

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In The Matter Of Fact Finding Between:

WRIGHT STATE UNIVERSITY

- and -

S.E.R.B. CASE NO. 99-MED-06-0594

WRIGHT STATE UNIVERSITY CHAPTER
OF THE AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS

APPEARANCES:

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REPORT & RECOMMENDATION OF THE FACT FINDER

Frank A. Keenan
Fact Finder

STATE EMPLOYMENT
RELATIONS BOARD
JUL 20 11 20 AM '04

BACKGROUND: This case came on for hearing in Fairborn, Ohio on October 12, and 24, 1999. Mediation efforts were undertaken on October 12, 1999, and with the diligence and good faith of the parties' advocates and their respective negotiation teams, with some assistance from the undersigned acting as Mediator, one "Retrenchment," was successfully mediated.

SERB has certified the following bargaining unit as appropriate:

"Included: All full-time tenured and tenure-track faculty employed by Wright State University.

Excluded: All department chairs and heads, all ranks of deans, all ranks of provosts, ranks of vice-presidents, the president, all other supervisors defined by Ohio Revised Code Section 4117.01(F), all faculty within the School of Medicine and Professional Psychology other than those who are tenured or tenure-track, and all other employees not included above."

SERB certified the election results as follows: Of 379 votes cast, 197 were cast for Wright State University Chapter of the American Association of University Professors; 177 votes were cast for "no representative;" and 5 challenged ballots were not sufficient to affect the results of the election.

On October 24, 1999, the parties submitted evidence and argued in support of their respective proposals for the remaining Contract provisions of their first Collective Bargaining Agreement which remained at impasse. As requested by the Undersigned, the parties also submitted and exchanged helpful post-hearing briefs, dated November 1, 1999. What follows hereinafter is a summary of the evidence; the parties' contentions and

arguments; the Fact Finder's Recommendations; and the rationale for the Fact Finder's Recommendations. In arriving at the Recommendations, the Fact Finder has taken into account and relied upon the statutory criteria set forth below, whenever such factors were put forward by the parties or otherwise emerged from the record evidence, to wit: the factor of past collectively bargained agreements; comparisons 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; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted 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.

ISSUE #1: ARTICLE 13 - COMPENSATION

I. EVIDENCE & POSITIONS:

The University's proposal for Article 13 is set forth in Appendix "A." The Union's proposal for Article 13 is set forth in Appendix "B." The University asserts that its proposal is an attractive and competitive compensation package.

In support of its proposal, the University notes its data to the effect that Wright State University is positioned in the middle of the rankings in academic reputation among Ohio

public universities. The University further asserts that its package is consistent with the Board of Trustees' policies and strategies for the University. It is the University's position that its overload compensation provision affords the University flexibility in assigning overload courses, while providing faculty the opportunity to negotiate a rate commensurable with their experience. It is further the University's position that its proposed rates for College of Science and Mathematics faculty advising students in independent laboratory studies is appropriate in light of the fact that such teaching arrangements are conducted informally.

By way of elaboration, the University notes that Wright State has received one of the nation's lowest ratings for academic reputation and is exceeded by Miami, Ohio State, University of Cincinnati and Bowling Green. Yet, despite Wright State's relatively low academic standing, it compensates its faculty very well. Thus, Wright State ranks 4th in faculty compensation among the 13 Ohio public universities. Wright State faculty rank second among the eight state universities with collective bargaining. They rank first in compensation among Ohio public institutions comparable in size, prestige, and mission (Akron, Bowling Green, Cleveland, and Kent).

The high earnings of Wright State faculty exceed the Board of Trustees' 1992 goal of maintaining faculty salaries "within the second quartile of the array of such salaries for all Ohio public four-year institutions." Moreover, with base pay fourth among the thirteen Ohio public universities, summer pay second, and (as agreed in the contract) the highest minimum salaries for each professional rank, the University – well ahead of schedule – has reached its 1998-2003 strategic plan goal of raising faculty salaries to "the highest quartile

among Ohio public universities.”

Wright State’s salary proposal (Appendix “A”) maintains bargaining unit faculty’s position as fourth highest in salary. The University’s proposal consists of a 2.5% across the board increase plus a market pool of .75% in 1999; a 2.5% salary increase divided equally between the across the board and merit in 2000-01; and a 2.5% increase divided equally between across the board and merit in 2001-02. The University’s proposed offer to faculty is higher than the 1999 salary increase given to all other University employee groups, which was 3%, divided equally between across-the-board and merit.

Moreover, Wright State’s offer of 3.25% for 1999 is consistent with other Universities engaged in collective bargaining. This lucrative raise is the fifth highest base salary increase among Ohio’s 13 public universities, and third highest among those with collective bargaining.

This increase maintains Wright State faculty in fourth place, more than \$1,000 per professor above fifth place Ohio University. With the state’s second highest rate for summer teaching (\$2.6 million in 1999) and the highest minimum salaries per rank, the University’s salary offer fulfills the Board of Trustees’ directives, ensuring that faculty salaries remain competitive.

The Union’s proposed salary increase of 16.25% over three years is clearly excessive. Such a raise — amounting to nearly 5.5% per year — would far exceed raises at other state universities, including universities larger and wealthier than Wright State. No evidence presented justifies such an enormous salary increase and such a substantial burden on the University’s budget.

The Union's proposed raise is especially inappropriate considering Wright State faculty's low workload. Wright State faculty rank second lowest of all state universities in assigned course load, and second lowest in actual teaching hours.

The University also challenges the Union's statistical data, characterizing it as misleading. Thus, the University notes that the Union compares faculty salaries at other state universities to those at Wright State department-by-department based on rank are misleading. Many of the proffered comparative ranks within departments contain groups of professors too small to be of statistical significance. Some of the comparative departments have only one individual per rank. By comparing small numbers of individuals representing the professional ranks in many of the so-called comparative departments, the result is essentially a "professor-to-professor" comparison.

The Union's statistics regarding the Anatomy department exemplify the inappropriateness of this method of comparison. At the assistant professor rank in Wright State's Anatomy department, the Union lists the salary of one individual. The median salary for Anatomy assistant professors in the entire State is generated from the salaries of nine professors statewide — four at Cincinnati, three at Ohio State, one at Cleveland State and the Wright State professor.

The Union relies on this median salary data and calculates that the same Wright State Anatomy professor deserves a raise of \$3,914.37 to bring his or her salary to the median for his or her rank and discipline. Again, this conclusion is based on the salaries of only eight others. This same type of analysis is applied to numerous other departments, comparing salaries of discrete groups of professors. The Union's estimated "median

salaries" are distorted by Ohio State University which employs 25% of all State university faculty and pays salaries at the State's highest rate; and omits Shawnee State and Cleveland State, two lower paying institutions, thereby further distorting median salary figures.

Another flaw in this type of "professor-to-professor" comparison is its failure to account for other factors affecting salary such as time in rank or merit. Based on the Union's list of departments at state universities, it cannot be determined whether Wright State faculty members have less seniority than their comparators, have been rewarded for outstanding achievement, or whether performance problems have factored in salary.

Further, that Wright State allegedly has a larger than average percentage of faculty in high paid disciplines does not support the Union's proposed salary increase. The University has offered a market adjustment pool in the 1999-2000 year equal to .75% of all faculty salaries. Out of this pool, the University will apply increases to the base salaries of faculty members whose salaries are below the median for their discipline, based on figures on which the Parties agree.

Moreover, the University's salary information supporting its proposal is more credible, since it bases its salary proposal on information provided by the AAUP national organizations' 1998-1999 faculty salary survey. This survey is widely-accepted at other Ohio and national institutions. Other Ohio institutions routinely rely on this survey to inform salary decisions. Unlike the widely-accepted information on which the University relies, the WSU-AAUP's data in support of its whopping 16.25% salary increase proposal is self-generated. The Union's statistics are not used or accepted at any other state institution.

The merit component of compensation proposed by the University is appropriate

and consistent with established University practices. The Union's argument that the University will not follow any criteria in awarding merit pay is unfounded. The University has agreed to adopt the Union's formula for calculating merit increases (Union Section 13.7) during the course of the Agreement. This formula for calculating merit pay will be set forth in the Parties' binding bylaws, or in a memorandum of understanding. The Union's proposed moratorium on merit pay for two years is unfounded.

The University notes that faculty who teach overload courses do so pursuant to voluntary agreements. It states that its overload compensation offer is reasonable and reflects past practice.

The University's proposed range of rates would afford it greater flexibility in staffing additional courses. Further, a range of rates, as opposed to a single fixed rate, allows the University to account for market forces and other factors affecting a rate, while maintaining quality education at a reasonable cost.

The Union's proposal to raise overload rates to fixed rates (the maximum rates proposed by the University) per rank of professor is excessive and constraining to the University. Should the Union's proposed overload rates take effect, the University would be constrained to either eliminate extra courses, or rely on adjunct professors. Furthermore, argues the University, the Union's proposal for overload compensation (their Section 13.12) infringes on the University's workload policy and is therefore inconsistent with Ohio law. Suffice it to say that the University sets out a plausible legal argument in support of its contention in this regard. Likewise, the Union presents a plausible legal counter-argument.

As for the Union's proposed rates for advising students in independent laboratory studies, the University characterizes same as excessive.

The Union has no demonstrated that its proposed rates are consistent with those at other Universities, or that the assigned work — which mainly involves periodic advising of students on research questions — is of such a burdensome or time-consuming nature warranting rates up to \$100 per credit hour.

Moreover, should the Union's proposed rates take effect, the University would be constrained to cut back on advising opportunities for students, which would infringe on its ability to provide students with quality instruction. Besides, the University provides faculty with extensive opportunities to teach summer courses at high rates of compensation. The Union's proposal regarding Article 13.14 should not be recommended.

The Union in support of its proposals emphasizes the University's ability to pay and the University's strategic goals and policy. It notes that Wright State, in a mere 32 years, has quickly become a nationally recognized University with a growing national reputation. As for revenue, the Union notes the projections of increase of 5 million dollars, plus, or 7% over the next 2 years. It also notes that Wright State is third in the State in operating appropriations. As for research grant revenue, the Union notes that at 35 million in research grants for the 1998-99 academic year, Wright State had the third highest level of research grants in the State. With a small faculty, there are fewer faculty members who are responsible for these impressive research dollars vis a vis other universities. The Union also notes that the University will likely receive \$1,157,828.00 over its budget for the 2000 fiscal year. It also points to the \$1.3 million budgeted vacancies. The Union contends that the

University is in an extremely favorable position with respect to its ability to pay the economic proposals of the Union.

Other matters noted by the Union include the CBO projection that the CPI will increase an average of 2.6% in the years 2000-2002. Thus, the across-the-board increase proposed by the University is below the CPI. As for the Union's market proposal, such is based in large measure on the University's Strategic Plan: to move faculty salaries to the top quartile.

