

IN THE MATTER OF FACT-FINDING BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

THE WRIGHT STATE UNIVERSITY
CHAPTER OF AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS,

Union,

and

WRIGHT STATE UNIVERSITY,

Employer.

SERB CASE NO. 2017-MED-02-0172

FACT-FINDER DAVID W. STANTON

POST-HEARING BRIEF OF AAUP-WSU

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I. INTRODUCTION

The Wright State University Chapter of the American Association of University Professors (“AAUP-WSU” or “Union”) is the bargaining representative for all full-time tenured and tenure-track faculty, senior lecturers, lecturers, instructors, clinical assistant professors, clinical instructors, and visiting faculty employed by Wright State University (“University”). Prior to June 2, 2016, there were two separate bargaining units, with separate Collective Bargaining Agreements, both dated August 20, 2014 through June 30, 2017. On June 11, 1998, SERB certified the AAUP-WSU as the exclusive bargaining representative for the tenured and tenure track faculty (hereinafter “Tenure-Eligible and Tenured” or “TET” faculty). On November 1, 2012, SERB certified the AAUP-WSU as the exclusive bargaining representative for the senior lecturers, lecturers, instructors, clinical assistant professors, clinical instructors, and visiting faculty (hereinafter “Non-Tenure Eligible” or “NTE” faculty). On June 2, 2016, SERB issued an Amendment of Certification that merged the two bargaining units into a single bargaining unit. The Petition for the Amendment of Certification was a joint petition signed by both parties, and filed jointly. The next Collective Bargaining Agreement will be the first CBA after the two units were merged and became a single bargaining unit.

There are approximately 581 bargaining unit faculty members, including approximately 421 TET faculty and 160 NTE faculty.

Prior to, during, and after the Fact-finding hearing, the parties agreed to a number of tentative agreements (“TAs”) that were provided to the Fact-finder. Another copy of the TAs will be provided with this post-hearing brief. The AAUP-WSU requests that all of the TAs be incorporated into the Fact-finder’s Recommended Award by reference.

II. BARGAINING HISTORY

Under Article 38 of both the TET and NTE Collective Bargaining Agreements, the parties were to begin negotiations no later than January 2017. In accordance with that agreement, the parties first met on January 13, 2017 and signed Ground Rules. (Union Exhibit 4). Under the Ground Rules, the parties agreed that the CBA would remain in effect until a new CBA was ratified. The parties also agreed that negotiations would be conducted at the bargaining table and in good faith toward achieving a contract mutually beneficial to all. The Notice to Negotiate was filed with SERB in February 2017. The parties met and reached tentative agreements on January 19, February 1, February 15, and March 7, 2017.

Under the Ground Rules, the parties agreed to exchange all non-economic proposals by March 10, 2017. On April 7, 2017, the parties were to exchange Articles 23 (Compensation), Article 24 (Minimum Salaries), Article 26 (Medical, Dental, and Vision Insurance), Article 31 (Other Benefits), and Appendix E (Summary of Medical, Dental, and Vision Benefits). It was the understanding of both sides, at time, that these were the *only* economic proposals that were to be open. The parties also agreed that, while they did not anticipate making proposals to change Article 9 (Academic Calendar), Article 27 (Life & Disability Insurance), Article 32 (Dues Check-Off and Fair Share), and Article 35 (Separability), they would discuss whether any of them required changes in order to be appropriate for a combined TET and NTE Agreement.

As agreed under Ground Rule #4, the parties exchanged all non-economic articles by March 10, 2017. At that time, neither party exchanged any language on Article 19, Workload. The administration did not propose any changes to Article 17, Retrenchment.

On March 16, 2017, the President of the University, David Hopkins, abruptly resigned at the request of the Board of Trustees. President Hopkins was to retire on June 30, 2017 and the

Board of Trustees had already hired his replacement, Cheryl Schrader, who was to begin her term on July 1, 2017. The Board of Trustees appointed an interim President, Curtis McCray, for the period of March 16 through June 30, 2017.

