



2. Comparison of the issues with those issues involving other public and private employees doing comparable work, with consideration of factors peculiar to the area and classification involved;
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

In the preparation of this report, I have been guided by the factors listed above.

When the Parties entered the fact finding process, there were, by my count, 138 unresolved items between them. This is larger than the number of contract sections for which changes were proposed, since in some cases both Parties proposed changes, and in some cases one or both Parties proposed multiple changes to a single section.

During the course of the proceeding, the Parties reduced the number of outstanding issues through tentative agreements and withdrawals of proposals. The Parties are well aware of the specifics and there is no need to itemize them here. However, I would make clear that I recommend that all tentative agreements for changes to the predecessor agreement be included in the new collective bargaining agreement.

## Analysis and Recommendations

I shall discuss the outstanding items in the order in which they appear in the predecessor agreement. It is tempting to deal with them in what might seem a more logical way, such as separating economic and non-economic items, or treating what I might consider related issues together, or addressing what I deem the most important or most difficult items either first or last. But with so many contract items to be discussed, doing so would create too much danger that one or more unresolved items would be lost in the shuffle, and I believe the safest course is simply to track the outstanding issues in the order in which they are covered under the predecessor agreement.

### **Article I B**

The Employer proposes a new Section B (with subsequent sections renumbered accordingly) adding what is commonly called a zipper clause, stating that the agreement is the full and complete agreement and supersedes prior agreements and memoranda of understanding.

I have not been made aware of any problems resulting from retention of “old” memoranda of understanding, and the addition of a zipper clause might do nothing more than create an additional point of contention in arbitration or SERB proceedings. Under the theory of “if it ain’t broke, don’t fix it,” I do not adopt this proposal.

- I recommend no change to the language of Article I B of the predecessor agreement.

### **Article I B 1**

The Employer proposes two additions to Article I B 1. The first would state that unpaid leaves of absence extend the probationary period. The second would provide that, with stated exceptions, probationary employees are not covered by the collective bargaining agreement.

The College maintains that the first proposal merely accords with State statute. It may well be that this proposal would work to the advantage of a probationary employee, since otherwise the Employer might be tempted to dismiss an employee it feels unable to evaluate because of insufficient time on the job. I recommend inclusion of this proposal.

The College asserts that its second proposal merely clarifies the existing situation. The proposal is similar to provisions found in many collective bargaining agreements, limiting the benefits available to probationary employees during their probationary period. It may be of benefit to both Parties to be able to point to specific contract language in explaining to a probationary employee why he or she is being treated differently from other employees, and I recommend inclusion of this proposal.

Specifically, I recommend that the existing language of Article I B 1 be retained, and that the following be added to it:

- Unpaid leaves of absence automatically extend the probationary period by an equal number of days.
- Probationary employees shall not be covered by the agreement except for wage, medical benefits, overtime, holiday, and union dues/fair share fee provisions.

### **Article IV B**

The College proposes that when the Association uses College facilities, it is to post such on the facility's calendar.

In my view this would not impose an undue burden on the Association, and could limit conflicts over usage of particular rooms.

I recommend that the second sentence of Article IV B be modified to read as follows, with the remainder of this Section retained unchanged:

- The use of College facilities must be scheduled through the Facility Scheduler and posted on the Facility's calendar.

### **Article IV D**

The Employer proposes that the current Article IV D be moved to Article VI, with no change in language, and that the remaining sections be renumbered accordingly.

I agree that this provision, which relates to the grievance procedure, fits more logically in Article VI (Grievance/Arbitration). This is purely a housekeeping change, not intended to change the obligations of either Party.

- I recommend that the current Article IV D be moved to become the second paragraph of Article VI B, with no change in language, and that the remaining sections of Article IV be renumbered accordingly.

#### **Article IV E (to become the new Article IV D)**

The College would limit leave to attend SERB proceedings to those held in Columbus.

The Parties have no control over where SERB chooses to conduct hearings. I see no reason why different rules should apply depending on whether SERB decides to hold a hearing in Columbus, Cleveland, Chillicothe or Cincinnati.

- I recommend no change to Article IV E of the predecessor agreement (except that it is to be renumbered as Article IV D).

#### **Article IV G (to become the new Article IV F)**

The College proposes that the copy of the agreement made available to employees shall be in electronic format.

The paperless society that had been predicted a couple decades ago has as yet failed to arrive. In my view the minimal savings to the College would be outweighed by increased inconvenience to employees, especially those who are not especially comfortable with computers.

- I recommend no change to Article IV G of the predecessor agreement (except that it is to be renumbered as Article IV F).

#### **Article V B**

The College proposes changes regarding materials to be provided to new employees. It seeks to change the time when the material is provided from the time of hire to the first day of employment, to change the material to be provided, and to require that the employee sign and date (rather than initial) to acknowledge receipt of the materials.

I see no reason why a new employee would need any of the material before actually starting work, and in the case of an employee who was hired but ultimately decided not to come to work, copying the materials would be a waste of time and paper. To that extent I adopt the Employer proposal.

A signature and date create no hardship for a new employee and provide a more authoritative acknowledgment than simple initials. I shall also adopt this Employer proposal

To the extent that the Employer seeks to eliminate some of the material to be provided to the new employee, I find no merit in the proposal.

Specifically, I recommend that Article V B be modified to read as follows:

- On the first day of employment, a new employee shall receive the following documents: job description, school support personnel agreement, insurance/benefit information (including but not limited to: policies and informational booklets), salary notice, and a copy of written rationale for placement on the salary schedule. Each new employee will sign and date a checklist that the documents were received and the employee will be provided a copy of his/her signed and dated checklist when it is completed.

### **Article V C**

The College proposes eliminating language restricting the Employer's access to employee computer information and office space.