As for merit pay, the Union defends its two year moratorium on the grounds that under the University's proposal, there are no objective criteria for merit increases, creating feelings of unfairness.

Concerning overload compensation, the Union asserts that under its proposal, overload compensation is paid any time the University unilaterally imposes an increase in the class limit of more than 20%. Overload compensation is then paid on a pro-rated basis. The Union's proposal also distinguishes between rank, and provides that assistant professors will receive \$800 per credit hour, associate professors will receive \$900 per credit hour, and full professors will receive \$1,000 per credit hour.

The University's proposal is similar, except that it has a broad range of overload compensation which applies. The University proposes that assistant professors receive between \$275 and \$800, that associate professors receive between \$325 and \$900, and that full professors be paid between \$375 and \$1,000. It provides no basis to explain the wide variations. In addition, the University will be under no obligation to follow any objective criteria in making its determination, and will not be required to explain to faculty

members its rationale.

Finally, the University is simply wrong when it claims that this issue is not a mandatory subject of bargaining. As shown, the University's reliance on O.R.C. Section 3345.45 is misplaced.

The Union notes that the University proposes that the Contract be silent on the issue of summer quarter research salaries. The University acknowledges that this stipend had been reduced to \$20 per credit hour by the Dean in the College of Science and Math beginning in the summer, 1998, but argues that no language addressing this issue should be placed into the CBA.

It is the position of the Union that the recent reduction in summer quarter research salaries does not fairly compensate faculty members. In addition, the University's timing is suspect, because the higher rates were paid up until the summer of 1998. The Union also believes that there is more work required to direct independent laboratory research at a Ph.D. level than a master's degree level, and more work at a master's degree level than with an undergraduate. The University's proposal fails to take this into account. The cost to the University of returning to the 1997 rates is minimal. At the same time, a return to the 1997 rates recognizes the work involved.

II. RATIONALE & RECOMMENDATION:

The undersigned has carefully reviewed the voluminous data on this issue, and studied the parties' respective contentions, arguments and counter-arguments, and, directly to the points, finds that by and large, the University's arguments and contentions are better

grounded in the record evidence and the more persuasive. Accordingly, the University's proposals will be and are recommended, with but two caveats. Added thereto will be the Union's proposal at Section 13.14. Additionally, I find the University's across-the-board increase to be slightly too parsimonious. Accordingly, it is recommended that after applying the formula set forth in Appendix "A," the University's across-the-board increase be enhanced by .25% for each year of the Contract. The undersigned is without authority to resolve the parties' "legal" differences with respect to overload, and unwilling to support one view over the other. To do so would invite litigation as in the Clermont County Sheriff's case in the early '80's, wherein none of the tentative agreements or any recommendations were put into effect on the grounds that the Fact Finder exceeded his authority in making a "legal" resolution.

ISSUE #2: ARTICLE E - MATTERS NOT COVERED

II. EVIDENCE & POSITIONS:

The University proposes Article E read as follows:

"E.1 - The parties have had an opportunity to present their proposals on any subject, except faculty workload, and this Agreement otherwise reflects the entire understanding between the Parties. This Agreement does not obligate the University to continue any practice, policy, pronouncement, or benefit that affects Bargaining Unit Faculty Members, except as expressly set forth herein. However, established peculiar personal benefits which the WSU-AAUP presents in writing to the Provost prior to the execution of this Agreement, and which the

Parties mutually agree to continue, shall not be discontinued or modified without prior notice to the WSU-AAUP.

E.2 - The terms of this Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary mutual consent of the Parties in a written and signed amendment to this Agreement.”

The Union is in agreement with the University’s language at paragraph E.2.

However, the Union would have paragraph E.1 read as follows:

“E.1 - This agreement reflects the entire understanding between the Parties. This Agreement does not obligate the University to continue any practice, policy, pronouncement, or benefit that affects Bargaining Unit Faculty, except as expressly set forth. However, nothing in this Article shall be construed as a waiver of the WSU-AAUP’s right to negotiate any change in a mandatory subject of bargaining, as specified in 4117.08.”

The University characterizes its proposed “zipper clause” as a compromise, stating that instead of demanding a complete waiver of the Union’s negotiating rights regarding terms and conditions not stated in tentative agreements or submitted for Fact Finding, bargaining unit faculty, under the University’s proposal would have the opportunity to bring forth, prior to execution, any other terms or conditions of employment desired for inclusion in the Agreement. Accordingly, asserts the University, subject to the University’s agreement, these terms would be binding on the Parties, and expressly set forth in either the Agreement itself, a side letter, or in memoranda of understanding.

The University takes the position that it should not be bound by numerous written, unwritten, and alleged practices and policies existing among approximately 35 University departments. The University asserts that its proposal would encourage communication between the Parties regarding the agreed terms and conditions of employment, avoid post-execution disputes, and foreclose the possibility of non-stop negotiations. The University takes the position that Administrators charged with responsibility to make decisions affecting wages, hours, or terms and conditions of bargaining unit employees, should have certainty regarding whether routine modifications to policy are lawful.

The University contends that other fact finders have recommended zipper clauses, citing Talawanda Classified Staff Association and Talawanda City Schools, SERB Case No. 97-MED-01-0025 (Marmo, 1997) (fact finder recommended that zipper clause remain in successor agreement); Sylvania Township and Teamsters Local 20, SERB Case No. 97-MED-08-0818 (Fitts, 1997) (recommendation that zipper clause would “bring closure to the negotiating process).

Furthermore, argues the University, without its zipper clause, the effects of the Management Rights clause – to which the Union has agreed – would be eviscerated. The Union insisted during negotiations, asserts the University, that the agreed Management Rights clause state that the University’s inherent management rights were limited where “expressly stated in this Agreement.” Yet, the Union seeks to circumvent the Management Rights clause entirely by binding the University to numerous unstated practices.

The Union takes the position that the University’s proposal strips the Union of valuable negotiation rights. Even in the even the Union were to proceed with the

untenable burden of identifying practices in 35 Departments and the University voluntarily agreed to continue specifically identified practices, such practices could be unilaterally discontinued or modified by the University without negotiations, solely upon providing the Union with notice, asserts the Union. The Union's proposal, asserts the Union, merely states that the University's obligation to negotiate, as set forth in Section 4117.08 of the Ohio Revised Code, has not been waived. This is a more reasonable, and more workable compromise because it still allows the University to modify mandatory subjects of bargaining mid-term, but only after negotiating the issue to impasse. The Union contends that the University's claim that its obligation to bargain mid-term would be too burdensome, is not well taken, citing In re: Cleveland Heights - University Heights Board of Education, SERB 97-005 (3-28-97), wherein SERB held that even if a change affects wages, hours or terms or other conditions of employment, the employer is not obligated to bargain with the Union if the affect is *de minimis*. The changes which have a more substantive effect, on the other hand, would need to be bargaining. The Union further asserts that it should also be noted that historically, boilerplate "zipper clauses" had not been interpreted to preclude bargaining over employer-initiated changes affecting terms and conditions of employment. See In re: Youngstown State University, SERB 93-011 (6-10-93); In re: Transportation Department, SERB 93-005 (4-29-93). On the other hand, some courts have construed zipper clauses to have precluded any midterm bargaining. In Ohio Council 8, AFSCME v. Kent State University, 1994 SERB 4-9 (10th Dist. Ct. App., Franklin, 3-29-94), the Court held that a general zipper clause precluded all mid-term bargaining. As such, it cannot be assumed that the current Board at SERB, or any of Ohio's courts of appeal would

necessarily look at the University's proposal as a traditional zipper clause which does not constitute a waiver. It must be assumed that, if the University prevails on its proposed zipper clause, that the Union could, in effect, be construed to have waived any right to negotiate any change in a mandatory subject of bargaining during the entire three years which the Collective Bargaining Agreement is in effect.

II. RATIONALE:

As the Union points out, "the parties spent a number of hours in mediation on October 12, 1999," regarding Article E. It was the undersigned who suggested the concept of "peculiar personal benefits" in an effort to meet the University's concerns that there were simply too many departments and too many practices out there, some of them contradicting each other, to in effect be frozen as the Union then proposed. The concept of "peculiar personal benefits," well established in rights arbitration as the kind of past practice which is generally regarded as binding, would have served to circumscribe and define which body of practices the parties were agreed would be binding for the life of their Agreement. Suffice it to say that neither on October 12, 1999, nor now, has either party subscribed to the concept I suggested. In any event, in my view, the parties' first Contract is not the best candidate for a restrictive zipper clause (the University's position) nor a standard which may potentially serve to modify the parties bargaining obligations which would obtain at law in the face of no contractual provisions spelling out the bargaining obligations (the Union's position). For the parties' first Collective Bargaining Agreement flexibility is desirable. This is best achieved by leaving the parties to their

grievance-arbitration process and subject to the mid-term bargaining obligations imposed and enforced by the State Employment Relations Board and the judiciary. Both parties are represented and advised by sophisticated Legal Counsel with the likelihood therefore that these legal and quasi-legal processes will not be abused. Accordingly, neither parties' provisions for Paragraph E.1 will be recommended, and only Paragraph E.2, set forth above, will be recommended.

III. RECOMMENDATION

Neither parties' proposed Paragraph E.1 is recommended. Paragraph E.2, which both parties agreed to, is recommended, to be re-designated Paragraph E.1.

ISSUE #3: ARTICLE 16 - MEDICAL, DENTAL AND VISION INSURANCE

I. EVIDENCE & POSITIONS:

The University's proposal for Article 16 is set forth in Appendix I. The Union's proposal for Article 16 is set forth in Appendix II.

In support of its proposal, the University notes that historically, for a monthly premium contribution based on the employee's income, employees have received medical and dental benefits with no deductible expenses and modest co-payments. All University employees, including all faculty and administration are covered by the same plan. One feature, which the University asserts is unique, is that the medical plan allows employees to opt for their choice of a doctor. The University contends that under its plan, the University

absorbs 92% of the costs. It notes that University-wide, its health insurance benefit costs rose some \$590,000.00, and that costs are expected to continue to escalate. The University notes that its proposal maintains most of the benefits available in 1999, albeit there are some reductions in pharmacy benefits and some co-pay increases which serve to fund a 20% reduction in premiums for faculty. Benefit levels are to remain substantially the same throughout the three year term of the Agreement. Employees earning less than \$50,000 per year who opt for single coverage pay only \$12.00 per month. The top premium rate under the University's proposal for employees earning over \$50,000.00 per year with two dependents is \$56.00 per month.

