that a number of classifications be added to the bargaining unit and that the Publications and Printing Department be removed. The Union does not dispute the positions being added in Section A of the Recognition Clause but did not agree to the removal of the Publications and Printing Department. The University further proposes the addition of a section setting forth the procedure by which it will notify the Union of the creation of any new bargaining unit classified job title. AFSCME has made a similar proposal but under Article 5 of the Agreement. The Union proposes a new section that will set a time line as to when the parties are to meet and discuss the creation of a new job classification including establishing a wage rate. The University as well as AFSCME agree that if the parties cannot reach an agreement on the inclusion of a new position in the bargaining unit, the issue would be submitted to SERB for resolution.

ANALYSIS - This fact-finder would recommend that certain classifications be added to Section A of the Recognition Clause. Both parties were in agreement as to those positions. In addition, this fact-finder would recommend that the Publications and Printing Department be removed as proposed by the University.

This fact-finder also finds that it would be appropriate to add a new section setting forth the procedure by which the University will notify the Union of the creation of any new bargaining unit classified job titles. The new section would set forth the procedure to be followed by the parties in discussing any new job classification

description as well as wage rate. This fact-finder finds that it would be reasonable to also provide for a mechanism for a temporary wage rate to be put in place until the matter can be resolved by the parties. It was shown that a temporary wage rate could be necessary in some instances so that the University could move forward with the new classification without any undue delay. Both proposals submitted by the parties include language whereby any issue which may arise would be submitted to SERB for final resolution. This fact-finder would like to add that this new section pertaining to the inclusion of a new classification in the unit should be included in Article 1 rather than Article 5 as the Union suggests.

RECOMMENDATION

It is the recommendation of this fact-finder that Article 1, Recognition and Definitions, Section A be amended to include a number of classifications which are to be added to the bargaining unit and that the Publications and Printing Department be removed. The Union agreed to the new classifications to be set forth under Section A, Article 1.

It is the further recommendation of this fact-finder that a new Section C be added under Article 1 which sets forth the procedure by which the University will notify the Union of the creation of any new bargaining unit classified job titles. This new section also sets forth the procedure by which the parties would meet to discuss the new classification job description and wage rate as well as the mechanism for a temporary wage rate to be put in place. The new section would also include language whereby if the

parties do not reach agreement on the inclusion of any new position in the bargaining unit, the issue would be submitted to the State Employment Relations Board for resolution.

ARTICLE 1, RECOGNITION AND DEFINITIONS

SECTION A.

Add new classifications as discussed and delete Publications and Printing Department.

NEW SECTION C.

The University will notify the Union of the creation of any new bargaining unit classified job title within those departments specified in Section A above within five (5) calendar days prior to posting. If the University and the Union agree that the new job title should be included in the unit, the parties shall meet and discuss the classification description and the appropriate wage rate. In the event the University and the Union are unable to reach agreement on the issue, the University shall establish a temporary rate, classification, and description and will promptly notify the Union in writing. The temporary rate, classification, and description shall remain in effect until there is agreement between the University and the Union. In the event the University and the Union do not Agree that the new job title should be included in the unit, then the Union's Staff Representative may submit the matter to the State Employment Relations Board.

4. ARTICLE 5, JOINT RESPONSIBILITIES AND EMPLOYEE RIGHTS

The Union proposes language to the effect that employees not be reclassified into a new position so as to remove them from the bargaining unit. The Union argues that this would result in the eroding of the bargaining unit. The University submitted a counter proposal which it claims provides more clarity regarding this issue than that submitted by the Union.

It should be noted that the Union also initially proposed under Article 5 a new section pertaining to the creation of new job classifications. As previously discussed, this fact-finder has determined that such a new section should be more appropriately addressed under Article 1, Recognition and Definitions. The fact-finder's recommendation on this matter was set forth under the Article 1 recommendation.

ANALYSIS - This fact-finder would recommend a modification to Section B of Article 5 that would prohibit the reclassification of bargaining unit employees which could erode the bargaining unit. This fact-finder finds that the University's proposal in this regard provides more clarity for such a prohibition. That is, it is the recommendation of this fact-finder that the additional language be included under Section B to the effect that the University would agree not to "either reclassify bargaining unit employees or" combine or redesignate departments for the purposes of eroding the Bargaining Unit.