Negotiations, during that time, came to a complete standstill. The Board of Trustees hired outside counsel to replace their chief negotiator, and the administration's negotiating committee refused to bargain – claiming repeatedly that they were not prepared to discuss either economic or non-economic proposals under the interim President and with their new chief negotiator. The only issue the administration's negotiating committee was willing to discuss was an early retirement incentive – which had not been part of any previous CBA.

During the Fact-finding hearing, Dr. McCray testified, and confirmed that while he was interim President, he refused to negotiate with the AAUP-WSU. As a result, the AAUP-WSU elected to proceed to Fact-finding. On June 27, 2017, SERB appointed David Stanton as Fact-finder for this case. The AAUP-WSU then tried to schedule the hearing for August or September because it appeared to be the only way the AAUP-WSU would be able to get the administration to put their economic proposals on the table.

Eventually the parties agreed to meet with FMCS Mediator George Albu. The parties met with Mediator Albu on July 28, 2017 and September 15, 2017. However, the administration was either unwilling or unable to put any proposals, economic or non-economic, on the table at either of these two sessions. As a result, the AAUP-WSU insisted on scheduling a Fact-finding hearing.

No meaningful negotiations occurred between March 10, 2017 and December 14, 2017. On December 14th, the parties met and reached a number of tentative agreements. All the tentative agreements reached at that time were on issues that could easily have been resolved the prior spring. The parties then met on January 17, 19, and 24, 2018 and reached a number of more

substantive tentative agreements. However, the administration put a number of new proposals on the table for the first time, such as Article 17, Retrenchment, Article 19, Workload, and Appendix I, Furlough (a new appendix). These proposals should have been submitted by the administration by the March 10, 2017 date, as specified in Ground Rule #4.

In addition, the administration did not provide a proposal on health insurance before January 19, 2018. In the past, the AAUP-WSU and the University have negotiated changes to health insurance. However, with this round of negotiations, the administration has refused to negotiate health insurance (or any of the other economic articles listed in Ground Rule #4, including Articles 23, 24, 26, 31, and Appendix E). Instead, the administration unilaterally implemented enormous decreases in coverage and increases in premium costs for non-bargaining employees and has now taken the position that the AAUP-WSU should simply accept these changes. This is typical of the administration's refusal to negotiate.

Although the University has serious (albeit self-inflicted) financial challenges, which the University is recovering from, the administration is trying to benefit from these challenges by gutting the collective bargaining process. A review of the administration's proposals shows that they are trying to eliminate the AAUP-WSU's ability to bargain over mandatory subject of bargaining. This is not good faith. The administration should not be able to benefit from these tactics.

Fact-finding was originally scheduled for January 31 and February 1, 2018. As required by RC 4117.14(C)(3)(a), both parties forwarded to the Fact-finder and the opposing party their position statements on January 30, 2018. On January 31, 2018, after opening statements, the Fact-finder suggested that the parties engage in mediation – which both parties agreed to. A few new tentative agreements were then reached. After that time, there were four days of hearing held on

April 3, April 4, May 22, and May 23, 2018. On May 21, 2018, between the third and fourth day of hearing, the administration submitted new proposals for Article 17 and Appendix I in violation of the Ground Rules, and RC 4117.14. In addition, these proposals were regressive when viewed in relationship to the proposals presented on January 30, 2018 and constitute bad faith. During the hearing, the Union objected to these new proposals.

The hearing concluded on May 23, 2018. The parties then agreed to an Extension Agreement and executed it between April 26 and May 3, 2018. The extension agreement was subsequently filed with SERB. Under the extension agreement, the parties are to file post-hearing briefs on or before July 12, 2018 directly with the Fact-finder, and the briefs are to be exchanged by the Fact-finder after received them from both parties. The Fact-finding Decision is to be issued on September 11, 2018.

