

**IN THE MATTER**

**STATE EMPLOYMENT  
RELATIONS BOARD**

**OF**

**AUG 22 10 12 AM '96**

**FACTFINDING**

**BETWEEN**

**THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS**

**AND**

**CINCINNATI STATE TECHNICAL AND COMMUNITY COLLEGE**

**Hearing: August 13, 1996**  
**SERB Case Number: 96-MED-06-0529**  
**Date of Report: August 20, 1996**  
**Issue: Factfinding**

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**REPORT AND RECOMMENDATIONS**

**Michael Paolucci**  
**Factfinder**

### Administration

By letter dated August 2, 1996, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On August 13, 1996, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on August 13, 1996, and is now ready for a factfinding report.

### Factual Background

The Employer, Cincinnati State Technical and Community College, hereinafter "College," was formerly known as Cincinnati Technical College until it added the Community College portion in 1994. It operates under the authority of the Ohio Board of Regents and, during the 1995-96 academic year, it had an average of 4,930 students in each of its five (5) ten (10) week terms. It operates these five (5) terms year round in contrast to the standard three (3) or four (4) term colleges; known, respectively, as either semester or quarter systems.

The Union represents the majority of faculty members as well as certain counselors and librarians. Although a majority of the members' duties involve teaching classes, their duties extend to other non-teaching duties typical for College faculty. There are 161 members in the bargaining unit. The Union was first certified in April, 1989, and has negotiated two (2) previous Collective Bargaining Agreements, the most recent of which expires on September 3, 1996.

The College's transition to a community college is expected to help increase enrollment since it added two (2) additional two (2) year associate degree programs. Although the College is open year-round, the teachers are only required to work four (4) out of the five (5) terms. Any work done

in excess of the mandatory amount is classified as "overload" and is compensated at a different rate than the standard wage. Prior to this Union's certification, no other unions existed at the College. However, there are currently three (3) other bargaining units; two (2) represented by the IUOE, and one (1) represented by the SEIU.

Prior to the factfinding hearing, one (1) issue was removed involving the Early Retirement Incentive (ERI), a new article that had been proposed by the Union. What remained was divided into Economic Issues and Non-Economic Issues. Each will be addressed separately.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

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

The issues will be addressed separately giving consideration to all of the required factors.

## **ECONOMIC ISSUES**

### **BENEFITS**

#### **1. SICK DAY POOL**

The Union's proposal is to reinstate an old policy where employees with excessive accumulated Sick Leave could donate their excess to other employees who needed sick leave, but were out. The College opposes the proposal since it has no controlling feature in that it becomes mandatory upon the employees request; is not limited to emergency situations; and would have a serious financial impact due to the large amount of accumulated Sick Leave many of the employees already have.

It is recommended that the Union's proposal not be adopted. Although the proposal has some initial appeal due to its previous existence, it was not shown to have ever been needed. Consequently, it is only a potential problem and does not have the weight of an issue that would have any immediate effect on either Party. Moreover, due to the extremely large amount of excess sick leave that most of the employees have, the potential abuse is great while the benefit is small. Therefore, the Union's proposal cannot be recommended.

#### **2. MEDICAL PLAN with the issues of VISION CARE PLAN, SHORT-TERM DISABILITY PLAN and LIFE INSURANCE COVERAGE also addressed.**

The College proposes adopting a cafeteria type benefits plan where it would fully fund medical benefits at Choice Care rates and provide adequate plan dollars to

**purchase all currently provided health benefits with the additions of vision care and short term disability. The only mandate in this proposal is that the employee accept the Employee Assistance Program. Depending on which option an employee chooses, each would either get all three (3) benefits or some variation of all three (3) plus a cash payout for any amounts not spent.**

**The Union proposes maintaining the status quo with employees being given the choice of three (3) health plans; Anthem POP, Anthem HMO, and Choice Care, and having employee contributions of \$6.00 per pay period for the family plan and \$2.00 per pay period for single plans. The Union also wants a vision plan, a short-term disability plan, and life insurance in the amount of one-and-one-half or \$50,000, whichever is higher, all to be paid for entirely by the College.**