An employee's privacy expectation, in my view, is limited where material the employee has generated is created on Employer premises, using Employer equipment and facilities (electricity, Internet connection), on Employer time. At a time when most people have their own personal communication devices, it is simple enough for an employee who wants to engage in a confidential communication to do so using her or his own cell phone, tablet or notebook computer. I conclude that there is merit to the College's proposal.

I recommend that Article V C be modified to read as follows:

- The College will continue to respect the reasonable expectations of privacy which employees have in regard to their personal effects on College property. Other staff will access a member's office space for defined job-related reasons only.

### **Article VI A**

The College proposes language that the Parties encourage mutual communication, and that grievance proceedings will be held in a mutually agreed upon location.

The proposal amounts to a clarification rather than a change in substance, and I recommend its inclusion. Specifically, I recommend that Article VI A be modified to read as follows:

- Nothing contained in this Article will be construed so as to prevent the informal adjustment of any grievance. The parties intend and agree that all disputes should be resolved, whenever possible, before the filing of a formal grievance and all parties are to encourage open communication between the Employer and its Employees so that resorting to the formal grievance procedure will not be necessary. During all phases of the grievance process the Association shall have the right to be present. Unless the parties enter into a written waiver to the contrary, Steps One and Two of the grievance procedure shall be pursued to completion before any application for arbitration may be made. In computing any time limit specified in this Article, Saturdays, Sundays and holidays shall

be excluded. The grievance process will be held at the NSCC Campus whenever possible in a mutually agreed upon location.

### **Article VI B**

As noted above, the College proposes to move language from Article IV D of the predecessor agreement to become part of Article VI B.

For the reason expressed earlier, I recommend in favor of this proposal, and repeat it here.

The College also proposes deletion of the following sentence from Article VI B “Grievances shall be presented and handled during regular working hours (8:00 AM to 4:00 PM).”

Adoption of this proposal might do more harm than good by generating disagreements over when grievances should be discussed. A possibly unintended consequence of deleting the sentence might be a claim that its deletion meant that grievances were no longer permitted to be heard during working hours. I recommend against adoption of this proposal.

- I recommend that the current Article IV D be moved to become the second paragraph of Article VI B, with no change in language.
- I recommend no other change to Article VI B.

### **Article VI C**

The Employer proposes that Step One of the grievance procedure is to begin with a written (rather than oral) notice to the employee’s immediate supervisor.

Using a written grievance will likely minimize disputes about when a grievance was filed, and over whether an employee actually intended to file a grievance as distinguished from merely venting about a matter.

I recommend adoption of the Employer’s proposed change, and that Article VI C be modified to read as follows:

- A grievance shall be initiated, by the aggrieved person, by serving written notice of the issue to the immediate supervisor within fifteen (15) days after occurrence of the facts upon which it is based or within fifteen (15) days after the grievant knew or through the exercise of reasonable diligence should have known of the occurrence. Individual employee grievances shall be filed in writing at Step One if the immediate supervisor has the authority to grant the relief sought.

The immediate supervisor shall schedule a Step One meeting and notify the Association and the grievant, if other than the Association, of the time and place of the meeting. The Step One meeting, unless extended by written agreement for a specified period, shall be completed within seven (7) days after the grievance is filed. Within five (5) days after the Step One meeting, the immediate

supervisor shall provide the Association and the grievant, if other than the Association, with a written answer to the grievance.

Attempts will be made to resolve any in-house grievance, prior to any SERB filing. The Association may file for SERB involvement at any time, but will consider requesting a 30-day stay to give the in-house grievance process time to be resolved on its own before any SERB action.

#### **Article VI D**

The College proposes increasing the current 10 day deadline for conducting a Step Two hearing to 15 days.

It appears that to date, when one Party has needed more time to schedule the Step Two meeting, the other Party has acceded. Delays in the grievance procedure often grow upon one another, and I see no reason to build additional delay into the procedure itself. This proposal strikes me as a solution where there is not a problem, and I do not adopt it.

- I recommend no change to Article VI D.

#### **Article VI E (Mediation)**

The Employer proposes a new Article VI E providing for grievance mediation, with the following sections to be renumbered accordingly.

The proposed mediation would be entirely voluntary: neither Party would ever be required to participate in the mediation of any grievance. The prospect of being able to resolve at least some grievances more quickly and less expensively than proceeding to arbitration commends itself. The potential benefit is high, and the potential cost is low, only a slight delay in reaching arbitration when mediation is proposed and declined, or where mediation is unsuccessful. (I note that the Federal Mediation and Conciliation Service does not charge a fee.) I recommend inclusion of the Employer's proposal as a new Article VI E, with the following sections to be renumbered accordingly:

- Grievance mediation is available as an option after the final step of the internal grievance procedure. Requests to mediate must be submitted within five (5) calendar days following management's Step Two response. If mediation is requested by a party and the other party agrees to mediate, the timelines for filing a request for arbitration will be tolled subject to the mediation procedure. A party refusing mediation must give written notice to the other party within five (5) calendar days of the request. If mediation is refused, applicable time limits for appealing a grievance to arbitration contained in the parties' collective bargaining agreement shall commence on the day the refusal notice is issued.

The parties agree to utilize the service of the Federal Mediation and Conciliation Service or other agreed upon mediation service.

### **Article VI F (Arbitration) (formerly Article VI E)**

The Employer proposes eliminating the ten day deadline for selecting an arbitrator after receipt of a panel.

Delays in proceeding to arbitration tend to accumulate exponentially. Ten days is generally enough to rank a Party's preferences on the list and to conduct the striking process. When a Party feel a need for additional time in a specific case, it is free to request it. Unlike the new Article VI E (Mediation) in this case the additional time cost is not accompanied by any corresponding benefit. I recommend against inclusion of this proposal.

- I recommend no change to Article VI E of the predecessor agreement, except that it is to be renumbered as Article VI F.

### **Article VII C**

The College proposes several changes. The first would eliminate the Job Audit Committee from consideration of alternative shifts, and relegate the discussion to the employee and the immediate supervisor. The other changes address lunch time.