RECOMMENDATION

It is the recommendation of this fact-finder that Section B of Article 5 be amended as follows:

ARTICLE 5, JOINT REPONSIBILITIES AND EMPLOYEE RIGHTS

- B. The Management of the University shall adhere to the provisions of this Agreement, and agrees not to either reclassify bargaining unit employees, or combine or redesignate departments for the purpose of eroding the Bargaining Unit.

5. ARTICLE 9, UNION STEWARDS

The Union proposes that Stewards be allowed to investigate and process grievances during work hours without loss of pay. Further, the Union proposes that release time be given to its President, Chief Steward and three Stewards to address issues related to the administration of the Agreement. The University proposes that Article 9 be amended to reflect the fact that a Fair Share Fee has been implemented. The University is opposed to giving Union Stewards the license to investigate grievances during work time upon mere notification to a supervisor.

ANALYSIS - This fact-finder does not recommend the changes proposed by the Union pertaining to Union Stewards. As indicated, the Union proposes that stewards be allowed to investigate and process grievances during work hours without loss of pay. The Union has further proposed changing the amount of release time to be given to the Union President, Chief Steward and three Stewards to address issues related to the administration of the Agreement. However, this fact-finder finds no basis has been established for these changes to Article 9.

There were no comparables cited pertaining to other universities where stewards have been allowed to investigate and handle grievances during work hours without loss of pay. To the contrary, a review of the other university contracts indicate that the current provision found in the parties' Agreement here is the same as that found in comparable contracts. For example, the University of Akron provides that union representatives are to perform their representational duties "totally outside of working time."

Moreover, this fact-finder finds that the current language set forth in Sections B, C and D are reasonable. Under Section B, the current language allows a steward to get permission from his supervisor to "process and handle" grievances but not to investigate them during working time. Section B further provides that permission from a steward's immediate supervisor "shall not be unreasonably withheld." Section C allows the Union President reasonable time during working hours without loss of pay to meet with Union or University representatives. Likewise, it is apparent that Section D was meant to provide that Union business is to be conducted on non-working time except for meetings scheduled with management.

RECOMMENDATION

It is the recommendation of this fact-finder that the Union's proposal for modification to Article 9, Union Stewards, not be granted. There was insufficient evidentiary basis established for making the changes proposed by AFSCME pertaining to Union Stewards.

ARTICLE 9, UNION STEWARDS

Sections B, C, D - Current language, no change.

6. ARTICLE 10, CONTRACTING AND SUBCONTRACTING

The Union proposes language under this provision which would prohibit the University from contracting out bargaining unit work when vacancies exist within a classification. Further, the Union proposes that overtime work first be offered to the bargaining unit members instead of that work being contracting out. The Union also proposes a provision which would protect against the erosion of the bargaining unit by offering work to contractors or subcontractors. The University opposes any change in the current provision as suggested by the Union.

ANALYSIS - This fact-finder does not find any evidentiary basis to support the Union's proposed changes to Article 10. There was no evidence produced that the University has engaged in any contracting out or subcontracting of unit work which has resulted in the erosion of the bargaining unit. It should be noted that the current provision under Section B of Article 10 states that in the event of any contracting out, the University will insure that no employee is laid off or takes a reduction in pay as a result.

Moreover, comparable contracts at other state universities show that the contract restrictions proposed by the Union here are not found in other agreements. For example, the Union has proposed that the University not be permitted to contract out bargaining unit work when vacancies exist within the classification. However a review of other University contracts including Cleveland State University, the Ohio State University, and the University of Cincinnati shows that such provisions on contracting out are not found in their agreements. Likewise, there are no comparable agreements which provide that

overtime is to be provided to bargaining unit employees before work can be contracted out. Once again, none of the other state university contracts including Ohio University and Youngstown State University provide for such a provision. It should also be noted that the current Paragraph B under Article 10 between the University and AFSCME provides that in the event of any contracting out, the University "will insure that no employee is laid off..." Such language is similar to that found in other state university contracts. For example, the Ohio State University CBA states that if the university engages in contracting out, no bargaining unit member is to be laid off as a result. Considering that comparable state university contracts contain language which is similar to that currently found in Article 10 here, this fact-finder can only conclude that the provision is reasonable and should be retained in the absence of any compelling reason to modify the provision.