**Making a recommendation for these issues is complicated by several factors. It must be recognized that health insurance, and other related benefits, have become crucial in most, if not all, collective bargaining agreements. In fact, the level of importance in health insurance is very often on par with a wage increase. The reasons for the rise in the importance of insurance can be traced to many factors, but most recently it can be attributed in large part to the insurance industry's current state of flux. The unpredictability of health insurance reasonably causes both Parties to want to minimize the potential liability in increased cost that may occur during the life of the agreement.**

**These concerns are aggravated in the instant matter by the method in which**

these separate, yet directly related issues were presented. It is impossible to compare each Parties proposal since the issues were at once separate and together. Since the issues were not presented head-to-head, the recommendation is based on each Party's overall presentation. Recognizing all of the above, the following recommendations are made:

- All three (3) health insurance plans will be continued to be offered. This recommendation is based on the fact that most of the employees currently use the Anthem plan; the fact that the College President is a member of Choice Care's Board of Directors, yet chooses Anthem; and the fact that the increase in health insurance costs was not shown to be unreasonable.
- The remaining benefits for life insurance, short-term disability, and vision care, shall be provided for all employees. The internal comparables support this recommendation.
- The contributions by each employee shall be modified as follows:  
Choice Care - \$10.00 per pay period for Family Plan  
\$ 8.00 per pay period for Single Plan  
Anthem - \$ 20.00 per pay period for Family Plan  
\$ 15.00 per pay period for Single Plan

### **3. SICK LEAVE CASHING-IN**

The Union proposes changing the calculation for the sick leave cash-in. The original formula was based on a 261 day work year and the employees currently only work 180 days. The College objects due to the fact that the employees are paid on a yearly basis, not on a per diem. Thus, the number of days worked should not change the formula. Moreover, due to the large number of hours many employees have banked, the College argued that the increase in the cost of this benefit would be approximately 45%.

It is recommended that the current formula remain in place. The College showed that the Union had previously argued that employees are paid on the entire year without regard to the number of days worked. It is inconsistent for it to now argue that the formula should change since it successfully negotiated fewer work days per year. Thus, it is recommended that the formula not be changed.

### **4. SICK LEAVE - NEW HIRES ONLY**

The College proposes a cap of thirty (30) days accumulation time, reduced from the current sixty-five (65) and, that the sick leave calculation be changed from contract hours to hours absent from work.

Since neither proposal was supported by evidence that the employees have abused the current practice, these proposals cannot be recommended.

**5. TUITION REIMBURSEMENT**

The College proposes increasing the current \$7,500.00 reimbursement fund to \$10,000.00 for a grade of "B" or higher. The Union proposes that 100% of all members tuition costs be paid for by the College.

It is recommended that the College's proposal be adopted. Although the Union argued that the current \$7,500 pool is typically used up, it did not show what costs would be attendant to its proposal. Without evidence of the costs involved, it would be unreasonable to adopt its proposal. It must be recognized that what it proposed is a significant departure from the previous language and would insert an unknown cost to the College. As such, it cannot be recommended.

**6. VACATION ACCUMULATION**

The College proposes changing the current practice from allowing vacation to accumulate the same as sick leave to requiring employees to cash it out at the end of the year.

The College persuasively argued that the accumulation of vacation time hampers its ability to schedule employees. It is recommended that the current language remain with the accumulation of vacation time be limited to two (2) years; after which time all accumulated vacation time shall be converted to a cash payment.

## 7. COMPENSATION

The College proposes an across the board 2.5% wage increase in each of the three (3) years of an Agreement. The College also proposes a bonus plan for cash payments based on the size of any enrollment increase. The proposal is that if enrollment increases by 4-5%, each member would receive \$250.00; if it increases by 5-6%, the payment would be \$500.00; if it increases by 6-7%, the payment would be \$750.00; and if it increase by more than 7%, then payment would be \$1,000.00.