The College argues that the Job Audit Committee should be involved in classifications, and not shifts. While there may be some semantic appeal to this notion, the Parties at some point agreed that the Job Audit Committee would have this role, despite its name, and there is no indication that any problems have resulted. I also see no need to change the lunch language. I shall recommend that Article VII C be retained unchanged from the predecessor agreement.

- I recommend no change to Article VII C of the predecessor agreement.

### **Article VII E**

The Employer proposes what I would term a "housekeeping" update, changing "37 ½" to "40" hours in keeping with the change to an eight hour day.

The proposal is in keeping with others to which the Parties tentatively agreed, and although my notes do not indicate that there was a specific tentative agreement with respect to this section, the proposed change seems a completely noncontroversial one.

I recommend that Paragraph 1 under Article VII E be modified to read as follows, with no other changes to the language of Article VII E:

1. Overtime/extra hours shall first be offered to the employee having the greatest seniority who is qualified to do the activity that would not put the employee over 40 hours for the week.

## **Article VII F**

The College seeks to change the year for calamity days with respect to part time employees from a September through August year to a calendar year.

As I understand it, the proposed change is in keeping with actual practice. It appears that a calendar year will be simpler to administer, but would not reduce any benefits for part time employees. I shall recommend adoption of this proposal.

I recommend that the third paragraph of Article VII F be modified to read as follows, with no other changes in Article VII F:

- Part-time employees will be paid for calamity days for their scheduled hours up to their calculated banked hours. Documentation for these hours will be taken from the annual seniority posting which shows the part-time employee's average/typical weekly hours worked. Banked hours will be determined by dividing the employee's total days worked into their total hours worked to determine their average hours worked per day. That number will be multiplied by 3 to determine the hours to be banked for the year. These hours will be in effect from January 1 to December 31 of each year.

## **Article VII G**

The Employer proposes to add a sentence that flex time schedules must be accounted for within the same work week.

The point of the proposal is to insure that flexing of work schedules will not subject the Employer to additional overtime liability. Since flexed schedules under Article VII G are implemented only with the mutual consent of employee and supervisor, this proposal may be superfluous. Nonetheless it does no harm that I can foresee, and may provide guidance for both employee and supervisor in crafting a flex time schedule.

I recommend that the following sentence be added to Article VII G, with the remainder of Article VII G being retained unchanged:

- Schedules that are flexed must be accounted for within the same work week.

## **Article VII H**

The Employer proposes deleting the second paragraph of this section, dealing with an "interest list" for part time work.

According to the undisputed evidence, the interest list has been abandoned in actual practice, and I believe that fossilized language has no useful purpose in a collective bargaining agreement. Accordingly, I shall recommend deletion of this paragraph.

- I recommend that the second paragraph of Article VII H be deleted, but that the first paragraph be retained.

### **Article VII I**

The College proposes deletion of this entire section.

As with Article VII H, the undisputed evidence is that this section has no current applicability. I shall recommend that it be deleted. Since there are no later sections under Article VII, no renumbering is required.

- I recommend that Article VII I be deleted from the collective bargaining agreement.

### **Article IX B**

The Employer proposes changing this section so that instead of being permitted to make copies of his or her personnel file, an employee would be required to request that copies be made.

There is no evidence that the current practice has been subject to abuse, and under the Employer's proposal supervisors would sometimes serve as high paid photocopyers. I do not recommend this proposal.

- I recommend no change to Article IX B.

### **Article IX C**

The Employer proposes deletion of this section restricting outsider access to employee personnel files, with corresponding renumbering of later sections.

I consider that public employees should not be naked to prying inquiries founded on mere curiosity, or even less worthy motives. I do not adopt the Employer proposal.

- I recommend no change to Article IX C.

### **Article IX E**

The College proposes elimination of the current Article IX E, which precludes anonymous materials as a basis for adverse action, and prohibits inclusion of such materials in employee personnel files.

Anonymous defamatory material is often prompted by malicious considerations, and is even less reliable than normal hearsay, which at least permits some inquiry into the motive of the accuser. I do not believe this section is intended to preclude the Employer from making inquiry into the validity of an anonymous complaint, but unless there is supporting evidence, an anonymous complaint should be given no credence. I find this proposal to be without merit.

- I recommend no change to Article IX E.

### **Article IX F**

The Employer proposes elimination of the first two sentences of this section, which call for employees to be apprised of matters added to or deleted from their files, and to acknowledge such.

In my judgment, an employee's interest in being alerted to changes in his or her file outweighs the minimal cost to the Employer involved. I do not support the proposed deletion of this section.

- I recommend no change to Article IX F.

### **Article X B**

The Employer proposes two changes. The first would change the information to be provided in the posting of vacancies. The second would eliminate the automatic bid imputed to employees on vacation.

Among the changes in postings the Employer would make are eliminating "Starting date." It observes that the starting date is seldom achieved. So far as I am aware, this has not led to any disputes, and I infer that the Parties have treated the specified starting date as an aspiration and not a promise. This proposed change seems unnecessary to me and I shall not recommend it.

The Employer's second proposal commends itself to me. The current provision for automatic bids on behalf of employees on vacation seems a relic from a bygone age, when employees on vacation were presumed to be incommunicado. With the Internet and cell phones, an individual is rarely beyond reach. The first sentence of Article X B provides for email notifications of vacancies to all employees. Presumably an employee on vacation need only check her or his email to see if there are any vacancies in which the employee is interested. Conversely, under the current language, an employee returning from vacation might be surprised to learn that he or she has been deemed to have bid on a position in which the employee has no interest. I recommend adoption of this proposal.

- I recommend that the final paragraph of Article X B (beginning "Providing an appropriate") be deleted and that the remainder of Article X B be retained unchanged.