RECOMMENDATION

It is the recommendation of this fact-finder with respect to Article 10, Contracting and Subcontracting, that there be no change in the current provision.

ARTICLE 10, CONTRACTING AND SUBCONTRACTING

Current language, no change.

7. ARTICLE 11, WORK OF SUPERVISOR

The Union has proposed language which would state that supervisors are not to perform bargaining unit work. Further, the Union proposes that student employees not be allowed to supervise or evaluate the work of bargaining unit members.

The University opposes AFSCME's proposals claiming that there is no evidence that the current provision which allows supervisors to perform a wide array of work has resulted in any erosion of the bargaining unit. The University also takes the position that there is no need to prohibit student employees from directing the work of bargaining unit employees because it is only on rare occasions that a student has assisted a newly hired bargaining unit employee in performing certain work.

ANALYSIS - This fact-finder would not recommend any change in the current Article 11, Sections A, B and C. There was insufficient evidence produced to show that these current provisions which allow supervisors to perform unit work in certain instances needs to be changed. There was no evidence that any such work of supervisors has resulted in the erosion of the bargaining unit. There have been no grievances filed to that effect under the current provision.

Moreover, provisions regarding supervisor work found in comparable collective bargaining agreements shows that the language which the Union seeks here is not found elsewhere. In all of the other state university contracts cited as well as those involving the City of Kent and the City of Akron, their contracts do not include language whereby supervisors are completely prohibited from performing bargaining unit work. A review

of the provisions found in the other state university CBAs shows that the provisions regarding work of supervisors is similar to that which is found in the Agreement here.

Likewise, none of the other university contracts cited contain any language like that proposed here which places restrictions on student employees. There was insufficient evidentiary basis established for the Union's proposal for a new provision covering student employees.

This fact-finder notes that AFSCME did present several witnesses who complained that supervisors have performed bargaining unit work which in turn deprived them of overtime. However, those witnesses acknowledged that they filed grievances over the matter and at least in one case received a favorable outcome. It appears to this fact-finder that under current language found under Article 11, if an employee believes that a supervisor is improperly performing certain bargaining unit work as described under Section A of that provision, then they clearly have the right to grieve the matter.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Sections A, B, and C of Article 11, Work of Supervisor Provision, be retained with no change.

ARTICLE 11, WORK OF SUPERVISOR

Sections A, B and C - Current language, no change.

No new provision regarding student employees as proposed by Union.

8. ARTICLE 12, BULLETIN BOARDS

The Union proposes language which would allow it to have access to all of its bulletin boards at any time of the day without management supervision.

The University is opposed to the Union's proposal to change Section B of Article 12. The University contends that the proposed language regarding the posting of notices without being supervised during work time is in conflict with the restrictions referenced in Article 9.

ANALYSIS - This fact-finder finds that there was insufficient evidentiary support to modify the Bulletin Board Provision as proposed by AFSCME. The current provision allows the Union to post items on the bulletin boards during non-work time. There was no evidence that supervision has violated this provision by denying the Union access to the bulletin boards during non-work time. In all respects, the current provision appears to be reasonable and should be retained.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Article 12, Bulletin Board Provision.

ARTICLE 12, BULLETIN BOARDS - Current language, no change.

9. ARTICLE 19, HOURS OF WORK

The Union proposes new language under this provision which would allow employees to clock-in fifteen minutes prior to the start of their work shift. In addition, the Union proposes that employees not be docked pay for clocking in seven or less minutes after the start of their shift. Further, the Union proposes changes to work scheduling wherein employees may be scheduled for work weeks other than Monday through Friday.

The University is opposed to AFSCME's proposal which permits employees to clock-in fifteen minutes prior to the start of their shift. The University also opposes allowing employees to clock-in up to seven minutes after the start of their shift without being considered tardy. The University claims that such provisions do not exist in comparable collective bargaining agreements and create issues with respect to the FLSA.