The Union proposes an across the board 7% increase in each of the three (3) years of an Agreement. In addition, the Union proposes cash payments in the amount of \$530.00 the first year, \$573.00 the second year, and \$620.00 the third year. The Union also proposed a 5% increase upon the awarding of tenure; longevity pay at the rate of 5% with ten (10) years of service; 4% with fifteen (15); 3% with twenty (20); and 2% with twenty five (25). In addition, the Union proposed overload pay increases in the amount of 8% for each of the three (3) years plus a change in the calculation of overload pay when an employee teaches in the fifth (5<sup>th</sup>) term and the elimination of caps on the maximum salary ranges for newly employed faculty.

### A. WAGE INCREASE

Based on an examination of the College's financial condition, the internal and external comparables, and the other recommendations included in this report, the following recommendations are made:

- an across the board wage increase in each of the three (3) years of an agreement shall be at 4.5%, 4.5%, and 4.5%.

**B. ENROLLMENT INCREASE**

Based on the above wage increase, it is recommended that the College's enrollment increase payment plan be adopted. It provides for the Union's goal but only if enrollment increases. Since a large part of the College's income is based on enrollment, then making the cash payment contingent on the increase in enrollment is reasonable.

**C. TENURE BONUS**

Based on the longevity recommendations, the tenure bonus requested by the Union cannot be recommended.

**D. LONGEVITY SALARY INCREASE**

It must be recognized that step increases are a common method of paying teachers. However, since there is not a history of such payments at this College, then the imposition of such a payment scheme must be done moderately. Consequently, it is recommended that a step wage increase be given at the ten, fifteen, twenty and twenty-five year marks in the amounts of 3% for the ten year anniversary, and then 2% for each of the other anniversaries listed.

**E. OVERLOAD RATES**

1. DURING FOUR (4) REGULAR ACADEMIC TERMS
2. OVERLOAD RATE DURING FIFTH (5) ACADEMIC TERM

The Union proposes changing the method in which both of the aforementioned rates are determined. However, the College persuasively argued that overload is voluntary; that employees are currently receiving a significant portion of their annual

income through voluntary overload; and that the current payment rates are reasonable. Since overtime is the closest concept to the overload referenced here, its intent is relevant. Overtime is a method in which employers are "punished" for making their employees work more than what is considered reasonable. If the employer determines that it is necessary to require an unreasonable amount of work, then it must pay for that privilege. When that concept is applied here it results in the conclusion that the Union's proposal is unsound. The Union's proposal would require the finding that the employees must be paid more for work that is voluntary in order to punish the College. Consequently, the Union's proposal cannot be recommended.

**F. MINIMUM/MAXIMUM WAGE RATES FOR NEW EMPLOYEES**

Since the recommendation for across the board increases is intended to apply to all wages, including that for new hires, then it is recommended that that proposal be applied here.

The Union's proposal to remove maximum wage rates is based on the argument that the College could find better qualified candidates to fill vacancies if only its maximum wage rates for new employees were not capped. Implicit in this argument is the notion that management does not have the ability to decide the best way to find new employees. Without further support, this proposal cannot be recommended since the ability to determine the best method of hiring new employees is solely within management's right.

## **NON-ECONOMIC ISSUES**

### **1. UNION OFFICE**

The Union proposes that the College provide an office with a door to be used solely as the Union office. The College fears that if this unit is given an office, then the other two (2) Unions will demand the same. The College proposes deleting language regarding the Health Profession Building since it is now completed and the language is inapplicable.

It is recommended that the College proposal be adopted. The College convincingly argued that it had space constraints; that many employees, both faculty and administrative, currently worked in cubicles because of the lack of space; and that the other unions would attempt to each get their own offices if this proposal were adopted. These internal comparables are compelling and require a recommendation that the Union's proposal not be adopted. However, since the language regarding the completion of the Health Profession Building has no application, it is recommended that it be deleted and thus, that the College's proposal be adopted.

### **2. DUES CHECK-OFF**

The Union proposes that language be included that would require a dues check-off for all College employees, not just those who are bargaining unit members. Since the Agreement only applies to bargaining unit members, the College opposes extending its scope to other employees.