### **Article X D**

The predecessor agreement provides that "Vacancies shall be filled with the most senior qualified applicant." The Employer proposes a change that would permit it to choose "from the 3 most senior most qualified applicants."

In my view the proposed change would provide the College with little practical benefit, while potentially generating disagreements over who is the "most" qualified applicant. As the section currently reads, the College is never required to place an employee in a position for which he or she is not qualified, solely on the basis of seniority.

- I recommend no change to Article X D.

### **Article X E**

The College proposes to change 30 days to 30 calendar days, and 60 days to 60 calendar days in connection with the trial period in a new classification.

This proposal has the benefit of eliminating the ambiguity of whether the days specified are calendar days or business days. The exact duration does not seem to be at issue, and clarity as to exactly what the duration is benefits both Parties. I recommend adoption of this proposal.

I recommend that Article X E be modified to read as follows:

- In the event of promotion or transfer from one classification to another or to a non-union position, the employee shall be given a trial period in which to demonstrate his/her ability to perform on the new job. The Employer shall give the promoted or transferred employee reasonable assistance to enable him/her to perform up to the Employer's standards on the new job. If the employee feels that they are unsuited for the position, they may return to their prior position during the first thirty (30) calendar days of the trial period. If, in the opinion of the Administration, the employee is unable to demonstrate ability to perform the work required during the first sixty (60) calendar days of the trial period, the employee shall be returned to his/her previous assignment.

### **Article X F**

The college proposes two changes to paragraph 3 of this section. The first would limit a promoted employee to a total of five years experience credit. The second would eliminate language providing that promoted employees are to be paid no less than the rate of the positions they are leaving.

It seems to me advisable that the experience credit should be capped rather than potentially unlimited, and I recommend inclusion of this proposal.

As far as I am aware, the provision for an employee to retain at least his or her prior rate when moving to a new position has not been the subject of abuse, and I see no need to change it. I do not adopt this proposal.

I recommend that paragraph 3 of Article X F be modified to read as follows, with no other changes to Article X F:

- Promoted employees will be placed on a step that equates to their prior experience related to their new position not to exceed a total of five (5) years of external credit and all applicable internal experience, and the step per diem rate or hourly rate will not be less than the per diem or hourly rate that they are leaving.

## **Article XI D**

The Employer proposes changes in the posting of the seniority list. The Union proposes that the seniority list be updated twice yearly rather than annually.

Any saving to the College that might result from its proposed changes would be minimal. It is useful that the seniority list be easily accessible to employees in both electronic and hard copy formats. I do not adopt the Employer's proposal.

The bargaining unit is not such a large one that updates would seem necessary twice, rather than the current once, each year. I do not adopt the Union's proposal.

- I recommend no change to Article XI D.

## **Article XII B**

The Employer proposes three changes. The first would state that layoffs are to be within the affected classification, a phrase that does not appear in the predecessor agreement. The second would permit a laid off employee to bump only the least senior (rather than a less senior) employee. The third would change "reduction in force" to "reduction in work force" in the second paragraph of the section.

The first proposed change would make clear that if the Employer concludes that it needs one fewer Library Assistants, it would not be required to lay off a Maintenance Technician instead simply because the Maintenance Technician has less seniority. I recommend its adoption.

In my view the second proposed change is unnecessary and perhaps harmful. It could be harmful in situations where a laid off employee was qualified to perform the jobs of some less senior employees, but is not able to perform the job held by the employee with the very least seniority. Since the existing language specifies that an employee may bump only into a position for which the employee is qualified, there is no danger that the current provision would force the College to place any employee in a position that she or he was not qualified to perform. The Employer raises the prospect of a sequence of bumps under the current language, but there is no evidence that this has ever occurred, and the bargaining unit is not so large that a layoff would likely set off a chain of bumps. I do not recommend adoption of this proposal.

The third proposal would merely bring the terminology of the second paragraph into conformity with that of the first paragraph, and would not bring about any substantive change. I recommend its adoption.

In summary, I recommend that Article XII B be modified to read as follows:

- No employee shall be laid off pursuant to a necessary reduction in the work force unless said employee shall have been notified of said layoff at least sixty (60) days prior to the effective date of the layoff. In the event of a necessary reduction in work force, the Employer shall first lay off probationary employees in the affected classification, then other employees in that classification by inverse order of seniority. In no case shall a new employee be employed by the Employer while there are laid off employees who are qualified for a vacant or newly created position. Employees whose positions have been eliminated due to reduction in work force or who have been affected by

a layoff/elimination of position shall have the right to assume a position, regardless of classification, for which they are qualified, which is held by a less senior employee.

Employees who are employed on grant monies shall be notified of a reduction in work force within thirty (30) days after the College has notification that the grant monies will no longer be available.

### **Article XIII C**

The Employer proposes that departments may designate “blackout” periods during which vacations may be restricted.

The language as proposed would place no limits on departmental discretion as to when and to what extent departments could restrict vacations, but would permit them to simply “declare” such restrictions. I regard the discretion as too broad and subject to abuse, and I do not accept this proposal.

- I recommend no change to Article XIII C.

### **Article XIV**

The Employer proposes several changes in language in this Article.

The proposal seems to me no more than a minor clarification, for example by making clear that the classifications referred to are classifications within the bargaining unit. I recommend adoption of this proposal.

I recommend that Article XIV be modified to read as follows:

- Classification System

Each Support Employee position will be placed within one of the columns of the classification system. Some factors considered in the placement of positions include, but are not limited to, knowledge, complexity, responsibility, personal contact, nature and purpose, physical conditions, organization required.

1. There shall be no change in classification unless there is a significant change in the job duties.
2. The Job Audit Committee will evaluate requests for change in classification. The Job Audit Committee shall consist of three administrators and three members of the Support Staff Negotiations Committee, or their designee. Members of the committee shall not be from the same department and will serve for a minimum three (3) year rotating one (1) member from each side each year. The employee and the employee’s supervisor shall serve the Committee as reference persons only. The Committee will select a chairperson from the members of the Committee.