In Section 16.5 of its proposal, the University seeks cost sharing on premium increases. It states that since it offers such a comprehensive plan, it seeks the *quid pro quo* of cost-sharing on premium increases from all beneficiaries. Under the University's proposed Section 16.5, bargaining unit faculty, as would all University employees, would be responsible for 50% of cost increases beginning January 1, 2002, should costs of insurance rise in 2000-01. The University notes that cost-sharing on premium increases has been implemented at Kent State University. As for a vision care component of the University's medical insurance plan, the University contends that the Union's detailed, benefit specific proposal is premature inasmuch as the University is currently negotiating with providers on specific terms and a provider should be secured by January, 2000. The University contends that it cannot determine whether the Union proposed benefits may be obtained at the Union's proposed rates and hence it should not agree to specify benefits that it cannot currently cost.

Still further with respect to medical plans, the University notes that the Ohio Inter-University Council is currently studying University medical plans, in recognition of the uncertainty among universities administering plans with respect to providers, benefits, and coverage, and it asserts that the findings of the Council may inform future decisions regarding medical benefits.

The Union reminds the Fact Finder that during the summer, the bargaining unit accepted the University proposed changes with respect to the prescription drug benefit component, which served to increase out-of-pocket costs to unit members, despite the fact that other major economic issues remained unresolved at that time. The Union notes that both it and the University are proposing to decrease the contributions faculty are required to make toward their health care, and to add vision care to the benefits provided. The differences between the parties, asserts the Union, is that the University is only willing to use savings realized from the decrease in benefits for prescription drugs, while the Union believes that some additional cost is justified. The Union notes that the record reflects that bargaining unit employees currently spend \$204,540.00 each year toward the cost of their premiums. Under the Union's proposal, this would be reduced to \$75,204.00, whereas under the University's proposal, employee contributions would only be reduced to \$163,632.00. Given the benefit levels provided to faculty at other universities, the increased out-of-pocket expenses for prescription drugs, and the favorable fiscal position that the University enjoys, the University's proposals do not go far enough, argues the Union. The Union's proposed premium reductions and its defined-benefit vision plan are clearly justified argues the Union. Union submitted data indicates that faculty at Wright

State pay more for their health care benefits than faculty elsewhere.

By way of elaboration, the Union contends that, contrary to the University's contention, the cost of a vision care component should not be seen solely as a zero-sum game, calculated in relation to the reduction in costs associated with the reduced prescription drug benefit. Vision care, asserts the Union, stands alone, and the prescription drug savings should be used only to partially offset the cost of the reduction in the general premium contribution and the vision care benefit.

The Union contends that the University's vision care proposal is too vague, and the fact that benefit levels for vision care are fairly standard answers, the University's objections *vis a vis* the incomplete bidding process with carriers that it is presently engaged in. Moreover, external comparables support the vision care benefit, it being provided at Bowling Green, Cleveland State, Kent State, Ohio State, Ohio University, University of Akron, University of Toledo and Youngstown State.

As for its no-cost single plan proposal, the Union notes that other universities provide their faculty with the option of a no-cost plan, to wit, Cleveland State, Kent State, Miami University, Ohio University, University of Cincinnati, and Youngstown State.

The University retorts that the Union's comparative data is inconclusive. It cannot be determined whether any of these no-cost single coverage plans include medical, dental, and vision care. Further, argues the University, the Union's comparable data does not reveal whether other universities offer a plan with the same level of benefits as Wright State along with unlimited choice of doctor.

As for the University's proposal at Section 16.5, which the Union characterizes as a

provision calling for the faculty to take on an unlimited liability of funding 50% of any future increases in health care premiums, this provision would, asserts the Union, significantly reduce the incentive that the University has to keep health care insurance premiums as low as possible. The University did not point to one other contract in the state that had such a draconian provision. Given the volatility and rapidly escalating costs of health insurance, faculty could have their financial security undermined if such a provision were to be included in this contract. Clearly, the University is in a much better position to absorb these rising costs and if the University feels that it can no longer handle the increased costs, it can always negotiate with the Union for higher premiums in the next contract.

II. RATIONALE:

My study of the parties' respective contentions and the record evidence in the matter convinces me that with one exception, the University's proposals are better supported. There can be no question but that health insurance benefits are costly, and that their cost is likely to continue to escalate. Additionally, comparison of health benefits is not the easiest task, given their complexity and the great variety in their terms and quality. This reality somewhat undermines the value of purported comparable data introduced into evidence. In any event, an overarching consideration here is the University-wide embrace of the health benefits being proposed by the University. It makes no sense whatsoever, in this volatile area, for the bargaining unit to in effect go its own way in terms of health insurance benefits, as long as the University-wide benefit proposed is a reasonable one, as

is the University's here. If the University's plan is more costly than comparables, it nonetheless is not way out of the mainstream. Additionally, it has the highly desirable feature of doctor choice. The Union challenge to the "uniqueness" of this feature is not persuasive. The undersigned encounters exposure to a high number of health benefit plans in the course of his assignments as a Fact Finder, Conciliator, and Arbitrator, and I can and do take arbitral notice of the uniqueness of the doctor choice feature in today's health insurance environment. There are two caveats with respect to the University's health benefit proposals, namely, Section 16.5 and 16.6. As the Union notes, there are virtually no external comparables to support the premium increase cost sharing the University proposes (only Kent State arguably has such a concept). Accordingly, the University's Section 16.5 will not be recommended. As for Section 16.6, I find merit in the Union's proposal for a more defined source of assistance with faculty health insurance claims. Battling with insurance providers by the individual is a most harrowing experience. Accordingly, the Union's proposal for Section 16.6 shall be recommended.

III. RECOMMENDATION

Except for Section 16.5 and Section 16.6, the University's proposals for Article 16 - Medical, Dental and Vision Insurance (Appendix I) are recommended. It is recommended that the parties' Contract not contain the University's proposal at Section 16.5. It is recommended that the Union's proposal, and not the University's proposal at Section 16.6 be adopted.

ISSUE #4: ARTICLE 27 - INTELLECTUAL PROPERTY

II. EVIDENCE & POSITIONS:

The University's proposal is set forth in Appendix III. The Union's proposal is set forth in Appendix IV. Much of the language in the parties' proposals is agreed to, but here are some meaningful differences. The Union outlines these differences in the discussion which follows. Thus, the Union notes that first it proposes that the language in Section 27.1.1 apply only to "marketable" discoveries rather than all discoveries. The reason, asserts the Union, is that if a discovery is not marketable, then the entire article should not apply. For example, the University cannot market a mathematical formula. The Union asserts that the University has not provided an adequate explanation as to why the Union's "marketable" language would create a problem. In addition, the University claimed that its language follows O.R.C. Section 3345.14. Comparing the statutory language to the University's proposal, however, shows that the University's proposal differs from the statutory language.

Second, the Union believes that the language should only apply if significant use of university resources is involved, and adds language to define the term "significant use." The University also defines "significant use." The difference between the two proposals is that, resources which are comparable to the delineated resources, such as office space and customary clerical support, will be seen as ordinary use. Whereas in the University's proposal, anything not specifically delineated could be interpreted as extraordinary use. The Union's language is therefore more reasonable.

Third, the Union includes language in Section 27.1.1.2 that guarantees that if the University decides not to pursue the marketing of a discovery, then ownership is to be assigned to the faculty member, while the University retains a royalty-free license. It also provides that requests for such assignment by a faculty member are not to be unreasonably denied. Again, this language is logical and reasonably related to the stated goals of the University, while still providing some protection for faculty members. It is unclear to the Union why the University objects to this language.

Fourth, the Union includes language in Section 27.1.1.3 that pertains to faculty's ability to continue to use their discoveries and inventions while they remain at Wright State or when they leave their employment at Wright State. This provision would allow faculty to continue using their discoveries and inventions, which are likely to be part of their research, on an unrestricted basis. This is particularly important since it reflects the current application of the Ohio statute on discoveries and invention at Wright State University. Restricting the use of discoveries or inventions from faculty who created these would hamper their ability to continue their research, obtain extramural grants (which provide a greater return to the University than marketing a single product), and publish on their work. Failure to publish or obtain extramural grants in departments which are heavily research oriented would result in failure to achieve tenure. The University has no comparable language.

Fifth, the Union proposes language in Section 27.1.5 which protects faculty who wish to pursue patents on inventions, when the University declines to apply for or maintain a patent directly.

Sixth, Section 27.2.1 strikes out the term “work for hire” as redundant. Any work for hire would necessarily be subject to a separate written agreement.

Seventh, the Union proposes the term “but are not limited to” in Section 27.2.3. A reading of this provision shows a clear need for the additional language.

Eighth, the Union strikes language in Section 27.2.4 which is beyond its control. The portion of the language which has already been agreed to provides that the bargaining unit faculty member is to consult with his or her Chair. It is poor language to add “who shall have the opportunity to consult with the Intellectual Property Officer prior to approval.” How should faculty members know if this happens, or if not, enforce it? These types of intra-management procedures should be included in a labor contract.

Finally, the Union strikes the University’s proposed Section 27.3.1 because faculty work should be treated as work-for-hire. Faculty in the art department, for example, should not be asked to create trademarks for the University without some written agreement, specifying additional compensation for work which is clearly outside their current job description.

The University also outlines its differences with the Union and as outlined below, puts forth its position. Thus, the University notes at the outset that the Union proposes that the University retain ownership rights in only “marketable” inventions or discoveries [27.1.1 - 27.1.1.3]. This proposal is inconsistent with Ohio Revised Code Section 3345.14, which makes no exception for “marketable” discoveries or inventions. The Ohio legislature has determined that State universities retain exclusive ownership rights in inventions and discoveries. The University does propose, however, to permit faculty to share in royalties

and provide that the University may, at its discretion, assign ownership rights in inventions or discoveries to a faculty member. As for the Union's proposal at 27.1.1.3, that bargaining unit faculty retain rights to "unrestricted" use of marketable discoveries or inventions whether or not they remain employed at the University, the University contends that this Union proposal is contrary to Ohio law in that Ohio law provides that faculty retain no rights in discoveries or inventions and that the University has exclusive rights, unless assigned. The University notes that it has provided that faculty separating employment from the University shall continue receiving distributors of their share of royalties.

In support of its proposal for Section 27.1.5, the University notes that the Ohio legislature has set forth in O.R.C. Section 3345.14 that the University has no duty to assign faculty ownership rights in intellectual property, but rather, has complete discretion. The Statute has no language regarding the "reasonableness" concept the Union would interject.

The University considers the proposed "reasonableness" standard as placing an ominous burden on its administrators considering assignments of intellectual property rights. Faculty members denied assignment requests would be invited to file grievances regarding the "reasonableness" of the denial. Since the statute does not require any assignment, the University's offer to "duly consider" all assignments is sufficient. The Union proposal on this issue should be rejected.