ANALYSIS - This fact-finder finds that there was insufficient evidentiary basis established for the new language which AFSCME has proposed for the Hours of Work Provision. While there were several AFSCME witnesses who testified in support of the proposals, it was shown that such proposals are not found in comparable collective bargaining unit agreements. Moreover, the University is correct in pointing out that allowing employees to clock-in fifteen minutes prior to their shift or to clock-in seven minutes past their start of their work shift without any loss of pay would create issues with respect to the Fair Labor Standards Act.

Comparable collective bargaining agreements show that the kind of provisions which AFSCME has proposed here are not found in these other state university contracts. For example, a provision like that proposed by the Union pertaining to clocking in before an employee's shift starts is not found in Cleveland State University's CBA or the Ohio State University CBA. Likewise, there are no clock-in after shift starts provisions in any of these other state university contracts including Ohio University and the University of Cincinnati. There are also no similar limitation language pertaining to an employee's work schedule found in the other university contracts cited. Therefore, comparable collective bargaining agreements do not support AFSCME's proposals regarding Hours of Work.

RECOMMENDATION

It is the recommendation of this fact-finder that there should be no new language set forth under the Hours of Work Provision proposed by AFSCME.

ARTICLE 19, HOURS OF WORK - Current language, no change.

10. ARTICLE 20, OVERTIME

The Union proposes a change in the maximum accrual of compensatory time from the current 120 hours to 180 hours. Further, it is proposed that employees be able to use compensatory time when needed, for personal use or for an emergency.

The University is opposed to the Union's proposal to change the maximum accrual of compensatory time. The University has submitted a proposal whereby an employee's request to use compensatory time in an emergency cannot be unreasonably denied.

ANALYSIS - This fact-finder has determined that there should be some modification to Paragraph C of Article 20 pertaining to the use of compensatory time. It would reasonable to provide that an employee may request immediate use of compensatory time for extraordinary or emergency personal needs. This provision shall provide that such requests are not to be unreasonably denied. This fact-finder does not find that the additional language which the Employer has suggested pertaining to an employee's prior history is to be taken into consideration with respect to these kinds of requests.

This fact-finder has further determined from the evidence presented that it would be reasonable to increase the maximum amount of compensatory time which employees can accumulate to 180 hours. This would be more in line with the maximum accumulation of compensatory time provisions found in other state university contracts. For example, the Ohio State University as well as Cleveland State University provide for

a maximum accumulation of 240 hours of compensatory time. Miami University also allows an employee to accrue up to a maximum of 240 hours of compensatory time. It should be noted that there was also some testimony by AFSCME witnesses that there is a need to increase the amount of maximum accrual of compensatory time.

However, this fact-finder would not recommend the additional language proposed by AFSCME to the effect that the University is to allow compensatory time to be used "at the employee's request." Such language is not found in other state university contracts pertaining to the use of compensatory time. Rather, the other comparable collective bargaining agreements contain language like that found in the parties' current CBA here. That is, compensatory time is to be granted at a time mutually convenient to the employee and the immediate supervisor. This fact-finder finds that the current language set forth under Paragraph B under Article 20 is reasonable and should be retained.

RECOMMENDATION

It is the recommendation of this fact-finder that the amount of maximum accumulation of compensatory time is to be increased to 180 hours. The only other change in Article 20 would be to add language whereby an employee may request immediate use of compensatory time for extraordinary or emergency personal needs.

ARTICLE 20, OVERTIME

- B. Increase maximum accrual of compensatory time to 180 hours.
Otherwise, no change in the current language set forth in Paragraph B.

C. Add additional language as follows:

An employee may make a request to the immediate supervisor or designee for the immediate use of compensatory time for extraordinary or emergency personal needs that require the employee's immediate attention. Such requests shall not be unreasonably denied.

11. ARTICLE 21, EQUALIZATION OF OVERTIME

The Union proposes language to compensate employees if they are by-passed for an overtime opportunity. The Union further proposes that dining services be considered one unit for overtime purposes.

The University opposes the proposals made by AFSCME regarding equalization of overtime. The University has proposed additional language to Article 21 whereby it would not need to request overtime work of an employee who on two occasions within a sixth month period of time has refused to accept overtime work.