III. FINANCIAL POSITION OF THE UNIVERSITY

A. Fiscal Watch

RC 3345.72 required the office of budget and management to work with the auditor of state, the chancellor of higher education, and two representatives from state universities and colleges designated by the chancellor of higher education—one representative from a four-year institute and one representative from a two-year institute—to develop rules regarding fiscal watch for state colleges and universities. The committee was to agree on the circumstances under which a college or university would enter into fiscal watch, the requirements for the institution while it is under fiscal watch, and the circumstances when fiscal watch will terminate. Pursuant to the mandate of RC 3345.72, OAC 126:3-1-01 was implemented to govern the fiscal watch of state institutes of higher education.

OAC 126:3-1-01(A)(4) sets forth calculation ratios that are used to determine the fiscal condition of state institutes of higher education. OAC 126:3-1-01(B) sets forth the criteria for determining when an institute of higher education will enter a fiscal watch. OAC 126:3-1-01(B) states, in relevant part:

- (1) The state university or college fails to submit its fiscal year financial statements in accordance with paragraph (A)(2)(a) of this rule;
- (2) The state university or college fails to obtain an audited year-end report as required by paragraph (A)(3)(a) of this rule;
- (3) The state university or college has a composite result of the ratio analysis calculated in accordance with paragraph (A)(4) of this rule of 1.75 or less for two consecutive fiscal years;
- (4) The state university or college has a composite result of the ratio analysis calculated in accordance with paragraph (A)(4) of this rule of 1.75 or less and the chancellor has determined that the state university or college has failed to take decisive action to improve its financial condition;
- (5) The state university or college has a composite result of the ratio analysis calculated in accordance with paragraph (A)(4) of this rule of 1.75 or less and one or more of the reportable events listed in paragraph (A)(5)(b) of this rule has occurred during the reporting period;¹

¹ OAC 126:3-101(A)(5)(b) states:

b) Reportable events

In addition to the requirements of paragraph (A)(5)(a) of this rule, the quarterly report shall contain a narrative statement indicating whether any of the following events have occurred during the period covered by the report:

- (i) The state university or college requested an advance of state subsidy money during the quarter covered by the report;
- (ii) The state university or college delayed or failed to make any payments to applicable retirement systems (e.g., P.E.R.S. or S.T.R.S.) required to be made during the quarter covered by the report;
- (iii) The state university or college failed to make any scheduled payroll payments payable during the quarter covered by the report;
- (iv) The state university or college failed to make any payments to vendors when due during the quarter covered by the report as a result of a cash deficiency or a substantial deficiency in the payment processing system of the state university or college;
- (v) The state university or college failed to make any scheduled payment of principal or interest for short- or long-term debt during the period covered by the report;
- (vi) The state university or college has revised its original budget for the fiscal year and the revision will result in a substantially reduced ending fund balance or larger deficit;

(6) The state university or college has a composite result of the ratio analysis calculated in accordance with paragraph (A)(4) of this rule of 1.75 or less and the auditor of state has reported one or more substantive audit findings; or

(7) The state university or college receives a disclaimer of opinion on its last audited financial statement.

Pursuant to OAC 126:3-1-01(D) the board of trustees of a university or college under fiscal watch is to do the following:

- Develop a financial recovery plan with the purpose to end the fiscal watch within three years. The financial recovery plan must comply with the following requirements:
 - It must be approved by the chancellor of higher education;
 - It must analyze the institution's financial difficulty and the causes of significant revenue or expenditure problems;
 - It must provide a description of initiatives proposed or under taken by the institution to address its financial difficulties and analyze the effectiveness of those initiatives;
 - It must contain contingency plans to address the institution's financial difficulties and any circumstances that could worsen the institution's fiscal condition;
 - It must contain a financial forecast for three years; and
 - It must contain any other information requested by the chancellor of higher education.
- Consult with the auditor of state regarding necessary or appropriate steps to bring the institution's books of accounts, accounting systems, financial procedures, and financial reports in compliance with requirements prescribed by the auditor of state.
- Direct the institution to develop and implement an accounting and reporting system in compliance with the requirements set by the auditor of state.
- Examine monthly levels of expenditures and encumbrances insuring they are compliant with the fiscal recovery plan.
- Approve and monitor monthly levels of expenditures and encumbrances that exceed the amount set in the fiscal recovery plan.