The University notes that it proposes that it retain ownership rights of all copyrightable works authored at its direction. The federal Copyright Act permits employers to retain ownership rights in copyrights authored by employees within the scope of their employment. This doctrine is called the "work-for-hire" doctrine. The Federal Copyright

Act provides that works for hire are owned by the employer. See, 17 U.S.C. Section 101; 17 U.S.C. Section 201. Thus, the University, as the employer, is legally entitled to ownership rights of faculty copyright-able works. However, the University proposes to permit faculty to retain ownership rights in "traditional faculty products of scholarly activity," such as lecture notes, unless the faculty member assigns such rights to the University or the traditional product was created at the direction of the University and is therefore a "work for hire."

The University notes that it considers its proposed "work for hire" language at Section 27.2.1 as important. The Union proposes to eliminate such language, claiming that all faculty copyright-able works developed at the University's direction are done so according to written agreement. However, the Copyright Act does not limit "works for hire" to written agreements. The University as an employer under the Act, is entitled to copyright ownership in all copyright-able works of its employees regardless of whether such works are authored in accordance with a written agreement. Thus, the Fact Finder should recommend adoption of the University's proposal regarding copyright ownership.

The University urges that its proposal within its Section 27.2.4 to the effect that prior to Chair approval, the Chair be permitted to consult with the University's intellectual property officer should be adopted. The University notes that when the Chair is uncertain whether proposed use of University resources could result in a subsequent reimbursement to the University paid from royalties, that Chair should be afforded the opportunity to consult the Intellectual Property Officer, who administers the University's intellectual property plan. That individual is knowledgeable about the University's intellectual property

policy and the level of faculty use of resources that may constitute “significant use of University resources.” The Union has already agreed in Article “B” that the University has a Management right to “control operations.”

The University notes that it retains ownership of all trademarks created by faculty members at the University’s request. No law or regulation rests ownership rights in trademark developed at an employer’s direction with the employee. Besides, the University would retain copyright ownership in any trademark involving a logo or design developed by a faculty member at the University’s direction. Such works would constitute University-owned “works for hire” under Copyright Act. Thus, the University’s proposal on trademark ownership should be accepted.

II. RATIONALE:

My study of the parties’ respective positions convinces me that by and large the University’s contentions and viewpoint are the more persuasive, except as otherwise indicated. The gist of the University’s position is that it seeks to contractualize the “ownership” concepts established in Ohio and Federal law with respect to intellectual property. It goes without saying that these laws have their complexities. The advantage to essentially tracking them in the Contract is that there exists a substantial body of judicial gloss to guide the parties in their contractual administration. In essence, the Union’s proposals seek to modify, reduce, or take away the ownership vested in the University by Statute. No *quid pro quo* for such incursions on the University’s ownership rights is put forth. For this the parties’ first Contract, it makes more sense to simply in essence codify

the status quo. Accordingly, the University's proposals for Article 27 shall be recommended, with the exception of Section 27.1.1.1 concerning the definition of "significant use," and Section 27.2.3, concerning "traditional faculty products." I find the Union's proposals for these sections to be more reasonable. With respect to 27.2.3, the University's language is subject to a restrictive interpretation, which I don't believe is the parties' intent.

III. RECOMMENDATION

The University's proposals for Article 27 are recommended (See, Appendix III), except for Section 27.1.1.1 and 27.2.3, which should read as per the Union's proposals (See, Appendix IV).

ISSUE #5: ARTICLE 26 - DUES CHECK-OFF

III. EVIDENCE & POSITIONS:

The parties are agreed to the following two provisions for Article 26:

"26.1 The regular WSU-AAUP dues shall be established under the terms of the WSU-AAUP Constitution and Bylaws and certified to the University by the WSU-AAUP. Upon written authorization of payroll deductions, the University shall deduct WSU-AAUP dues from the paychecks of all bargaining unit faculty who are members of the WSU-AAUP in equal increments, and transmit the amount deducted to the WSU-AAUP. The President of WSU-AAUP shall by September 15 make known to the University the amount to be deducted annually.

- and-

26.3 The WSU-AAUP agrees that it will indemnify and hold the University harmless from any and all claims, damages, actions, or suits of any nature arising out of, related to, or in any way connected with the enforcement or application of this Article.”

The Union proposes a Section 26.2, Section 26.4, and Section 26.5, as follows:

“26.2 The University will make every effort to forward checked-off dues and the fair share fee to the WSU-AAUP one week following the end of the month. Each month, a report will be sent to WSU-AAUP documenting the members whom dues were deducted and the amount of that deduction. The University shall levy no charge upon WSU-AAUP for administering the payroll deduction.”

The University, being opposed to any fair share fee, would delete the phrase “and the fair share fee” of sentence one, but otherwise agrees to the Union’s proposal for Section 26.2.

The Union’s specific fair share fee proposals are set forth in Sections 26.4 and 26.5, as follows:

“26.4 In recognition of the WSU-AAUP’s services to the bargaining unit, each member of the bargaining unit who is not a member of the WSU-AAUP shall on the effective date of this Agreement or sixty (60) days after the effective date of appointment to a bargaining unit position have a “fair share fee” deducted from his/her pay and forwarded to the WSU-AAUP. The WSU-AAUP will certify to the

University the amount of the fair share fee, which shall not exceed the amount of dues for regular members of WSU-AAUP.

26.5 This Article is in all respects subject to O.R.C. Section 4117.09, including the rebate procedure and conscientious objector provisions thereunder.”

In support of its fair share fee proposals, the Union emphasizes that it is legally responsible for representing at the bargaining table, in grievances, at arbitration, and in unfair labor practices, all bargaining unit employees, even if they are no members of the Union, all of which costs money. The Union points out that a fair share fee provision presents non-members of the Union from enjoying a “free ride,” that is, it prevents non-members of the Union from enjoying all the benefits of unionization without any of the cost. In this regard, the record reflects that, since certification, as much or more of Union officers’ time has been spent representing and/or advising non-Union members of the faculty, as opposed to Union member faculty. Pointing out that its fair share fee proposal presents no financial burden to the University, the Union urges the inference that Management’s reasons to object to fair share fee provisions is therefore to undermine the authority of the Union and create unnecessary financial hardship for the Union in its ability to represent members of the bargaining unit, an unworthy basis for denying recommendation of fair share provisions.

The Union further emphasizes that the University has two other collective bargaining units, one represented by the F.O.P., Ohio Labor Council, Inc., and the other by Teamsters Local No. 957, and that both of these internal comparables have fair share fee

provisions. In this regard, it is noted that the Teamsters bargaining unit is comprised of approximately 150 employees. The existence of fair share fee provisions in the University's Contracts with the F.O.P. and the Teamsters shows that the issue of fair share is not adverse to the Board of Trustees, argues the Union.

The Union notes that prior to the early retirement program implemented at the end of the 1998-1999 academic year, a majority of the bargaining unit employees were members of the Union. However, since many senior faculty retired, and since many of them were members, presently the Union represents 46% of the bargaining unit, some 15 members short of a majority. The Union asserts that younger faculty are reluctant to join the Union because they face enormous obstacles with respect to tenure. Thus, argues the Union, fair share alleviates the burden on younger faculty members, who, without fair share, are required to make a public statement regarding their membership during difficult pre-tenure years.

With respect to external comparables, the Union notes that six State Universities are organized, to wit: University of Toledo; Youngstown State University; Kent State University; Cleveland State University; University of Cincinnati; and Central State University. In addition, argues the Union in its post-hearing brief, at the time of the fact finding hearing, neither the Union nor the University had information regarding Shawnee State University. In its post-hearing brief, the Union notes that Shawnee State did have a fair share fee provision in its 1994-1997 Contract (excerpt provided), such that assuming the Union has not been decertified since that time frame, it is fair to assume that Shawnee State currently has a fair share fee provision, argues the Union. Of the six universities that are organized

and identified above, two, the University of Toledo and Youngstown State have fair share fee provisions in their labor contracts, with the consequence, argues the Union, that one-third of organized universities in Ohio have fair share fee provisions.

The University objects to the Union's proposals on fair share. Associate Provost William Rickert indicated that the University's Board of Trustees is philosophically opposed to having bargaining unit faculty who are not members of the Union pay fair share. According to Rickert, the Board of Trustees considers forcing fair share fee payments on non-Union member faculty as inappropriate, and a factor which could lead to low morale. Provost Rickert also indicated that numerous non-Union member faculty had expressed to him great disfavor with paying fair share fees. Additionally, citing excerpts from the undersigned's Fact Finding Report & Recommendations in Miami University -and- AFSME Local 209, SERB Case No. 95-MED-09-0733 (1966), and Northridge Local School District Board of Education -and- Teamsters Local Union No. 957, SERB Case No. 96-MED-07-0591 (1996); in support of its opposition, the University notes the undersigned's observation to the effect that as a "first contract, the granting of a fair share provision could not reasonably have been anticipated, it being a ... provision more appropriate to a maturer bargaining relationship." The University goes on to note the undersigned's additional observation to the effect that "a recommendation ... of fair share requires a meaningful quid pro quo," that is, as the University characterizes it in their post-hearing brief, "fact finders should not consider recommending fair share when a Union does not offer a concession in exchange." The University notes that the undersigned also indicated in Northridge in support of a failure to recommend fair share that "it wasn't shown that the Union presently enjoys a

high rate of membership.” To a similar effect, the University cited Fact Finder Marmo’s Report & Recommendation in Talawanda Classified Staff Association -and- Talawanda City Schools, SERB Case No. 97-MED-01-0025 (1997).

Yet another basis for not recommending fair share, argues the University, is to be found in the proposition that fair share needs to be cooperatively agreed upon and not mandated, as in effect found in Talawanda, supra: Miami East Education Association -and- Miami East Local Schools, SERB Case No. 96-MED-03-0204 (Paolucci, 1996); and Lawrence County Board of MR/DD and OAPSE Local No. 4, SERB Case No. 97-MED-10-1159 (Sambuco, 1998). Then too, the University contends that the mere fact that a Union represents non-union members in a unit is an insufficient basis for awarding fair share.

II. RATIONALE:

For the reasons which follow, the Union’s proposed provisions for Article 26 - Dues Check-Off, Sections 26.1 through 26.5 inclusive will be recommended. Thus, the rationale of Fact Finders Marmo, Paolucci, and Sambuco to the effect that “fair share needs to be cooperatively agreed upon and not mandated,” relied on by the University, simply misconstrues the primal task of the Fact Finder, namely, the making of a recommendation in the face of the parties inability “to cooperatively agree upon” a proposition and proposal, that is, the need to make a recommendation in the face of an impasse. Accordingly, it constitutes a singularly unpersuasive basis for not recommending fair share.