ANALYSIS - This fact-finder has determined that with one exception, the current Equalization of Overtime Provision should be retained with no change. There was insufficient support to justify AFSCME's proposal to compensate employees when they are by-passed for an overtime opportunity. The current provision states that if an employee has not been given their overtime opportunity, then they are to be given the next available opportunity for an equal or greater amount of overtime. This provision appears to be reasonable. There was no showing that this current language has created any difficulties in equalizing overtime opportunities for the bargaining unit.

Moreover, comparable collective bargaining agreements do not contain provisions like that proposed by AFSCME here whereby employees are paid for denied overtime opportunities. For example, Cleveland State University, the Ohio State University and the University of Cincinnati do not have such provisions in their contracts.

There simply was insufficient basis established for the Union's proposal to compensate employees when they are by-passed for an overtime opportunity.

This fact-finder also would not recommend the proposal made by AFSCME to consider dining service as one unit for overtime purposes. The University presented several management witness who oversee the dining services operations on campus. As they pointed out, each service area such as Rosie's and Subway have different operational needs, standards and procedures for the employees working there to follow. Management witnesses were convincing in explaining that classifying all dining services as one departmental unit for purposes of overtime would create a number of operational issues. For that reason, this fact-finder would not recommend that dining services be considered to be one unit for overtime purposes.

The only exception to the above finding is that there was justification established that the Equalization of Overtime Provision should be extended to bargaining unit members for football games. As such, the overtime opportunities available at football games should be offered to bargaining unit members in accordance with the terms set forth under Article 21. Therefore for purposes of football games played by the Kent State University football team at Kent campus, all service areas within dining services will comprise one unit.

This fact-finder also has determined that there should be no new language included in Article 21 as that proposed by the Employer which was that the University need not request overtime work of an employee who on two occasions within a sixth

month period refuses to accept overtime work. There was insufficient basis established by the University for such a provision. Moreover, the current Paragraph C of Article 21 provides a reasonable method of handling those situations where an employee is unavailable or chooses not to work overtime assignments.

RECOMMENDATION

This fact-finder does not recommend the adoption of AFSCME's proposals to compensate employees when an employee is by-passed for an overtime opportunity. Current language set forth in Section G of Article 21 should be retained without any change.

Likewise, this fact-finder does not recommend the University's proposal concerning modification of Section C of Article 21.

Concerning Section I regarding departmental units, the only change which this fact-finder would recommend is New Section b as follows:

Dining Service

- a. Each service area is a unit - current language
 - 1) Prentice
 - 2) Rosie's
 - 3) Eastway 2nd fl.
 - 4) Beall Bake Shop
 - 5) Second Fl. Student Ctr., Schwebel and Kent Market 1st Fl.
 - 6) The Hub and Pete's Arenaand other similar units as established.
- New - b. For purposes of Football games played by the Kent State University football team at Kent State University, all service areas within Dining Services will comprise one unit.

With respect to the other sections of Paragraph I, there is to be no change, current language.

12. ARTICLE 26, CLEAN-UP TIME

The Union proposes that the amount of clean-up time provided to employees before the end of their shift and before lunch be increased from five minutes to fifteen minutes. The University opposes AFSCME's proposal to increase the end of shift and pre-lunch clean-up times.

ANALYSIS - This fact-finder has determined that there was insufficient basis established for any change in the amount of clean-up time provided to employees. The increases in the amount of clean-up time proposed by the Union would represent a substantial increase in cost for the University. The University showed that increasing the end of shift clean-up time from five minutes to fifteen minutes for all employees would cost the University approximately \$225,000 per year. Likewise such an increase for pre-lunch clean-up for custodial and maintenance employees would cost the University \$120,000 per year.

Comparable collective bargaining agreements involving other state universities show that if there are provisions for clean-up time, five minutes is the norm. The Ohio State University as well as Ohio University also provide for five minutes of clean-up time. In several instances, other state universities did not have any provision for employee clean-up time like that provided to the bargaining unit members here. Cleveland State University as well as the University of Cincinnati do not have such provisions. Therefore considering the cost impact on the University of AFSCME's proposals as well as the provisions for clean-up time found in other state university

collective bargaining agreements, this fact-finder must find that there was no justification established for any increase in the amount of clean-up time.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Clean-Up Time Provision as proposed by AFSCME.