Pursuant to OAC 126:3-1-01(E) an institution of higher education under fiscal watch is required to provide a quarterly report to the chancellor of higher education and the board of trustees that serves as statement of revenues, expenditures, and other changes for the year to date. The

(vii) The state university or college projects a significant negative variance between its most recently adopted annual budget and actual revenues or expenses at the end of the fiscal year.

quarterly report is to be prepared in the same manner that the institution prepares its budget. Further, an institution under fiscal watch is required to present an annual report to the governor, the speaker of the house of representatives, the president of the senate, the chancellor of higher education, the auditor of state, the legislative service commission, and the director of the office of budget and management detailing the progress of the institute to eliminate fiscal watch conditions, the institute's failure, if any, to comply with OAC 126:3-1-01, and plans for further actions to end the institution's fiscal difficulties.

Pursuant to OAC 126:3-1-01(F) the fiscal watch of an institution of higher education will terminate if the following criteria are met:

1) The chancellor shall terminate the fiscal watch of a state university or college when in its opinion:

(a) The state university or college under fiscal watch achieves a composite result of the ratio analysis calculated in accordance with paragraph (A)(4) of this rule of at least 2.40 for a fiscal year;

(b) The state university or college has remediated all of the conditions that led to the fiscal watch, including any cash flow problems, the inability to prepare fiscal year financial statements in a timely manner, substantive audit findings, or reportable events; and

(c) No other condition exists or is likely to materialize that could result in a declaration of fiscal watch.

(2) If in the opinion of the chancellor the fiscal watch should be terminated, the chancellor shall issue a directive declaring the termination of the fiscal watch and shall certify the termination to the governor, the speaker of the house of representatives, the president of the senate, chairs and ranking members of the house and senate finance committees, the legislative service commission, the director of the office of budget and management, and the board of trustees of the state university or college.

(3) The chancellor may consult with the auditor of state, the office of budget and management, and the legislative service commission in reaching his or her opinion as to whether the fiscal watch shall be terminated.

Pursuant to OAC 126:3-1-01(G) an institution of higher education will be placed under conservatorship if the institution's composite ratio is 0.75 or lower and the chancellor of higher education determines the institution is experiencing a "serious failure of financial administration and has failed to take decisive action to restore financial health." In the alternative, an institution of higher education may be placed under conservatorship if it has been under fiscal watch for three consecutive years and the chancellor of higher education determines that the institution is "experiencing serious failure of financial administration."

If an institution of higher education is placed under a conservatorship, a "governing authority" will be appointed to make decisions regarding the institution's finances.

This composite ratio is commonly called an "SB6" score. In FY 2015, Wright State University had an SB6 score of 2.4. In FY 2016, Wright State had an SB6 score of 2.1. In FY 2017, the SB6 score was 0.8. If Wright State gets an SB6 score of 1.75 or less for FY 2018, the University will go into fiscal watch. If Wright State achieves an SB6 score above 1.75 for FY 2018, then the two-year clock will start fresh and there will be no chance of Wright State going into fiscal watch before the end of FY 2020.

At the time this post-hearing brief is being submitted, the AAUP-WSU does not know the SB6 score for Wright State for FY 2018. However, the Board of Trustees has indicated that they believe they will be able to achieve an SB6 score above 1.75 and will avoid fiscal watch.

However, one thing is clear. Bargaining unit members received no wage increase in 2017-2018 and that academic year is not at issue. Any changes being negotiated will not take effect until the fall 2018 and, with respect to health care, not until January 2019. As a result, the current negotiations will not affect the University's ability or inability to reach the SB6 bench mark that avoids fiscal watch.