In my view, the facts and circumstances here are more similar to those obtaining in the case of Licking County Engineer (Highway Department) -and- Teamsters Local Union No.

63Z, SERB Case No. 99-MED-03-0285. In that case, involving the undersigned's Fact Finding Report & Recommendations of August, 1999, I noted as follows:

"Preliminarily it's noted that SERB neutral panelists are assigned principally only to the SERB Region within which they reside. It is noted that the U.S. Supreme Court has, with certain safeguards, sanctioned imposing 'fair share' fees on bargaining unit employees who are non-members of the Union, and who benefit from the Union's collective bargaining efforts, which obviously enough involve monetary costs, notwithstanding said non-members' first amendment rights. It does so essentially on the grounds that such fees are simply a matter of fairness. As if to give emphasis to the 'fairness' of the proposition that such non-members of the Union participate in the cost of the Union's bargaining efforts which results in their benefitting from the Contract terms exacted in collective bargaining negotiations with the Employer, the U.S. Supreme Court unflatteringly refers to such non-member bargaining unit employees as 'free riders.' Suffice it to say that the Union's fairness argument is as eminently persuasive to the undersigned as it has been to the U.S. Supreme Court. Clearly, based on the Supreme Court's viewpoint in this regard, neutral panelists, from the outset of O.R.C. 4117, from the northern tier of the State awarded 'fair share,' even in first contracts, typically relying virtually solely on the 'fairness' of doing so. This rationale was less common in the Central and Southern Regions of the State. In these areas, the Employer legislative body were often politically conservative, often extremely so, and opposed philosophically to 'fair share.' Many neutral panelists, including the undersigned, believed that this stance was worthy of recognition and respect and hence frequently, at least for a first Contract, 'fair share' would not be recommended. It was felt that after a contract's worth of dealing with the Union, the legislative body might come to be less hostile to reality of being organized generally, and more specifically less

hostile to the fair share concept. But these Reports & Recommendations of mine (as best I recall, and the Employer produced none to the contrary) and others which I became familiar with, either as presented for hopeful persuasive precedent, or as statutorily mandated to be taken into account by me as Conciliator, never involved a situation such as that presented here, wherein internal comparables existed, that is, where the legislative body had previously accepted 'fair share' for other bargaining units concerning which they were the legislative body. Here the Commissioners have accepted 'fair share' in the last round of the Sheriff's Department negotiations, and not pressed on to challenge same in a fact finding or conciliation hearing, where a philosophical objection could potentially prevail. ... In sum, the acceptance of 'fair share' in the Sheriff's Department undermines any contention of philosophical objections *vis a vis* other Licking County Bargaining Units. ..."

Accordingly, I recommended Fair Share in the Licking case. The short of the matter is that valid comparables have from the outset of O.R.C. 4117 been given substantial weight by neutral panelists. And with respect to the issue of fair share, internal comparables are particularly weighty. I also note that the Teamsters bargaining unit is a substantial one. And here, in addition to the internal comparables, as seen above, the internal comparable factor is bolstered by some external comparables as well. With respect to the numbers-of-members analysis referenced above, I believe it reasonable to infer that the Union might well be correct concerning its observation about the reluctance of tenure track faculty to declare themselves as Union members. Thus, in the particular context here, the numbers analysis is weakened. With respect to the quid pro quo analysis referenced above, although the Union has not identified any particular provisions as sacrificed in order to obtain fair share, a quid pro quo nonetheless exists in the face of the

totality of the undersigned's Recommendations, which by and large fall short of what the Union has requested and perceived as reasonably obtainable. In sum, the pertinent statutory factors preponderate in favor of the Union's proposals.

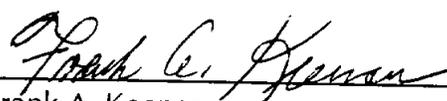
III. RECOMMENDATION

It is recommended that all of the Union's proposals for Article 26 - Dues Check-Off, Sections 26.1 through and including Section 26.5, be adopted by the parties in the Contract.

It is further RECOMMENDED that all of the parties' tentative agreements be incorporated into their Contract.

This concludes the Fact Finder's Report & Recommendations.

November 30, 1999



Frank A. Keenan
Fact Finder

APPENDIX "A"

Article 13 Salary

UNIVERSITY REVISED DRAFT October 8, 1999

- 13.1 For academic year 1999-2000.
 - 13.1.1 Each Bargaining Unit Faculty Member shall receive an across-the-board raise equal to 2.5% of his or her annual base salary for academic year 1998-1999. Such raises will be effective July 1, 1999 for Members with fiscal year appointments, and September 1, 1999 for Members with academic year appointments.
 - 13.1.2 The University shall create a market adjustment pool equal to .75% of the total annual base salary for academic year 1998-1999 of all Bargaining Unit Faculty Members who were employed during the 1998-1999 academic year and who remain employed during the 1999-2000 academic year. The University shall distribute market-based raises from this pool after considering recommendations regarding each eligible Member from the WSU-AAUP. Such raises will be effective January 1, 2000, and will be paid to the Members who receive them no later than ninety (90) days after the University receives recommendations for such raises from the WSU-AAUP.
- 13.2 For academic year 2000-2001.
 - 13.2.1 Bargaining Unit Faculty Members will receive raises from a pool equal to 2.5% of their total 1999-2000 base salaries. These raises shall amount to an across-the-board increase of 1.25% for each Bargaining Unit Faculty Member and eligibility for merit raises from a pool equal to 1.25% of the 1999-2000 base salaries. Such raises will be effective July 1, 2000 for Members with fiscal year appointments, and September 1, 2000 for Members with academic year appointments.
- 13.3 For academic year 2001-2002.
 - 13.3.1 Bargaining Unit Faculty Members will receive raises from a pool equal to 2.5% of their total 2000-2001 base salaries. These raises shall amount to an across-the-board increase of 1.25% for each Bargaining Unit Faculty Member and eligibility for merit raises from a pool equal to 1.25% of the 2000-2001 base salaries. Such raises will be effective July 1, 2001 for Members with fiscal year appointments, and September 1, 2001 for Members with academic year appointments.

13.4 Promotion Increases. A Bargaining Unit Faculty Member who is promoted from Associate Professor to Professor shall receive an increase of \$3000 or 7.5% of that Member's annual base salary, whichever is greater. A Bargaining Unit Faculty Member who is promoted from Assistant Professor to Associate Professor shall receive an increase of \$2500 or 7.5% of that Member's annual base salary, whichever is greater.

13.5 Overload Salary. Bargaining Unit Faculty Members who are offered and agree to teach overload classes shall be paid in accordance with the following schedule:

RANK	BASIC RATE PER CREDIT HOUR	MAXIMUM RATE PER CREDIT HOUR
Assistant Professor	\$275	\$ 800
Associate Professor	\$325	\$ 900
Full Professor	\$375	\$1000

13.6 Summer Quarter Teaching. A Bargaining Unit Faculty Member with an academic year appointment who has completed three quarters of service and is assigned by the University to teach during the Summer quarter will receive 1/36th of his or her annual base salary for the preceding three quarters per scheduled credit hour of summer instruction, up to a maximum of six credit hours per five-week term. Four credit hour courses taught during the academic year consisting of three contact hours and an "innovative 4th hour" shall be treated as three credit hour courses for purposes of summer class scheduling and of calculating a Member's summer compensation. Salary for teaching in excess of six hours will be calculated at an overload rate, pursuant to Section 13.5.

13.6.1 An individual Bargaining Unit Faculty Member may agree to teach a summer course for less than 1/36th of his or her base salary per credit hour.

13.6.2 When actual enrollment in an undergraduate summer class is less than twenty (20) students or in a graduate summer class is less than ten (10) students, the University may reduce the salary paid to the Member for teaching such under-enrolled class to no less than the amount the Member would have received pursuant to Section 13.6 pro-rated for the enrollment in the class. **A combined graduate-undergraduate class shall be considered as an undergraduate class, with each enrolled graduate student counted twice.**

For example, a Member teaching an undergraduate class with fifteen (15) students enrolled, shall receive no less than 75% of the salary determined for that Member according to Section 13.6; **a Member teaching a cross-**

"A"

listed undergraduate and graduate class with ten (10) undergraduate students and three (3) graduate students enrolled, shall receive no less than 80% of the salary determined for that Member according to Section 13.6.

13.6.3 The University shall depart from the summer salary formulas described in Sections 13.6 and 13.6.2 only for financial, curricular, and/or enrollment management reasons which shall be provided to the Bargaining Unit Faculty Member or to the WSU-AAUP upon request.

13.6.4 Should a Bargaining Unit Faculty Member decide not to teach a summer class, the University may, at its sole discretion, either cancel that class or hire an individual outside the Bargaining Unit to teach the class at a salary not to exceed that last offered to the Member of the Bargaining Unit.

APPENDIX "B"

Article 13: Compensation

AAUP Draft Proposal
October 8, 1999

- 13.1. **For Academic Year 1999-2000:** Each bargaining unit member shall receive a standard increment of four percent (4%) of his/her 1998-1999 base annual contract salary.
- 13.2. The University shall create a market adjustment pool equal to one and three quarters percent (1.75%) of the total annual base salary for the academic year 1998-1999 of all Bargaining Unit Faculty Members who were employed during the 1998-1999 academic year and who remain employed during the 1999-2000 academic year. The University shall distribute market-based raises in accordance with Appendix F, except that faculty on a fiscal year contract will receive the market adjustment noted multiplied by 1.22.
- 13.3. All raises in 13.1 and 13.2 will be effective July 1, 1999, for Members with fiscal year contracts, and September 1, 1999, for Members with academic year contracts.
- 13.4. **For Academic Year 2000-2001:** Each continuing bargaining unit member shall receive a standard increment of four percent (4%) of his/her base annual contract salary as it had been established for the academic year 1999-2000.
- 13.5. The University shall create a market adjustment pool equal to one and one-half percent (1.5%) of the total annual base salary for the academic year 1998-1999 of all Bargaining Unit Faculty Members who were employed during the 1998-1999 academic year and who remain employed during the 2000-2001 academic year. The University shall distribute market-based raises in accordance with Appendix F, except that faculty on a fiscal year contract will receive the market adjustment noted multiplied by 1.22.
- 13.6. All raises in 13.3 and 13.4 will be effective July 1, 2000, for Members with fiscal year contracts, and September 1, 2000, for Members with academic year contracts.
- 13.7. **For Academic Year 2001-2002:** Each continuing bargaining unit member shall receive a standard increment of two percent (2%) of his/her base annual contract salary as it had been established for academic year 2000-2001. In addition, each department will receive a salary pool of one and three quarters percent (1.75%) to be distributed as merit pay. Merit pay for individual bargaining unit members will be determined as follows: The raise for an individual bargaining unit faculty member, in a given department, will be calculated as follows.

$$\frac{p}{\sum_{i=1}^n p_i} \times \frac{M}{2} + \frac{p \times b}{\sum_{i=1}^n p_i \times b_i} \times \frac{M}{2}$$

where :

M is the total merit pool for the department (in dollars)

n is the number of bargaining unit faculty members in the department

p is the individual's number of merit points (pursuant to Section 10.2.1)

p_i is the number of merit points for the *ith* individual of the department

b is the individual's base salary

b_i is the base salary for the *ith* bargaining unit member of the department.