ARTICLE 26, CLEAN-UP TIME - Current language, no change.

13. ARTICLE 27, LEAVES OF ABSENCE

The Union proposes new language whereby all bargaining unit employees would receive three personal days off each year. Further, the Union proposes that employees on the negotiating committee be permitted to negotiate during working hours without a loss of pay. Finally, AFSCME proposes that employees be provided with release time with no loss of pay to vote on contract ratification.

The University opposes each of the AFSCME proposals pertaining to additional personal days and release time for negotiating committee members. The University proposes that employees be provided with up to thirty minutes of release time without loss of pay once during the term of the Agreement to vote on ratification of a successor Agreement.

ANALYSIS - This fact-finder finds that there was insufficient evidentiary basis established in support of AFSCME's proposal to provide bargaining unit employees with three personal days off each year. It was shown that such a proposal would have a cost impact on the University of \$125,000 in each year of the Contract. A review of comparable collective bargaining agreements involving other state universities shows that in general employees are not provided with any personal days. The Ohio State University, Cleveland State University as well as the University of Cincinnati collective bargaining agreements do not contain any personal day provisions. Therefore considering comparables as well as the financial impact on the University, this fact-finder

would not recommend the adoption of AFSCME's proposal regarding the addition of three personal days for bargaining unit employees.

This fact-finder also does not find sufficient basis to support the Union's proposal that up to ten bargaining unit employees should be permitted to negotiate during working hours without loss of pay. Likewise, there was no evidentiary support presented for the Union's proposal to allow bargaining unit members with release time with no loss of pay to vote on contract ratification. Comparable collective bargaining agreements involving other state universities show that in general there are no paid release time for negotiation provisions included in their collective bargaining agreements. Likewise, paid release time for voting provisions are also not found in other state university CBAs.

However, this fact-finder would recommend the proposals submitted by the University regarding paid release time for voting on a new Contract. The University's proposal would allow bargaining unit members up to thirty minutes of release time without loss of pay once during the term of the Agreement to vote on ratification of a successor Agreement provided the polling is conducted on the campus. This proposal appears to be reasonable and addresses the Union's concern that employees be given release time to vote on Contract ratification.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no new personal day provision as proposed by AFSCME. It is also recommended that the other proposals pertaining to paid release time for negotiations and paid release time for voting submitted

by AFSCME not be adopted. However, this fact-finder would recommend that the following language be included in a new section pertaining to allowing employees to vote on Contract ratification.

ARTICLE 27, LEAVES OF ABSENCE

New Section O. Employees who are members of the Union will be provided with up to thirty (30) minutes of release time without loss of pay once during the term of this Agreement or any extension thereof to vote on ratification of a successor agreement provided the polling is conducted on the Kent campus.

14. ARTICLE 28, SICK LEAVE

The Union proposes that employees accrue sick leave at 6.25 hours rather than the current 4.6 hours for each eighty (80) hours of service. The Union also proposes language which would provide that for anyone for whom the employee stands in "loco-parentis" be added to the definition of immediate family for purposes of sick leave and/or funeral leave. The Union also proposes language whereby if the employee is incapacitated and unable to report off work, then they would be permitted to notify the Employer as soon as they are able to do so. Further, the Union proposes to increase the amount of sick leave that may be converted upon retirement or death.

The University opposes the Union's proposed change in sick leave cash out. It also opposes the additional language proposed by AFCSME pertaining to the sick leave provision. The current maximum payout of sick leave upon retirement is one-fourth of 120 days. The Union proposes to increase the maximum payout to one-half of the employee's accrued but unused sick leave.

ANALYSIS - This fact-finder does not recommend any change in the current Sick Leave Provision. There was insufficient basis established for the changes proposed by the Union. The current sick leave accrual of four and six tenth hours for each 80 hours of work is the norm at all state universities. Also, the current language pertaining to the definition of immediate family as well as the notification required of an employee who is incapacitated appears to be reasonable.