3. A request for a change in classification of a bargaining unit position, based on a significant change in job duties may be initiated by an employee, the administration, or the NSCC Support Staff Negotiations Committee. The Party requesting the change in job duties shall complete a Position Description Questionnaire (PDQ). This is used to collect sufficient information about the bargaining unit position, duties, responsibilities, and qualifications in order that an appropriate assignment of a job classification can be determined.

After such a request, the Parties agree to attempt resolution of the issue within a thirty (30) day time period and the Committee shall render a written decision based on majority vote of the committee. The rate of pay for the classification or reclassification will be effective on the date of the filing or the date the Committee renders to be appropriate. In case a majority consensus is not reached, the President of the College shall cast the deciding vote. In addition, the President of the College may accept or reject the decision of the Committee.

If a position is moved to a lower classification, the affected employees have the rights described in Article XII-B.

A second request for a change in classification within a year must document new rationale.

4. New support staff positions, unless specifically exempted by law, shall be assigned to the bargaining unit if the job descriptions specify duties that are performed by unit members or which by the nature of the duties should reasonably be assigned to the bargaining unit. All new bargaining unit job descriptions will be developed by the administration and will be bargained by the administration and the Support Staff Negotiations Committee, along with the wages, hours, terms and conditions of employment.
5. Any new classes in the classification system will be bargained by the administration and the Support Staff Negotiations Committee, along with the wages, hours, terms and conditions of employment for said classes.

## **Article XV**

The College proposes to delete the reference to Appendix C. This is in keeping with its proposal (discussed within) to eliminate all appendixes other than the medical summary. It also proposes a language change in Paragraph 3 to eliminate a reference to the "Director" of Human Resources.

As I understand it, the proposed language change is in conformity with current reality and does not amount to a substantive change. I shall recommend it. I see no harm in retaining a copy of the job description form as an appendix, and I do not recommend this proposed change. To the extent that the job description may need to be updated from time to time, the Parties should be able to accomplish any modifications by mutual consent.

My recommendation with respect to Article XV is;

- Paragraph 3 shall be modified to read as follows, but in all other respects Article XV shall be retained unchanged:
  3. Changes to the job description that result in change of starting and/or ending time for full-time employees, part-time to full-time, or classification will require the position to be re-posted. However, if an employee has been in a position for a period of three (3) or more years, the position shall not be re-posted. Special circumstances will be reviewed and mutually agreed to by the Support Staff Negotiations Committee and the Department of Human Resources leadership.

### **Article XVII A**

Both parties propose updating Article XVII A to provide hospitalization coverage to dependent children up to age 26.

I shall recommend this modification to Article XVII A.

In addition, the Union proposes new language that would prohibit change to medical coverage that “negatively impacts” any member. It also proposes an increase from \$450 to \$1000 in the Section 125 account contribution.

The Employer proposes substantial changes to Article XVII A.

I do not recommend either Party’s proposed modifications. The Union’s proposal seems to me to invite disputes over the meaning of the phrase “negatively impacts” as it applies to any specific situation. From the data I have, I am not able to conclude whether the Employer’s proposed modifications would provide a better health care value or not. I am most reluctant to “tinker” with the plan that the Parties had earlier negotiated. On that same basis I do not recommend the Union’s proposed Section 125 increase. In summary, I recommend no changes in Article XVII A other than the increase in dependent age.

Accordingly, I recommend that the final sentence of the first paragraph of Article XVII A be modified to read as follows, with no other changes to the language of Article XVII A of the predecessor agreement:

- Hospitalization coverages are available to the employee, the spouse, and unmarried dependent children until the end of the month in which they reach twenty-six (26) years of age.

### **Article XVII B**

The College proposes changes in dental insurance coverage, in keeping with its proposal to change hospitalization coverage.

On the same basis that I recommend no substantive change in Article XVII A, I also recommend no change to Article XVII B.

- I recommend no change to the language of Article XVII B of the predecessor agreement.

### **Article XVII C**

The College proposes changes in vision insurance coverage, in keeping with its proposal to change hospitalization coverage.

On the same basis that I recommend no substantive change in Article XVII A, I also recommend no change to Article XVII C.

- I recommend no change to the language of Article XVII C of the predecessor agreement.

### **Article XVIII**

The Employer proposes deletion of the second sentence under the heading “FMLA,” including deletion of items 1 through 3.

The material that the Employer seeks to delete is a brief paraphrase of the Family and Medical Leave Act. It appears to me that nothing stated in this brief summary is inaccurate, but it is certainly an incomplete description of a complex piece of legislation, and to that extent it may be misleading. Deletion of this matter would not alter employee rights under the FMLA or the collective bargaining agreement. To the extent that an employee seeks information about the FMLA, she or he would be well advised to consult more comprehensive sources than a 10 line synopsis in the collective bargaining agreement. Indeed, the fourth paragraph under this heading informs the employee that explanatory material is available from the Human Resources Department. I recommend adoption of the Employer proposal to delete the paraphrase.

- I recommend deletion of the second sentence under the heading “FMLA,” (including the language from “In summary,” to “employee’s job.”). I recommend no other changes under this heading, so that the first sentence of the first paragraph would remain, as would the second, third, and fourth paragraphs.

### **Article XVIII A**

Certain modifications proposed by both Parties have been resolved, and I shall not discuss them in this report. Only one item with respect to Article XVIII A remains unresolved.

The College proposes elimination of paragraph 3 (Advance) from the predecessor agreement, with corresponding renumbering of subsequent paragraphs.

This provision permits an employee to advance usage of up to five days of sick leave, to be repaid as the employee accrues sick leave, or by reimbursement to the College if the employee leaves before accruing the sick days. There is no indication that this humane provision has been abused, and I shall not recommend its modification.

- I recommend no changes to Article XVIII A, other than those heretofore agreed to by the Parties.