It is recommended that the Union's proposal not be adopted. It is an unusual situation where the Agreement is applied to employees not covered by the Agreement. Further, the Union failed to demonstrate how many employees this would affect. Without such evidence, and because the proposal is so unusual, it cannot be recommended.

3. FAIR SHARE

The College proposes changing the current fair share language such that the portion regarding "religious objectors" be removed since recent case law has potentially ruled such provisions unconstitutional and against Ohio Revised Code 4117.09(C). Based on the cited case law, the Union changed its position at the hearing and offered language that reads as follows:

The AAUP has adopted procedures to annually notify any member of the bargaining unit who has not joined the Union concerning the manner in which the fair share fee was calculated, and his or her right to object to the Union's fair share fee and to obtain a hearing before an impartial arbitrator concerning the calculation of the fair share fee. Upon request by the College, the AAUP shall provide a copy of its annual fair share fee notice and procedures to the College.

It is recommended that the Union's proposed language be adopted. Based on the College's representation that case law may forbid the determination of a religious objector, and based on the Parties historical use of a fair share fee, then it is reasonable to use an arbitration procedure to determine whether the fair share fee should be paid. Examination of the Union's proposal shows that it is reasonable and provides a fair method to determine eligibility of a fair share payment. Therefore, it

is recommended that the Union's proposal be adopted.

4. LEAVE FOR AAUP ACTIVITIES

The College proposes adding language that would require thirty (30) days notice of a replacement teacher when a AAUP member will be away on Union activities or, in the alternative, that the Union pay for the cost of a substitute teacher.

The proposal cannot be recommended. Although language similar to the College's proposal is contained in a subsequent paragraph, that language is pertinent to time off for negotiating. Such must be recognized as requiring a more significant time-off period than for typical Union activities. Further, the College did not cite specific problems with the current language. Other than a general objection to it being inconvenient, the College failed to show that the current setup hampered its ability to run the college and thus, its proposal cannot be recommended.

5. PAID TIME FOR UNION BUSINESS

The Union proposes that language be modified so that instead of receiving release time to negotiate, it be given sixty four (64) workload units, the equivalent of a full-time member's annual workload, which it may delegate as it sees fit.

The College proposes changing the same language such that during sabbatical or other type of leave, the Faculty Senate President cannot also receive four (4) workload units. The College cited a current situation where, although on leave, the

Faculty Senate President received four (4) workload units. Its proposal would delegate those units to other members of the Senate.

The Union's proposal is a radical departure from the current language. To justify such a huge change it must be able to show that a equally important need exists. It failed to do so. In fact, its argument lacked the assertion that the current number of hours were inadequate. Since its proposal would dramatically change the current method, and since the proposal was unsupported by a showing of need, then it must be recommended that the Union's proposal not be adopted.

On the other hand, the College persuasively argued that the current receipt of four (4) workload units by the Faculty Senate President while he was on leave was unreasonable. Since the President was on leave, he was not performing any duties that earned the four (4) units and thus the current benefit is gratuitous. The language the College proposes allows the hours to be transferred to another Senate member and is reasonable. Therefore, it is recommended that the College's proposal be adopted.

## 6. GRIEVANCE PROCEDURE

### A. GRIEVANCE DEFINITION

The Union proposes including language that would make policies, procedures and past practices an automatic part of the grievance procedure.

It must be recommended that the Union's proposal not be adopted. This recommendation is based on the fact that the Union failed to show that any grievance

has been denied because of the lack of this language. Indeed, the College persuasively argued that including policies and procedures in this provision, issues that are typically solely within its discretion, would make them negotiated and thus, non-modifiable. With regard to past practices, it must be observed that by definition past practices are those items not included in an Agreement, but which have attained the level of negotiated language due to the Parties' actions. In essence, past practices are already "grievable." Based on these conclusion, the Union's language is superfluous and cannot be recommended.