With respect to the Union's request to change the amount of conversion permitted of sick leave upon retirement, this fact-finder would not recommend the change proposed because of the cost implications as well as based upon comparisons with other state university contracts. It was estimated that the Union's proposed increase in sick leave accrual would have significant cost implications up to about \$218,000 per year. Moreover, a review of comparable state university contracts indicates that the current maximum cash out of sick leave upon retirement of one-fourth of 120 days is in line with that found in comparable contracts. For example, Cleveland State University's contract likewise provides that after ten years of service an employee can convert one-fourth of their accrued but unused sick leave up to 240 hours or thirty days. There was insufficient evidentiary basis established for the Union's proposed change in sick leave cash out.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no changes in the Sick Leave Provision as proposed by the Union.

ARTICLE 28, SICK LEAVE - Current language, no change.

15. ARTICLE 32, VACATION

The Union proposes to increase vacation accrual which would provide employees with fifteen years of service with twenty-five working days of vacation. For those employees with twenty-one or more years of service, the Union proposes to increase the amount from the current four weeks of vacation to six weeks. The University opposes any change in the current Vacation Provision.

ANALYSIS - This fact-finder would not recommend any change to the Vacation Provision. There was insufficient evidentiary basis established for the change in vacation accrual proposed by AFSCME. Moreover, it was shown that the University's unclassified employees currently have the same vacation benefits that AFSCME employees have at the current time. Any increase in the amount of accrual for the bargaining unit here could mean that the University might have to provide the same increases to its unclassified employees. This would have a significant cost impact upon the University.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Vacation Provision.

ARTICLE 32, VACATION - Current language, no change.

16. ARTICLE 33, HOLIDAYS

The University proposes amending this article to require that employees be in pay status on his/her normal workday immediately preceding and immediately following a holiday in order to be entitled to holiday pay. AFSCME is opposed to such a change.

ANALYSIS - This fact-finder would not recommend any change in the current Holiday Provision as proposed by the University. The current provision already provides that an employee must be in active pay status on their normal workday immediately preceding a holiday in order to be entitled to holiday pay. The University has proposed adding language to the effect that the employee must also be on active pay status immediately following a holiday in order to be entitled to holiday pay. While the University has cited comparable collective bargaining agreements, a close review of those contracts indicate that there are several which do not require an employee to be on active pay status following a holiday in order to be entitled to holiday pay. For example, the Ohio State University has no such provision. Likewise, Central State as well as Shawnee State Universities do not have such provisions in their CBAs. There simply was insufficient showing made that the change proposed by the University is warranted at the present time.

RECOMMENDATION

It is the recommendation of this fact-finder that the Holidays Provision remain the same without any change.

ARTICLE 33, HOLIDAYS - Current language, no change.

17. ARTICLE 35, SENIORITY

The Union has proposed additional language which would allow all employees on May 15 of each year the opportunity to bid on shifts, days off and work zone. The Union proposes that seniority be the deciding factor in awarding bids for these purposes. The University opposes any change in the Seniority Provision.

ANALYSIS - This fact-finder would not recommend any change in the Seniority Provision as proposed by AFSCME. There was insufficient basis established for providing that employees can bid on their shift assignments and days off once a year with the bids being awarded based upon seniority. As the University showed, allowing such a practice would require it to spend substantial sums on retraining employees every year and would unduly impact the University's overall operation at one of the busiest months of the year.

Moreover, seniority provisions in comparable bargaining agreements were shown to not have such provisions. Cleveland State University, the Ohio State University and Ohio University collective bargaining agreements do not contain any language which allows employees to bid into new shifts or job assignments based upon seniority. Considering these comparable CBAs and the lack of any significant evidentiary support to support the change recommended by AFSCME pertaining to seniority, this fact-finder would not recommend the additional language proposed by the Union.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the Seniority Provision as proposed by AFSCME pertaining to employees being permitted to bid on shift assignments and days off based upon their seniority.

ARTICLE 35, SENIORITY - Current language, no change.

18. ARTICLE 41, DISCIPLINE

The Union proposes language whereby the Employer would be required to provide documents and evidence to the Union two days prior to a predisciplinary conference. Further, the Union proposes new language pertaining to Last Chance Agreements which would limit the duration of the agreement to not more than three years.

The University proposes removing current Section G from this article which provides that certain discipline is to be removed from the employee's personnel file and cease to have any effect after a period of time.