- 13.8. The University shall create a market adjustment pool equal to one and one quarter percent (1.25%) of the total annual base salary for the academic year 1998-1999 of all Bargaining Unit Faculty Members who were employed during the 1998-1999 academic year and who remain employed during the 2001-2002 academic year. The University shall distribute market-based raises in accordance with Appendix F, except that faculty on a fiscal year contract will receive the market adjustment noted multiplied by 1.22.
- 13.9. All raises in 13.6 and 13.7 will be effective July 1, 2001, for Members with fiscal year contracts, and September 1, 2001, for Members with academic year contracts.
- 13.10. **Market Adjustment Increases:** The market adjustment increase will be determined by the faculty member's rank and discipline in the year 1999, according to Appendix F. Those faculty receiving promotion in 1999 will receive the market adjustment for their new rank. Those Members who are promoted after 1999 will continue to receive the market adjustment for their rank in 1999 throughout the three years of this contract. If an acting chair moves back into a bargaining unit faculty position during the period of this contract, he/she will be eligible for any applicable market adjustment for the remaining years of the contract.
- 13.11. **Promotion Increases.** Each bargaining unit member receiving a promotion during the terms of this agreement shall receive an additional increase of \$3,000 or 7.5% of base salary, whichever is greater, for promotion from associate to full professor, or \$2,500 or 7.5% of base salary, whichever is greater, for promotion from assistant to associate professor.
- 13.12. **Overload Compensation.** Any increase in the maximum number of courses or the maximum number of credit hours taught by departmental bargaining unit faculty over the past three years will result in overload compensation. Any increase in the class limit over 20%, which is unilaterally imposed by the University, will be subject to overload compensation on a prorated basis. New faculty will receive overload

compensation if the number of courses or number of credit hours exceeds the maximum teaching load that does not result in overload, unless they are hired using alternative criteria, in Article 11, which would necessitate different teaching load. Additional salary increments for bargaining unit faculty teaching in excess of their regular teaching duties (overload assignments) varies on the basis of rank, in accordance with the following schedule:

Rank	Rate per Credit Hour
Assistant Professor	\$800
Associate Professor	\$900
Professor	\$1000

These rates shall be in effect throughout the term of this Agreement.

- 13.13. **Summer Quarter Teaching Salaries.** A faculty member on an academic year contract who has completed three quarters of service specified in his or her contract will receive the basic pay rate per quarter credit hour for full-time assignment, which is 1/36th of the faculty member's base salary for the preceding three quarters. Salary for teaching in excess of full-time assignment will be calculated at the overload rate, specified above.
 - 13.13.1. Summer salary for a newly appointed bargaining unit member shall be based on the initial salary and calculated in the same way as regular bargaining unit faculty.
 - 13.13.2. A full-time teaching assignment during only one five-week term is six credit hours per term. Four credit hour courses taught during the academic year consisting of three contact hours and an "innovative 4th hour" shall be treated as three credit hour courses for purposes of summer class scheduling and of calculating a Member's summer compensation. A full-time teaching assignment for courses that are scheduled for the full ten-week term is twelve quarter credit hours per term.
 - 13.13.3. An individual Bargaining Unit Faculty Member may agree to teach a summer course for less than 1/36th of his/her base salary per credit hour. However, a Member cannot be asked to accept such lowered compensation for arbitrary or capricious reasons.
 - 13.13.4. When actual enrollment in an undergraduate summer class is less than twenty (20) students or in a graduate summer class is less than ten (10) students, the University may reduce the salary paid to the Member for teaching such under-enrolled class to no less than the amount the Member would have received pursuant to Section 13.6 pro-rated for the enrollment in the class. For example, a Member teaching an undergraduate class with fifteen (15) students enrolled, shall receive no less than 75% of the salary determined for that Member according to Section 13.6.

In the College of Science + Mathematics;

13.14. **Summer Quarter Research Salaries** Academic year contract Faculty who direct independent laboratory research for either undergraduate or graduate students during the summer will receive the following stipends:

- For undergraduate research students: \$30/credit hour
- For master's students: \$50/credit hour
- For Ph.D. students: \$100/credit hour

APPENDIX I

Article 16 Medical, Dental and Vision Insurance

UNIVERSITY REVISED DRAFT
October 8, 1999

- 16.1. Medical Insurance. For the duration of this Agreement, the University will provide Bargaining Unit Faculty Members with medical insurance policies with United Healthcare of Ohio and the United HealthCare Insurance Company or other group insurance provider with substantially the same level of benefits as established for the year 1999, but with the following changes effective January 1, 2000, or as soon as such coverage can be obtained by the University:
- 16.1.1 The Medical Insurance coverage previously provided by the HealthSpring Medical Plan will be replaced by United HealthCare of Ohio Health Maintenance Plan (HMO 750) providing similar benefits to the HealthSpring Medical Plan.
- 16.1.2 Prescription drug coverage for acute care drugs provided by the United HealthCare Plus Medical Plan and to be provided by United HealthCare of Ohio Health Maintenance Plan (HMO 750) will be the following:
- Up to a 31 day supply of a generic drug on the United HealthCare formulary will be provided for a copayment of \$7.
 - Up to a 31 day supply of a brand name drug on the United HealthCare formulary will be provided for a copayment of the greater of \$10 or 20% of the cost but with a maximum copayment of \$30.
 - Up to a 31 day supply of a non-formulary drug will be provided with a copayment of \$40.
 - A one month supply of oral contraceptives will be provided for a single copayment.
- 16.1.3 Prescription drug coverage for maintenance drugs provided through the Frederick A. White Health Center Pharmacy and/or Express Scripts, Inc. will be the following:
- Up to a 90 day supply of a generic drug will be provided for a copayment of \$12.
 - Up to a 90 day supply of a brand name drug for which there is no suitable generic substitute will be provided for a copayment of the greater of \$22 or 10% of the cost of the drug.

Up to a 90 day supply of a brand name medication when a suitable generic substitute is available will be provided for the greater of \$60 or 10% of the cost of the drug.

Up to 18 Viagra pills during a 90 day period will be provided through the Frederick A. White Health Center Pharmacy (and not through Express Scripts, Inc.) for a single copayment.

Injectable infertility medications such as Follistin and Fertinex will be provided through the Frederick A. White Health Center Pharmacy (and not through Express Scripts, Inc.) for a copayment equal to 50% of the cost.

Up to a 90 day supply of oral contraceptives will be provided for a single copayment (\$12 for a generic drug; \$22 or 10% of the cost for a brand name drug) through the Frederick A. White Health Center Pharmacy (and not through Express Scripts, Inc.).

- 16.1.4 The University will offer each Bargaining Unit Faculty Member the option to enroll in the National Ear Care Plan, or an equivalent plan if available, providing an annual hearing screening and discounts on the cost of hearing aids and certain hearing testing. The Bargaining Unit Faculty Member will pay any enrollment fee for the Plan.
- 16.2 Dental Insurance. For the duration of this Agreement, the University will provide Bargaining Unit Faculty Members with dental insurance benefits through Delta Dental Plan of Ohio or other group insurance provider with substantially the same level of benefits as established for the year 1999.
- 16.3 Vision Insurance. For the duration of this Agreement, the University will provide Bargaining Unit Faculty Members with vision insurance benefits similar to the following:
- An eye examination performed by a vision plan network provider once each 12 months for each insured for a single copayment of \$10.
 - Lenses and/or frames for each insured once in 24 months for a single copayment of \$25 when provided by a vision plan network provider.
 - Contact lenses (In place of the benefit for lenses and frames) equal to the benefit for lenses and frames, when such contact lenses are provided by a vision plan network provider and are determined to be medically necessary.
 - Contact lenses (In place of the benefit for lenses and frames) up to \$105 when such contact lenses are provided by a vision plan network provider and are determined to be elective.

Benefits will be provided for exams, lenses and/or frames, and contact lenses provided by a non-network provider up to benefit maximums for each service determined by the vision plan.

16.4 Employee Premium Contributions for Health Care Coverage: The University will provide the Medical, Dental, and Vision Insurance coverage as described in Sections 16.1-16.3 to Bargaining Unit Faculty Members for a single monthly employee contribution.

16.4.1 The premium contribution to be paid by the Bargaining Unit Faculty Member for Employee Only coverage beginning January 1, 2000 shall be:

\$16/month for a Member enrolled in the United HealthCare Plus Medical Plan or the United HealthCare Insurance Company Out-of-Area Medical Plan, and whose Annualized Full Time Equivalent earnings are less than \$50,000.

\$24/month for a Member enrolled in the United HealthCare Plus Medical Plan or the United HealthCare Insurance Company Out-of-Area Medical Plan, and whose Annualized Full Time Equivalent earnings are \$50,000 or more.

\$8/month for a Member enrolled in the United HealthCare of Ohio Health Maintenance Organization (HMO 750) Plan, and whose Annualized Full Time Equivalent earnings are less than \$50,000.

\$12/month for a Member enrolled in the United HealthCare of Ohio Health Maintenance Organization (HMO 750) Plan, and whose Annualized Full Time Equivalent earnings are \$50,000 or more.

16.4.2 The premium contribution to be paid by the Bargaining Unit Faculty Member for Employee and One Dependent coverage beginning January 1, 2000 shall be:

\$28/month for a Member enrolled in the United HealthCare Plus Medical Plan or the United HealthCare Insurance Company Out-of-Area Medical Plan, and whose Annualized Full Time Equivalent earnings are less than \$50,000;

\$40/month for a Member enrolled in the United HealthCare Plus Medical Plan or the United HealthCare Insurance Company Out-of-Area Medical Plan, and whose Annualized Full Time Equivalent earnings are \$50,000 or more.

\$16/month for a Member enrolled in the United HealthCare of Ohio Health Maintenance Organization (HMO 750) Plan, and whose Annualized Full Time Equivalent earnings are less than \$50,000.

\$24/month for a Member enrolled in the United HealthCare of Ohio Health Maintenance Organization (HMO 750) Plan, and whose Annualized Full Time Equivalent earnings are \$50,000 or more.