#### **B. SKIPPING OF GRIEVANCE STEPS**

The Union proposes including language that would allow it, but not the College, to skip steps in the grievance procedure. Although this type of language is included in many collective bargaining agreements, the Union failed to show that it is necessary here. Moreover, its citation of two (2) factual situations that would justify this language were not compelling examples of an employer attempting to delay the grievance procedure. In fact, the time lines in those cases must be found to have been reasonable under all the circumstances. Moreover, the current language already has a tight time line that must be found to allow little dalliance by either Party. Consequently, the Union's proposal cannot be recommended.

#### **7. FACULTY INVOLVEMENT IN GOVERNANCE OF COLLEGE**

The Union proposes various and dramatic changes to the language defining

the faculty and management's functions. A review of these modifications shows that they delegate serious duties that are typically the function of management. To recommend the Union's proposal would invert the normal relationship between management and employees. As an example, the Union proposes that faculty have "primary" responsibility in issues of "appropriate class size", hiring and promotion, and would forbid the Board of Trustees from vetoing faculty's decisions except in "exceptional circumstances." Since all of the proposals violate these basic demarcations in the duties of each party, it is not necessary to address each of the Union's proposed changes. It is recommended that all Union proposals in Article V not be adopted.

**8. REMOVAL OF COORDINATOR OF ACADEMIC COMPUTING**

The College proposes removing the Coordinator of Academic Computing from the bargaining unit. Since removal of a position from the bargaining unit is an issue involving a SERB determination, it cannot be recommended.

**9. ASSIGNMENTS AT SATELLITE OR ANCILLARY CAMPUSES**

The Union has proposed that language be included that would prevent the assignment of any faculty to more than one (1) campus per day. The College proposes language that would require at least one (1) hour between scheduled classes.

It is recommended that the College's proposal be adopted with the

modification that it be extended to one and one-half (1.5) hours. This is based on the knowledge of the unpredictable traffic in Cincinnati and the fact that although Harrison is only eighteen (18) miles from the campus, it could very easily take over one (1) hour to get back and forth. Moreover, it is typically management's responsibility to schedule, not the faculty. Unless an overwhelming need can be shown, this right of management cannot be impeded. No such need was argued here, and thus, the Union's proposal cannot be recommended, and the College's proposal, with the above modification, is recommended.

#### 10. WORKLOAD UNITS

The Union made several proposals regarding the giving of workload units. These units are essentially a method of computing the amount of work that an employee has done over a certain period of time. Those portions where the Union requests clarification of language cannot be recommended. This is based on the fact that examination of the language shows that it is understandable as written and therefore, the clarifications it asks for are not necessary.

##### A. NEW COURSES

Regarding the development of new courses, the Union persuasively showed that additional work is involved. However, its proposed language gives too much control to the faculty. Management must have the ability to direct the workforce and the proposed language effectively removes that ability from management's control. For this reason, the Union's proposal cannot be recommended.

**B. DISTANCE LEARNING/ELECTRONICALLY PURVEYED METHOD OF INSTRUCTION.**

As the proposals pertain to distance learning, or electronically purveyed methods of instruction, the Union's proposal cannot be recommended since it has an automatic formula of the "unit-value-plus-one" for calculating the number of workload hours. Since the Union's proposal fails to consider the fact that the different courses involve different amounts of work, then its stringent formula cannot be applied and its proposal cannot be recommended.

In contrast, the College's proposal does provide a method for the differing amount of work to be factored in. Since the affected faculty member is under no obligation to teach the course unless the number of workload hours is agreed to, then this portion of the College's proposal is recommended. However, paragraph (e) of the College's proposal cannot be recommended. This paragraph would require the faculty to adsorb part of the risk in offering the class. The faculty members should be able to negotiate workload units without regard to the number of students who take the class. If the Parties wish to make this calculation part of specific classes, they may do so. However, it is foreseeable that certain classes will take a large amount of preparation but may have a low student turnout. In these instances the faculty should have the ability to negotiate for more workload hours regardless of the number of students. Therefore, with the exception of

paragraph (e), it is recommended that the College's proposal be adopted.