## **Article XX**

The College proposes to modify this Article, which deals with employee discipline, so as to eliminate the employee's right to a hearing when discipline less than an unpaid suspension is to be imposed. It would also modify the last two paragraphs of this section in each case to eliminate the phrase "for the same offense" in connection with the removal of discipline after passage of time without further discipline.

There is no indication that employees frequently request hearings over minor discipline, nor that such requests impose an undue burden. While discipline short of suspension can be protested through the grievance procedure, it is to the advantage of all Parties that misunderstandings about the pertinent facts be resolved before rather than after discipline has been imposed. I do not recommend adoption of this proposed change.

The College's other proposed change appears to be a clarification, which in some cases could work to an employee's advantage. I recommend adoption of the latter proposal.

I recommend that the final two paragraphs of Article XX be modified to read as follows, but that in all other respects the language of Article XX be retained unchanged:

- Documentation of warnings (Steps 1 and 2) are to be removed from employee's personnel file after twelve (12) months without any further progressive discipline.

For progressive discipline steps 3 and 4, the step will be backed up one step for each two (2) years without any further progressive discipline.

## **Article XXII A**

Article XXII A does not actually specify salaries, but instead references the master schedule, which is set forth in Appendix A. However, both Parties offer proposals relating to the third sentence of this section under the predecessor agreement, which states:

For the life of this contract, the support staff agree to forego any wage or step increase with the exception if non-bargaining unit employees receive a raise in salary, bargaining unit members will receive the same average percentage pay increase.

I shall refer to the first clause of this sentence as the step freeze, and the second clause as the me-too provision. Both parties would eliminate the quoted sentence, but both propose additional language. The effect of the Employer proposal would be to keep the step freeze in place, but to eliminate the me-too provision. The Union's proposal would effectively end the step freeze, and restore the forgone step increases, so that many members would advance multiple steps to the step level they would currently occupy, but for the step freeze under the predecessor agreement. The Union proposes that employees also advance to the next step annually during the term of the new agreement. Finally, the Union would retain a modified version of the me-too provision, under which bargaining unit members would receive the direct salary

increases “equivalent” to any other employee group that received a greater salary increase, and “the same indirect salary increase” as any other employee or employee group.

Both parties would delete the final sentence of this section under the predecessor agreement.

Finally, the Employer proposes two percent annual salary increases without retroactivity to the effective date of the agreement, and the Union proposes five percent annual salary increases, retroactive to the effective date of the agreement. I shall not discuss my recommended changes to the salary matrix here, but instead will do so below, with the discussion of Appendix A, where the salary numbers appear in the agreement.

As to the Union’s proposal to recoup the step movement forgone under the predecessor agreement, I shall not recommend such restoration. It seems to me that when the Parties entered into the predecessor agreement, they did so with the expectation that the steps “lost” under that agreement would be lost forever, rather than restored under the succeeding collective bargaining agreement. Had the Parties understood that the “lost” steps were to be restored, presumably they would have included in the predecessor agreement a provision to the effect that employees would advance the appropriate number of steps as of 11:59 p.m. on June 30, 2015. No such provision appears, and I infer that the mutual expectation was that these “lost” steps would not be recouped under the new collective bargaining agreement. Accordingly I do not recommend restoration of the steps forgone under the predecessor agreement.

However, I do not recommend continuation of the step freeze. Over the course of their bargaining history, the Parties have developed a 13 column, 31 step (0 through 30) salary matrix. Extending the step freeze on a permanent basis effectively destroys that matrix, and would ultimately leave all employees at the first step, so that the remaining steps would be illusory. When employees join the College, and are handed a salary matrix showing 31 steps, the expectation created is that someday the employee will be able to reach the highest step. Just as I infer that under the predecessor agreement the Parties did not contemplate that the forgone steps would be restored, so also do I infer that the Parties did not intend to impose a permanent step freeze. If such was their intent, they would have implemented a single step salary matrix, with a provision for “grandfathering” the existing employees. I shall recommend that all those employed as of June 30, 2015 (except those already at the top step) advance one step effective on July 1, 2015, and that all employees advance one step in each succeeding year of the new agreement.

I do not recommend inclusion of a me-too provision. The language of the predecessor agreement suggests that the me-too provision was a trade-off in exchange for the step freeze. With the end of the step freeze, I see no reason to continue the me-too provision that was presumably offered in consideration for it. Furthermore, the inclusion of a me-too provision (sometimes also referred to as a most favored nation clause), invites disputes over how it is to be applied. As I understand it, there is currently pending a grievance over the application of the me-too provision under the predecessor agreement. While the merits of that grievance are not before me, and I express no opinion as to its proper resolution, I think it is in the Parties’ mutual advantage to avoid sowing the seeds of future arbitrations. Particularly inasmuch as I am not recommending any form of salary freeze (as discussed within) I shall not recommend inclusion of any form of me-too provision.

In addition, as discussed in more detail within, I am recommending that the salary increases resulting from both step movement and percentage increases are to be effective retroactively to July 1, 2015.

Finally, as both Parties would eliminate the final sentence of this section, I recommend its deletion.

Some language changes are necessary to implement the recommendations I have discussed above. In order to accomplish this, I recommend that the language of Article XXII A be modified to read as follows:

- The master schedule shall consist of 31 annual steps, numbered from zero through 30. See Appendix A. All employees employed as of June 30, 2015 shall advance to the next step in the progression effective on July 1, 2015. All employees shall advance to the next step on July 1 in succeeding years of this agreement.

#### **Article XXIV A**

The Employer proposes eliminating the reference to the Job Audit Committee.

The proposal would amount to a substantive modification, and I am not convinced that any change is necessary.

- I recommend no change in Article XXIV A.

#### **Article XXIV C**

The Employer proposes “clean up” language to remove a redundancy and to accord with current practice.

The proposal appears to do no more than to bring the contract language into conformity with actual practice, and I recommend its adoption.