As a result, both sides agreed that if the University were to reach an SB6 score of 1.75 or below and go into fiscal watch, it would be unrelated to these negotiations. If the University avoided fiscal watch, the clock would be reset for two years and their SB6 score would have to fall at or below 1.75 for FY 2019 as well as FY 2020.

B. Financial Overview – AAUP-WSU Perspective

The AAUP-WSU has been trying, for a number of years, to rein in the financial mismanagement of the administration and the Board of Trustees. On April 13, 2016, a year before the current CBA expired, AAUP-WSU President Martin Kich sent a letter to the Board of Trustees. (Union Exhibit 5). In the letter, President Kich told the Board that the AAUP-WSU believed that the administration should commit itself to finding savings of \$24 million in nine areas, which were:

1. The reduction, rather than the continuing multiplication, of administrative positions on all levels.
2. The reduction in the number of administrative “silos.”
3. The elimination of stipends to administrators (other than for department chairs) who are already among the most highly paid employees of the University.
4. The reduction in the duplication of service units.
5. A moratorium on the hiring of outside consultants, search firms, and other comparable external contractors.
6. The moth-balling of some if not most of the semi-autonomous entities.
7. Greater control of the costs associated with recruiting international students.
8. The reduction of the cost of intercollegiate athletics.
9. Elimination of the deficit at the Nutter Center and the Student Union.

President Kich then requested the administration and Board begin acting in a transparent manner and specially requested the following:

1. Clear accounting of the direct and indirect costs of the ongoing investigations.
2. Clarity regarding the liabilities that the University was assuming in hosting the presidential debate.
3. Clarity regarding the liabilities that the University assumed with the real estate purchased through Double Bowler.
4. A full and open discussion with real data before the University considered the “monetizing” of University assets.

President Kich then asked the administration and the Board of Trustees for a commitment to resolving the budget issues.

As has been shown, this letter fell on deaf ears. None of the suggestions were adopted. No changes were made. During the year after President Kich sent his letter to the administration and the Board of Trustees, the University continued to burn through its reserves “like a drunken sailor”, according to Board Chairman, Doug Fecher. (Union Exhibit 6).

While this was happening, the AAUP-WSU tried its hardest to alert every member of the University community about the financial crisis, how it was created and why it was preventable. The AAUP-WSU published “Fast Facts” with truthful information and distributed these publications to its members, and other stakeholders. (See Union Exhibits 7). The AAUP-WSU published “Cracking the Nut” on topics such as WSARC, Spending Problems, WSRI, and the Plante Moran Audit. (Union Exhibits 10, 11, 12, 13, 14). Yet nothing changed.

On June 2, 2017, 254 bargaining unit faculty members added their names to a letter addressed to the Board of Trustees, Interim President Curtis McCray, and incoming President Cheryl Schrader, objecting to the FY 18 budget because it called for an increase of \$1.6 million for intercollegiate athletics, but included cuts to every other major spending unit, including \$9.5 million in cuts to the seven core colleges and \$1 million in cuts to the library. The letter fell on deaf ears. Nothing changed.

On December 12, 2017, the State of Ohio Office of Inspector General issued a scathing Report of Investigation on the Ron Wine Consulting Group, a contractor hired by Wright State. (Union Exhibit 9). Yet nothing changed.

Counsel for the administration argued at the Fact-finding hearing that the financial circumstances at Wright State are “not an issue of fault.” The AAUP-WSU strongly disagrees

with this. The proposals from the administration at Fact-finding are designed to take advantage of the administration's mismanagement to undermine collective bargaining, while doing nothing to address the administration's mismanagement. If "fault" were not an issue, the administration's proposals would show respect for faculty, and seek only temporary financial relief, not destructive changes designed to undermine collective bargaining. However, what the administration has decided to present are proposals which would permanently eliminate many of the protections that the parties negotiated over years.