#### **C INTELLECTUAL WORK**

The Union's proposal that all intellectual work be owned by the faculty member cannot be recommended. Since the employees are working under the direction and expense of the employer, then all product developed under that relationship must be retained by the Employer. Therefore, the Union's proposal cannot be recommended.

#### **D. WORKLOAD UNITS FOR MAINTAINING LABS**

The College proposes adding language that gives definition to "special projects". A review of that language shows that the term is undefined and thus, the definition offered by the College is necessary. Therefore, the College's proposal is recommended.

#### **E. COOPERATIVE EDUCATION COORDINATORS**

The College proposes changing the method in which workload hours are calculated based on whether a student stays with the same employer for more than one term. When the language was first negotiated, most Coop. students would only work one term. However, the College argues that now students will often work for the same employer through multiple terms thus requiring the Coop. coordinator to work less.

Although the College argued that less work is involved when a student works for the same employer for multiple terms, it failed to show that the number was so large to justify a change. The Union persuasively showed that

this has been the subject of much negotiation and therefore, it would unfair to modify it through factfinding. Therefore, the College proposal cannot be recommended.

11. FILLING OF VACANCIES

The Union proposes including a right of first refusal for filling vacancies. When this type of language is contained in a collective bargaining agreement, it will typically include language where management can determine whether the affected employee is the "most qualified" or "equally qualified." Rarely will such language make the filling of the vacancy automatic where the employee is "minimally qualified." Only in instances where the vacancy is for a position that does not take a great deal of ability will such language allow an employee to be "minimally qualified." Since the Union's proposal is such a "minimally qualified" provision, it cannot be recommended.

12. RIGHT OF REFUSAL FOR OVERLOAD RESPONSIBILITIES

The Union proposes a right of first refusal for filling overload opportunities. Although the right of first refusal is a common provision, it is typically conditioned on the employee being "qualified." Only if the employee wishing to fill the vacancy is qualified can he demand the right of first refusal. Since the Union's proposal does not contain such a condition, it cannot be recommended.

13. TENURE

A. NON-TENURE TRACK POSITIONS

The College proposes adding language that would allow it to tag certain positions as "non-tenure track." Since the College's proposal was based on the notion that some teaching positions will be for only one (1) to three (3) year periods, then it would be unfair to let those employees believe they were possible tenure track positions. However, the Union showed that since tenure does not begin until the fourth (4<sup>th</sup>) year, then the College's concern is unfounded. Moreover, if a class is terminated, the fact that the teacher is tenured does not affect the College's ability to terminate his employment. Thus, there is no need for this language and it cannot be recommended.

**B. APPLICANT FOR TENURE - COPY TO DEAN**

The College proposes requiring applicants for tenure to submit one (1) copy of their application to the Dean. Since this is not an unreasonable request, it is recommended.

**C. TERMINAL YEAR CONTRACT**

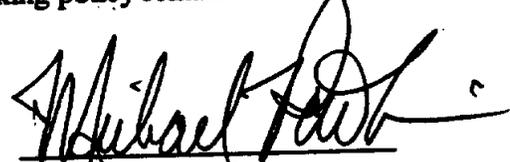
The College proposes changing the language so that those denied tenure do not continue employment beyond the current year. Currently, a faculty member who is denied tenure must be offered one (1) more year of employment. However, of the three (3) faculty in the past who have been denied tenure, two (2) have caused problems during the ensuing year due to the bitterness in being denied tenure. This is a persuasive argument. Because of these two (2) problems, the College has an

important interest in limiting similar type problems. Moreover, since the affected faculty remain employed for four and one-half (4 ½ ) months following the denial of tenure, they have a sufficient period in which to find other employment. Therefore, it is recommended that the College proposal be adopted.

14. **PARKING POLICY**

The College failed to provide a compelling reason to change the status quo. Therefore, due to its longstanding practice, it is recommended that the parking policy remain the same.

August 20, 1996  
Cincinnati, Ohio

  
Michael Paolucci