- 16.4.3 The premium contribution to be paid by the Bargaining Unit Faculty Member for Employee and Two or More Dependents coverage beginning January 1, 2000 shall be:

\$40/month for a Member enrolled in the United HealthCare Plus Medical Plan or the United HealthCare Insurance Company Out-of-Area Medical Plan, and whose Annualized Full Time Equivalent earnings are less than \$50,000.

\$56/month for a Member enrolled in the United HealthCare Plus Medical Plan or the United HealthCare Insurance Company Out-of-Area Medical Plan, and whose Annualized Full Time Equivalent earnings are \$50,000 or more.

\$24/month for a Member enrolled in the United HealthCare of Ohio Health Maintenance Organization (HMO 750) Plan, and whose Annualized Full Time Equivalent earnings are less than \$50,000.

\$36/month for a Member enrolled in the United HealthCare of Ohio Health Maintenance Organization (HMO750) Plan, and whose Annualized Full Time Equivalent earnings are \$50,000 or more.

- 16.5 Should the total costs for the medical, dental, and vision insurance benefits described in Sections 16.1-16.3 for fiscal year 2000-2001 increase beyond those costs for fiscal year 1999-2000, the annual premium contributions paid by Bargaining Unit Faculty Members shall increase beginning January 1, 2002 in an amount sufficient to pay 50% of the increased costs.
- 16.6 The University will assist Bargaining Unit Faculty Members in resolving disputes concerning the payment of medical and dental claims on the same basis as for non-Bargaining Unit employees. To receive such dispute resolution assistance, Bargaining Unit Faculty must use the claims resolution process of the medical and/or dental carrier.
- 16.7 **Health Care Review.** During the first year of this Agreement, the University and the WSU-AAUP will form a joint Health Care Review Committee composed of three (3) persons selected by and representing the WSU-AAUP and three (3) persons selected by and representing the University. The committee will make recommendations regarding insurance carriers; medical, dental, and vision coverages; and premiums to be paid by Members.

APPENDIX II

Article 16 Medical, Dental and Vision Insurance

AAUP REVISED DRAFT
October 19, 1999

- 16.1. Medical Insurance. For the duration of this Agreement, the University will provide Bargaining Unit Faculty Members with medical insurance policies with United Healthcare of Ohio and the United HealthCare Insurance Company or other group insurance provider(s) with substantially the same level of benefits as established for the year 1999, but with the following changes effective January 1, 2000, or as soon as such coverage can be obtained by the University:
- 16.1.1 The Medical Insurance coverage previously provided by the HealthSpring Medical Plan will be replaced by United HealthCare of Ohio Health Maintenance Plan (HMO 750) providing benefits similar to the HealthSpring Medical Plan.
- 16.1.2 Prescription drug coverage for acute care drugs provided by the United HealthCare Plus Medical Plan and to be provided by United HealthCare of Ohio Health Maintenance Plan (HMO 750) will be the following:
- Up to a 31 day supply of a generic drug on the United HealthCare formulary will be provided for a copayment of \$7.
 - Up to a 31 day supply of a brand name drug on the United HealthCare formulary will be provided for a copayment of the greater of \$10 or 20% of the cost but with a maximum copayment of \$30.
 - Up to a 31 day supply of a non-formulary drug will be provided with a copayment of \$40.
 - A one month supply of oral contraceptives will be provided for a single copayment.
- 16.1.3 Prescription drug coverage for maintenance drugs provided through the Frederick A. White Health Center Pharmacy and/or Express Scripts, Inc. will be the following:
- Up to a 90 day supply of a generic drug will be provided for a copayment of \$12.
 - Up to a 90 day supply of a brand name drug for which there is no suitable generic substitute will be provided for a copayment of the greater of \$22 or 10% of the cost of the drug.

Up to a 90 day supply of a brand name medication when a suitable generic substitute is available will be provided for the greater of \$60 or 10% of the cost of the drug, **as long as this amount is not greater than the actual cost of the drug.**

Up to 18 Viagra pills during a 90 day period will be provided through the Frederick A. White Health Center Pharmacy (and not through Express Scripts, Inc.) for a single copayment.

Injectable infertility medications such as Follistin and Fertinex will be provided through the Frederick A. White Health Center Pharmacy (and not through Express Scripts, Inc.) for a copayment equal to 50% of the cost.

Up to a 90 day supply of oral contraceptives will be provided for a single copayment (\$12 for a generic drug; \$22 or 10% of the cost for a brand name drug) through the Frederick A. White Health Center Pharmacy (and not through Express Scripts, Inc.).

16.1.4 The University will offer each Bargaining Unit Faculty Member the option to enroll in the National Ear Care Plan, or an equivalent plan if available, providing an annual hearing screening and discounts on the cost of hearing aids and certain hearing testing. The Bargaining Unit Faculty Member will pay any enrollment fee for the Plan.

16.2 Dental Insurance. For the duration of this Agreement, the University will provide Bargaining Unit Faculty Members with dental insurance benefits through Delta Dental Plan of Ohio or other group insurance provider with substantially the same level of benefits as established for the year 1999.

16.3 Vision Insurance. For the duration of this Agreement, the University will provide Bargaining Unit Faculty Members with vision insurance benefits as follows:

16.3.1 an annual eye exam (including refraction) with a \$10 copay,

16.3.2 coverage for prescribed glasses and contact lenses. This package must provide at least one pair of glasses or contacts every two years for adults for a single copay of \$25. **Children will be covered for one pair of glasses or contacts each year for a single copay of \$25. Benefit maximums shall be as follows: frames \$75, single lenses \$70 (\$80 lenticular), bifocal lenses \$80 (\$100 lenticular), trifocal lenses \$110 (\$110 lenticular); contact lenses \$200 (\$125 if not medically necessary).**

16.4. Employee Premium for Health Care Coverage: **The University will provide single employee coverage for Health, Dental and Vision Insurance at no cost to the employee.**

- 16.4.1. The premium paid by the Member for United Health Care Plus Medical Plan or the United Health Care Insurance Company Out of Area Medical Plan for the employee + 1 coverage shall be:
- 16.4.1.1. **\$12.50/month for employees earning less than \$50,000 per year in annualized salary.**
 - 16.4.1.2. **\$20/month for employees earning greater than or equal to \$50,000 but less than \$75,000 per year in annualized salary**
 - 16.4.1.3. **\$25/month for employees earning greater than or equal to \$75,000 per year in annualized salary.**
- 16.4.2. The premium paid by the employee for United Health Care of Ohio Health Maintenance Organization (HMO 750) Plan for the employee + 1 coverage shall be:
- 16.4.2.1. **\$5/month for employees earning less than \$50,000 per year in annualized salary.**
 - 16.4.2.2. **\$10/month for employees earning greater than or equal to \$50,000 but less than \$75,000 per year in annualized salary**
 - 16.4.2.3. **\$15/month for employees earning greater than or equal to \$75,000 per year in annualized salary.**
- 16.4.3. The premium paid by the employee for United Health Care Plus Medical Plan or the United Health Care Insurance Company Out of Area Medical Plan for family coverage shall be:
- 16.4.3.1. **\$15/month for employees earning less than \$50,000 per year in annualized salary.**
 - 16.4.3.2. **\$25/month for employees earning greater than or equal to \$50,000 but less than \$75,000 in annualized salary.**
 - 16.4.3.3. **\$35/month for employees earning greater than or equal to \$75,000 per year in annualized salary.**
- 16.4.4. The premium paid by the employee for United Health Care of Ohio Health Maintenance Organization (HMO 750) Plan for the family coverage shall be:
- 16.4.4.1. **\$7/month for employees earning less than \$50,000 per year in annualized salary.**
 - 16.4.4.2. **\$15/month for employees earning greater than or equal to \$50,000 but less than \$75,000 per year in annualized salary.**
 - 16.4.4.3. **\$22/month for employees earning greater than or equal to \$75,000 per year in annualized salary.**
- ~~16.5. Should the total costs for the medical, dental, and vision insurance benefits described in Sections 16.1-16.3 for fiscal year 2000-2001 increase beyond those costs for fiscal year 1999-2000, the annual premium contributions paid by Bargaining Unit Faculty Members shall increase beginning January 1, 2002 in an amount sufficient to pay 50% of the increased costs.~~
- 16.6. The University is committed to providing adequate service for faculty through the adopted health care coverage. An individual in Human Resources will be

responsible for assisting bargaining unit faculty in any claims disputes or for obtaining coverage from the designated carriers.

- 16.7. HealthCare Review: During the first year of this Agreement, the University and the WSU-AAUP will form a joint Health Care Review Committee composed to three (3) persons selected by and representing the WSU-AAUP and three (3) persons selected by and representing the University. **The committee will make a recommendation to continue coverage, change benefits levels, or change to an alternate carrier(s) for the next contract.**

Article 27
Intellectual Property

UNIVERSITY REVISION
October 6, 1999

27.1 ~~Inventions and Discoveries~~ **and Inventions.**

27.1.1 All rights to and interests in discoveries or inventions, including patents thereon, which result from research or investigation conducted in any experiment station, bureau, laboratory, or research facility of the University or involve significant use of University facilities or resources, shall be the sole property of the University. ~~regardless of whether such inventions or discoveries may also be copyrightable~~ **All rights and interests in software, although it is copyrightable, shall be the property of the University when it is required for an invention or is part of an invention.** Bargaining Unit Faculty **Members** who make or participate in the making of such discoveries or inventions in the course of fulfilling their University responsibilities or with use of University resources shall promptly disclose their **discovery** or invention to the Chief Intellectual Property Officer, using the disclosure form prescribed by that official. Use of this form has the effect of initiating the process of review for patentability and commercializability.

27.1.1.1 **Significant use of University resources involves use of such resources at a level beyond ordinary use, or use of resources other than assigned office space, customary clerical support and routine use of library resources, desktop computers, and office supplies.**

27.1.1.2 **The University will consult with the Bargaining Unit Faculty Member(s) who discloses a discovery or invention before marketing such discovery or invention.**

27.1.2 Rights to inventions arising in the course of government or other externally sponsored research are controlled by the terms of the agreement between the University and the sponsor and/or applicable federal regulations.