I recommend that Article XXIV C be modified to read as follows:

- Payroll deductions available for support staff shall include those that are mandated by law, plus the following:
  - 1) United Way (\$5.00 minimum per pay)
  - 2) Section 125
  - 3) NSCC Scholarship and Foundation
  - 4) Ohio State Deferred Compensation

Tax sheltered annuity premiums as authorized by each employee shall be permitted as payroll deductions. The number of firms to which such payments will be made by the College shall be limited to those approved by the College’s Board of Trustees. A list of the firms in this program shall be published annually. The employee shall determine the agent for his/her tax-sheltered annuity.

#### **Article XXVI**

The College proposes to eliminate most of Article XXVI. The effect of the change would be to end the SERS “pickup” for certain long term employees who were “grandfathered.” (More recent employees do not receive the SERS “pickup.”)

The effect of this proposal would be to effectively decrease the wages of senior employees by 5 percent, which is substantially more than the wage increases I have recommended above. As a result, the take home pay for these employees would actually be less under the new agreement than under the predecessor agreement.

It is not my intent to recommend any change in the SERS pickup system. I do not seek to remove the benefit from those currently receiving it, nor to extend the benefit to employees who do not currently receive it. In this context, I considered whether some change might be necessary in the final sentence under paragraph 2, referring to “the effective date of this agreement.” I suspect that this language has been retained under several successive agreements, and rather than recommending any modification, I shall recommend that the existing Article XXVI be retained as is, with the caveat that no change is intended in which employees are eligible for the pickup.

- I recommend no change to Article XXVI

### **Article XXVII**

The Employer proposes two changes. One would require 30 minutes advance notice, rather than the current “as soon as possible” for absences. The second would add the words “for job abandonment” to the provision permitting it to terminate an employee who is a no call - no show for three consecutive shifts.

Any organization operates more efficiently when absentees give sufficient notice to arrange for their replacement. Different individuals will have different interpretations of “as soon as possible” but a specific period informs the employee exactly what is expected. In most cases, giving 30 minutes advance notice should not be a hardship for the employee, but there may be occasions where it is not possible. An example would be the case of an employee who is involved in an accident on the way to work. I adopt the Employer proposal, but with an additional provision to cover the situation when circumstances beyond the employee’s control preclude the giving of 30 minutes notice.

As to the Employer’s second proposal, Article XXVII already permits the Employer to terminate an employee who is absent without notice for three consecutive shifts. Whether such a situation is considered “job abandonment” or something else would have no practical effect, and I see no point in adding this additional phrase to the agreement. I shall not recommend the Employer’s proposed change to the second paragraph of Article XXVII.

Specifically, I recommend that the first paragraph of Article XXVII be modified to read as follows, with no change to the second paragraph of Article XXVII:

- Any employee who is unable to report for work on a given day shall notify his/her supervisor at least one half hour (30 minutes) prior to the start of the shift, except in extenuating circumstances. All absences other than approved vacation should be reported in advance of time taken. If persons on emergency (personal) leave or sick leave have an adequate accrual of sick leave or emergency (personal) days, they will be compensated for their absence if the correct form is appropriately submitted. Other absences will be deducted from the employee’s pay.

### **Article XXVIII C**

The College proposes to add the phrase “and per College’s travel policy” to the section dealing with reimbursement for use of an employee’s personal vehicle.

Currently this section does not specify the rate for reimbursement, and the additional language is a clarification. I shall recommend its adoption.

Specifically, I recommend that Article XXVIII C be modified to read as follows:

- When an employee is required to travel on College business, a College car shall be used, if available. Reimbursement of travel expenses for the use of an employee’s personal car will be made only if a College car is unavailable and per College’s travel policy.

### **Article XXXII**

The Employer would change the terminology used under this Article from “severance” to “sick leave conversion.” It does not seek to change the substance of the benefit, which is payment of 25 percent of unused sick leave (to a maximum of 45 days) upon an employee’s retirement or death.

Whether this is a form of severance pay or something else seems to me a metaphysical question without practical significance. So far as I am aware, no problems of computation or otherwise have resulted from calling the payment “severance.” While I would not anticipate any harm resulting from a change in terminology, neither would I anticipate any benefit. I do not adopt this proposal.

- I recommend no change in Article XXXII.

### **Article XXXIII**

Both Parties appear to contemplate a three year term for the new collective bargaining agreement. Necessarily the “Duration of Agreement” article must be updated.

However, the language proposed by the Employer would have the effect of implementing wage increases only as of the date of ratification, rather than retroactively. It is my intent that the wage increases recommended above are to be retroactive to the effective date for the new collective bargaining agreement, July 1, 2015. The College has enjoyed the benefit of its employees’ uninterrupted service during the negotiations. The employees have forgone the right to strike, no doubt in the hope and expectation that any increases would be implemented retroactively. It is surely no surprise to the College that a new collective bargaining agreement will provide for wage increases, and it has had the opportunity to plan accordingly. Delaying the implementation of those forgone increases would, in my view, amount to a windfall to the College. Further, denying retroactivity under this agreement would have consequences on the negotiations for its successor: if the employees expected that any increases under a new contract would be prospective only, they would surely be less inclined to work beyond the contract expiration date and more likely to resort to economic pressure.

I would note that if I were recommending wage changes on a prospective basis only, my recommendations would necessarily have been for larger increases than set forth below under Appendix A.

While I recommend that the increases are to be implemented retroactively, I do not recommend that any interest be added to the retroactive payments. At this point the retroactivity period involved is less than half a year, interest rates are exceedingly low, and the time cost of calculating the interest would likely exceed the amount of the interest itself.

I recommend that Article XXXIII be modified to read as follows:

- This Agreement shall become effective as of July 1, 2015 upon ratification, and shall remain in full force and effect through June 30, 2018, and each year thereafter, unless written notice of termination or desired modification is given at least sixty (60) days prior to the expiration date by either of the parties hereto. The parties shall meet as soon as possible after notice has been served at a mutually agreeable time and place.