ANALYSIS - This fact-finder has determined after a review of the record presented that there should be no change in the current Discipline Provision. There simply was insufficient basis established for either AFSCME's proposals or that presented by the University.

First with respect to AFSCME's proposal regarding the predisciplinary conference, the current language appears to be adequate. Under Paragraph A in Article 41, it is provided that an employee who is to be discharged or given a disciplinary suspension must first be given an opportunity to attend the conference where they can present their version of the incident. Likewise, it provides the employee with the right to have a Union Representative present.

It was also not clearly established that there should be new language included under the Discipline Provision which would limit the duration of the Last Chance

Agreements. It was shown that Last Chance Agreements have been negotiated by the parties on a case by case basis. Moreover, such Last Chance Agreement provisions are not found in comparable state university collective bargaining agreements. The Ohio State University as well as the University of Cincinnati CBA's do not contain any language pertaining to the expiration of Last Chance Agreements. There was no legitimate reason established for changing the current approach.

There was also no basis established by the University for its proposal to delete the current Section G. This provision provides that verbal and written reprimands are to expire upon twelve months with disciplinary suspensions expiring after twenty-four months. There was no justification established by the University for removing the expiration time periods for verbal and written reprimands as well as for disciplinary suspensions.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Article 41, Discipline Provision as proposed by AFSCME and the University.

ARTICLE 41, DISCIPLINE - Current language, no change.

19. ARTICLE 44, PARKING

The Union proposes that employees no longer have to pay for parking. The University proposes adding a new section to this article which would provide that the parking rates set forth in this article would not apply to any newly developed premium parking locations/parking decks.

ANALYSIS - This fact-finder has determined that the current Parking Provision for AFSCME employees is reasonable and should not be changed. Under the current provision, the University has agreed to provide free parking for its employees at locations specified by the University. It was shown that all AFSCME employees currently have access to free parking at one of the lots on campus. Moreover as the University points out, to provide free parking to AFSCME employees anywhere on campus would cost the University about \$57,000 per year. As the University maintains, this would most likely result in pressure from other employees to provide them with free parking as well.

This fact-finder also does not find any justification for the new provision proposed by the University. The University's proposal seems to imply that it would want to charge employees more in the way of parking fees for new parking locations than that set forth under Paragraph D of Article 44. That section states that staff parking permits cost employees \$12.75 per month. There was no showing made that there would be any need to change the cost of parking permits for newly developed premium parking locations.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no changes as proposed by the parties for the Parking Provision.

ARTICLE 44, PARKING - Current language, no change.

20. ARTICLE 49, TERMINATION

The University proposes a two year Contract commencing upon ratification of the new Agreement. AFSCME proposes a three year Contract through September 30, 2017.

ANALYSIS - This fact-finder would recommend that there be a three year Agreement beginning on October 1, 2014 which would continue through September 30, 2017. It was shown that the parties have had three year contracts in the past including in the prior Agreement which expired on September 30, 2014. There was insufficient basis established by the University for only a two year contract commencing on the date of ratification of the new Contract.

RECOMMENDATION

With regard to Article 49, Termination, this fact-finder would recommend a three year Contract commencing on October 1, 2014 and continuing until midnight September 30, 2017.

ARTICLE 49, TERMINATION

A three (3) year Contract commencing on October 1, 2014 through September 30, 2017.

21. NEW ARTICLE - SUCCESSOR

The Union proposes language which would allow the Collective Bargaining Agreement to remain in effect in the event the Employer consolidates or contracts out the work of classification of bargaining unit employees to another party. The University opposes any such new language.

ANALYSIS - This fact-finder has determined that there was insufficient basis established by the Union for a Successor Provision as it has proposed. There is absolutely no indication that the University is planning to transfer or contract out bargaining unit work to another party. In the absence of any evidence to support such a Successor Provision, this fact-finder would recommend that there be no new article as proposed by the AFSCME.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no new article entitled Successor as proposed by the Union.

NEW ARTICLE, SUCCESSOR - No new article.

CONCLUSION

In conclusion, this fact-finder hereby submits his findings and recommendations on the issues presented.

MAY 29, 2015

James M. Mancini /s/
James M. Mancini, Fact-Finder

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