27.1.3 ~~Inventors~~ **Bargaining Unit Faculty Members** shall be entitled to share in any royalty income received by the University for their **discoveries** or inventions, in accordance with the University's royalty distribution schedule in Section 27.4. **The University shall maintain distributions of a Bargaining Unit Faculty Member's respective share of such royalties after the Member terminates his or her University employment.**

- 27.1.4 Bargaining Unit Faculty ~~inventors~~ **Members** agree to assist and cooperate with the University in obtaining and enforcing patents, including, without limitation, executing and delivering all assignments, documents and instruments reasonably requested by the University in conjunction with obtaining and enforcing patents within the United States or any foreign jurisdiction.
- 27.1.5 The University has no obligation to pursue or maintain patent protection for disclosed inventions. If the Chief Intellectual Property Officer recommends that the University not pursue a patent application, or maintain a patent, **or otherwise market that invention**, then the University may assign ownership to ~~the inventor~~ **a Bargaining Unit Faculty Member** while retaining a royalty-free license to use the invention for non-commercial purposes. **The University shall duly consider a Bargaining Unit Faculty Member's request for assignment of an invention, in which that Member has had input, when the University chooses not to pursue a patent application, maintain a patent for that invention, or otherwise market that invention.**
- 27.2 Copyrightable Works.
- 27.2.1 Bargaining Unit Faculty Members retain ownership of their own copyrightable works unless the work is a work-for-hire or is subject to a separate written agreement that requires assignment to the University or to a third party. In the case of assignment to the University, the author will retain the right to use the material for his or her own non-commercial purposes.
- 27.2.2 Bargaining Unit Faculty members shall cooperate with and sign all documents reasonably requested by the University to enable it to secure, register and enforce in the U.S. and any foreign countries, copyrights in all works owned by or assigned to the University. The University shall cooperate with and sign all documents reasonably requested by a Bargaining Unit Faculty Member to enable him or her to secure, register and enforce in the U.S. and any foreign countries, copyrights in all works owned by or assigned to that Member
- 27.2.3 Traditional faculty products of scholarly activity that have customarily been considered to be the restricted property of the author will be owned by the author regardless of the medium in which the work is embodied. Such traditional products include journal articles, textbooks, monographs, works of art including paintings and sculptures, and musical compositions. The University does not claim any ownership rights to such works.
- 27.2.4 Royalties earned from the commercialization of traditional faculty products will accrue entirely to the Bargaining Unit Faculty author(s) as personal

income, unless copyright was previously assigned to the University or significant University resources were used in the production of the work. For traditional faculty products requiring significant use of University resources, author(s) will repay the University for identifiable resources from any personal income earned. Before making significant use of University resources in the creation of such works, Bargaining Unit Faculty members shall consult with ~~an appropriate University administrator.~~ **their Chair, who shall have the opportunity to consult with the Intellectual Property Officer prior to approval.**

27.2.5 Development of distance learning courseware, instructional software, and other multimedia works involving significant University resources requires a written agreement between the University and the creator(s) outlining the rights and responsibilities of the parties. The agreement will cover, at a minimum, ownership, the right of the creator(s) to erase videotape or delete from a Web server any or all of the course content at the conclusion of a course, the need for written permission from the creator for the modification, reuse, or sale of courseware, the responsibility for obtaining copyright permission for items used in the creation of courseware, and the distribution of royalties.

27.3 Trademarks.

27.3.1 Any trademarks created by a Bargaining unit Faculty Member at the request of the University shall be owned by the University.

27.3.2 Trademarks created by a Bargaining Unit Faculty Member in association with an invention, discovery, or copyrighted material shall be owned by the same party that owns the invention, discovery or copyrighted material.

27.4. Royalty Distribution Schedule. Bargaining Unit Faculty Members who are makers of inventions and discoveries or authors of copyrighted works and who share royalties received by the University may select either of the following two methods for sharing such income.

27.4.1 Bargaining Unit Faculty Members may request that the University deposit all net royalties into a restricted (ledger 6) account.

27.4.1.1 Net royalties are defined as gross royalty income less actual expenses incurred by the University in administration of the intellectual property, including but not restricted to legal fees and patent maintenance fees.

27.4.1.2 Such restricted (ledger 6) accounts will be assessed a fee of 10% on all royalty income received.

27.4.2 Bargaining Unit Faculty Members may elect to receive personal income based upon gross royalties. For gross royalties up to \$50,000, the inventor's/author's share shall be one-half of gross royalty income. For gross royalties in excess of \$50,000, the inventor's/author's share shall be 40% of the excess above \$50,000 minus any expenses in excess of \$25,000.

For example, for \$200,000 cumulative gross royalties, with \$40,000 cumulative expenses, the total inventor's/author's share shall be

$$0.5 \times \$50,000 + 0.4 \times [(\$200,000 - \$50,000) - (\$40,000 - \$25,000)] = \$79,000.$$

APPENDIX IV

Article 27 Intellectual Property

AAUP Final REVISION

- 27.1 Discoveries and Inventions.
 - 27.1.1 All rights to and interests in **marketable** discoveries or inventions, including patents thereon, which result from research or investigation conducted in any experiment station, bureau, laboratory, or research facility of the University or involve significant use of University facilities or resources, shall be the sole property of the University. All rights and interests in software, although it is copyrightable, shall be the property of the University when it is required for an invention or is part of an invention. Bargaining Unit Faculty Members who make or participate in the making of such discoveries or inventions in the course of fulfilling their University responsibilities or with use of University resources shall promptly disclose their **marketable** discovery or invention to the Chief Intellectual Property Officer, using the disclosure form prescribed by that official. Use of this form has the effect of initiating the process of review for patentability and commercializability.
 - 27.1.1.1 **Significant use of university resources is the use of university facilities, staff or funds beyond those normally available to members of the university community. Use of assigned office space, normal clerical support, and routine use of library resources, desktop computers and office supplies are not significant use of university resources.**
 - 27.1.1.2 The University will consult with the Bargaining Unit Faculty Member(s) who discloses a **marketable** discovery or invention before marketing such discovery or invention. **If the university decides not to pursue marketing the discovery, they may assign ownership to the discoverer while retaining a royalty-free license to use the discovery for non-commercial purposes. Requests for such assignment by a Bargaining Unit Faculty member shall not be unreasonably refused.**
 - 27.1.1.3 **Subject to Section 27.1.2, Faculty members shall continue the unrestricted use of any of their marketable discoveries or inventions, whether or not they remain at the university. If the faculty member leaves the university, the applicable portion of the royalties from any marketed discoveries or inventions shall continue to go to the faculty member as long as the university maintains ownership. The university may enter into negotiations with the new institution about transfer of ownership for the marketed discovery or invention.**
 - 27.1.2 Rights to inventions arising in the course of government or other externally sponsored research are controlled by the terms of the agreement between the University and the sponsor and/or applicable federal regulations.
 - 27.1.3 Bargaining Unit Faculty Members shall be entitled to share in any royalty income received by the University for their discoveries or inventions, in accordance with the University's royalty distribution schedule in Section 27.4.
 - 27.1.4 Bargaining Unit Faculty Members agree to assist and cooperate with the University in obtaining and enforcing patents, including, without limitation, executing and delivering all assignments, documents and instruments reasonably requested by the University in

conjunction with obtaining and enforcing patents within the United States or any foreign jurisdiction.

- 27.1.5 The University has no obligation to pursue or maintain patent protection for disclosed inventions. If the Chief Intellectual Property Officer recommends that the University not pursue a patent application or maintain a patent, or otherwise market that invention, then the University may assign ownership to **the inventor(s)** while retaining a royalty-free license to use the invention for non-commercial purposes. **Requests for such assignment by a Bargaining Unit Faculty member shall not be unreasonably refused.**
- 27.2 Copyrightable Works.
- 27.2.1 Bargaining Unit Faculty Members retain ownership of their own copyrightable works unless the work is ~~a work-for-hire or is~~ subject to a separate written agreement that requires assignment to the University or to a third party. In the case of assignment to the University, the author will retain the right to use the material for his or her own non-commercial purposes.
- 27.2.2 Bargaining Unit Faculty members shall cooperate with and sign all documents reasonably requested by the University to enable it to secure, register and enforce in the U.S. and any foreign countries, copyrights in all works owned by or assigned to the University. The University shall cooperate with and sign all documents reasonably requested by a Bargaining Unit Faculty Member to enable him or her to secure, register and enforce in the U.S. and any foreign countries, copyrights in all works owned by or assigned to that Member.
- 27.2.3 Traditional faculty products of scholarly activity that have customarily been considered to be the restricted property of the author will be owned by the author regardless of the medium in which the work is embodied. Such traditional products include, **but are not limited to**, journal articles, textbooks, monographs, works of art including paintings and sculptures, and musical compositions. The University does not claim any ownership rights to such works.
- 27.2.4 Royalties earned from the commercialization of traditional faculty products will accrue entirely to the Bargaining Unit Faculty author(s) as personal income, unless copyright was previously assigned to the University or significant University resources were used in the production of the work. For traditional faculty products requiring significant use of University resources, author(s) will repay the University for identifiable resources from any personal income earned. Before making significant use of University resources in the creation of such works, Bargaining Unit Faculty members shall consult with their Chair, ~~who shall have the opportunity to consult with the Intellectual Property Officer prior to approval.~~
- 27.2.5 Development of distance learning courseware, instructional software, and other multimedia works involving significant University resources requires a written agreement between the University and the creator(s) outlining the rights and responsibilities of the parties. The agreement will cover, at a minimum, ownership, the right of the creator(s) to erase videotape or delete from a Web server any or all of the course content at the conclusion of a course, the need for written permission from the creator for the modification, reuse, or sale of courseware, the responsibility for obtaining copyright permission for items used in the creation of courseware, and the distribution of royalties.

27.3 Trademarks.

~~27.3.1 Any trademark created by a Bargaining Unit Faculty Member at the request of the University shall be owned by the University.~~

27.3.1 Trademarks created by a Bargaining Unit Faculty member in association with an invention, discovery, or copyrighted material shall be owned by the same party that owns the invention, discovery or copyrighted material.

27.4. Royalty Distribution Schedule. Bargaining Unit Faculty members who are makers of inventions and discoveries or authors of copyrighted works and who share royalties received by the University may select either of the following two methods for sharing such income.

27.4.1 Bargaining Unit Faculty members may request that the University deposit all net royalties into a restricted (ledger 6) account.

27.4.1.1 Net royalties are defined as gross royalty income less actual expenses incurred by the University in administration of the intellectual property, including but not restricted to legal fees and patent maintenance fees.

27.4.1.2 Such restricted (ledger 6) accounts will be assessed a fee of 10% on all royalty income received.

27.4.2 Bargaining Unit Faculty members may elect to receive personal income based upon gross royalties. For gross royalties up to \$50,000, the inventor's/author's share shall be one-half of gross royalty income. For gross royalties in excess of \$50,000, the inventor's/author's share shall be 40% of the excess above \$50,000 minus any expenses in excess of \$25,000.

For example, for \$200,000 cumulative gross royalties, with \$40,000 cumulative expenses, the total inventor's/authors share shall be $0.5 \times \$50,000 + 0.4 \times [(\$200,000 - \$50,000) - (\$40,000 - \$25,000)]$ \$79,000.