## **Appendixes**

The College proposes eliminating all Appendixes other than a medical benefits summary.

The evidence does not suggest that these Appendixes have created problems for the Parties, but their removal might lead to unforeseen and unintended consequences. I shall recommend no change to the Appendixes, other than Appendix A, discussed below.

- Except for Appendix A, I recommend no change to the Appendixes.

## **Appendix A**

The College proposes two percent annual non-retroactive increases, without step movement. The Union proposes five percent annual wage increases, retroactively, with recoupment of step movement forgone under the predecessor agreement, and with additional step movement each year.

I have already discussed step movement and retroactivity. There remains the matter of percentage increases.

The Parties provided a substantial amount of data relating to economic issues. This included information on the Employer's current financial situation, such as its assets and liabilities, its budget and revenue, and its reserves. The College derives roughly half its revenue from tuition and half from the State of Ohio, and the Parties supplied information on enrollment trends (both headcount and full time equivalents), as well as the State appropriations system, State disbursements and allocations. Since these are not final until December of each year, they are subject to change. The Parties offered "comparability" data, including average wage settlements, historical wage increases, increases paid to other employees of the Employer, and the State minimum wage. They also introduced pension material, including the SERS system.

There is no point in copying all of these numbers into this report, which is already a long one. Unfortunately, there is no equation or algorithm for determining the "right" amount for wages and salaries, based on all

these considerations. Instead, the formulation of salary recommendations is an art unto itself. Nor can I provide a rationale for why my recommendation is the proper one, or an explanation of how I chose these numbers, other than to say that I looked at the evidence, and asked myself what “felt” right for salary recommendations.

Of course, in addition to considering the economic evidence, I need also take into account the starting point: where the Parties are now, and how they got there.

The predecessor agreement includes a cumbersome salary matrix with 13 columns and 31 steps within each column, so that there are 403 possible different amounts an employee might receive, depending upon the employee’s job and experience. Such a complicated system can easily generate errors in placement and calculation, affecting whether a particular employee actually receives what the agreement provides for her or him. Mindful of the threat of arithmetical and computational error, I shall not attempt to generate a complete salary matrix ready for inclusion in the collective bargaining agreement. Rather, I will supply only a method for calculating a salary matrix, and leave it to the Parties, and their spread sheet experts, to derive specific numbers.

I begin with a summary, and a few examples, followed by my specific recommendations.

My starting point is the Hourly salary matrix set forth on page 45 of the predecessor agreement. Some of the steps in column 1 show hourly rates below the Ohio minimum wage of \$8.10 per hour. Presumably employees at those steps in column 1 are actually receiving \$8.10 per hour rather than the stated rate. New wage rates should be calculated on the basis of what employees actually receive, rather than some theoretical rate. So the beginning point for the calculation is to raise any rate that is less than \$8.10 to \$8.10.

My sense is that annual increases of 2.0 percent are in order. So the next step is to multiply these adjusted numbers and all the other numbers in the matrix by 1.02. The resulting figure is to be rounded up or down to the nearest cent. So, for example the new column 1 step 1 would be \$8.26 ( $\$8.10 \times 1.02 = \$8.262$ , rounded to \$8.26). The new column 5 step 26 would become \$18.44 ( $\$18.08 \times 1.02 = \$18.4416$ , rounded to \$18.44). The new column 7 step 23 would be \$23.79 ( $\$23.32 \times 1.02 = \$23.7864$ , rounded to \$23.79).

Each employee on the payroll as of June 30 who is not already at the top step is to advance (down in the matrix) by one step, and receive the new rate for that step. So for example an employee at column 5 step 25, receiving the “old” rate of \$17.95 would advance to the “new” column 5 step 26 rate of \$18.44. An employee at column 7 step 22, receiving the “old” rate of \$23.12, would advance to the “new” column 7 step 23 rate of \$23.79.

In the second year, the same process of multiplying each number in the 2015 - 2016 matrix by 1.02, rounding to the nearest cent to arrive at the 2016 - 2017 matrix, and advancing each employee not at the top step to the next step “down” in the matrix, would apply.

Likewise the 2017 - 2018 matrix would be obtained by multiplying each number in the 2016 - 2017 matrix by 1.02, and rounding to the nearest cent. Employees not at the top step would advance to the next step “down” in the matrix, and the applicable rate there would apply.

Specifically, I recommend the following method to determine the new Appendix A salary matrix:

- Each number in the Hourly matrix less than \$8.10 is replaced by \$8.10.
- Each number in the matrix is then multiplied by 1.02.
- The result is rounded up or down to the nearest cent. This determines the 2015 - 2016 Hourly matrix.
- From the resulting matrix, the Annual and Per Diem matrixes can be derived.
- Effective July 1, 2015, each employee on the payroll as of June 30, 2015 who is not already at the top step advances one step down on the matrix to determine the new rate for that employee.
- The rate is retroactive to July 1, 2015.
- The same process of applying a factor of 1.02 to the 2015 - 2016 matrix and rounding generates the 2016 - 2017 wage matrix. Again each employee not already at the top step advances by one step on July 1, 2016.
- The same process of applying a factor of 1.02 to the 2016 - 2017 matrix and rounding generates the 2017 - 2018 wage matrix. Again each employee not already at the top step advances by one step on July 1, 2017.

\* \* \*

As to all Articles and Sections for which no changes have been recommended above and which are not the subject of a tentative agreement between the Parties, I recommend that these Articles be retained unchanged from the prior agreement

Issued December 2, 2015

Matthew M Franchewing

### Certificate of Service

I certify that the above Report and Recommendations was served upon both of the above-named parties, and upon the State Employment Relations Board, in accord with SERB rules, on December 2, 2015.

Matthew M Franchewing