The evidence presented at the Fact-finding hearing shows that the AAUP-WSU has tried to address the financial mismanagement of the administration and the Board of Trustees for a number of years – without success. As a result, the AAUP-WSU now finds itself in the position of fighting off draconian proposals because, in the words of the administration's counsel, "WSU is out of money." If WSU is "out of money" (which the AAUP-WSU disputes), then it is the result of decision by management. To say that "fault" is not an issue is to ignore reality. It is imperative that all of the administration's proposals be evaluated in light of the "fault" around the financial circumstances and the fact that many of the administration's proposal would give even more power to the administration to continue to mismanage at the expense of the mission of the University.

C. Overview Prior to the Current Administration – Dr. Curtis McCray

Dr. Curtis McCray was the interim President at Wright State between March 16, 2017 and June 30, 2017. Dr. McCray was appointed by the Board of Trustees after the Board abruptly fired former President David Hopkins on March 16, 2017. At the time, the Board had already hired Dr. Cheryl Schrader as the new President to begin on July 1, 2017. Dr. McCray was therefore brought in as the interim until Dr. Schrader began her new term.

Dr. McCray testified during the Fact-finding hearing on behalf of management, but much of his testimony supported the AAUP-WSU's position on many of the outstanding issues. Dr. McCray testified that when he came to Wright State, he discovered that the prior administration had burned through \$100 million in reserves over five years to end up with a balance of zero. They had no budget process. There were no bells that went off. There were no alarms that went off. Bells and alarms should have gone off after each of the five years when the University was burning through its reserves, but they did not.

Dr. McCray testified that when he came to Wright State, the Board of Trustees gave him two mandates: 1.) to reduce expenditures by \$30 million by June 30; and, 2.) to protect Division I athletics. This is significant. Why did the Board of Trustees make a policy decision that Division I athletics was so important that they would jeopardize the existence of the University in order to protect it?

Dr. McCray testified that he had been the President of California State University at Long Beach between 1988 and 1994. During that time, he eliminated their Division I football program for financial reasons. In one year, this saved Long Beach \$17 million. Although it was a tough decision, it was financially necessary. The AAUP-WSU believes that, had Dr. McCray's hands not been tied by the Board of Trustees, he would have looked at the athletic expenditures at Wright State as he had at Long Beach.

Dr. McCray testified that when he first came to Wright State, he talked to many of the employees. One of the things he learned was that the administration had no control over decision making, including how budgets were managed. Departments at the University could just spend whatever they wanted with no oversight. In talking to people throughout the campus, he learned that people loved the former President. Why? Because the former President let everyone do

whatever they wanted. The University had no strategic plan and had no business plan. He had never seen out of control spending like what happened at Wright State anywhere else.

On direct examination, Dr. McCray was asked if he believed that Wright State currently has the correct number of faculty and he surprised the administration's counsel when he said "yes." He then explained that he believes in tenure. Tenure doesn't come easy and it should be protected. He recognizes the value of the work faculty do. A university is a place of learning. As Dr. McCray explained, it is important to have a wide distribution of disciplines and in order to accomplish this, the various disciplines must be represented by a sufficient number of faculty. This is particularly important for undergraduates. As a result, tenure should be protected.

Dr. McCray talked about the faculty at Wright State as well as the AAUP-WSU with a high level of respect. Dr. McCray has worked in academia and higher education his entire career. He has worked in a number of collective bargaining environments. He testified that he respected the Union and thought that the Union at Wright State did a good job for its membership (unlike the administration's outside counsel who referred to the Union as "delusional").

Although he didn't testify in any depth about the specific proposals that the administration was presenting, he said that if there was a financial exigency which necessitated the lay-off of faculty members, that the breath of faculty should be respected. In other words, any reduction of faculty should be done in a thoughtful way to maintain the diversity of disciplines. He further testified that furloughs only made sense if there was an actual reduction in work for those affected. When asked on re-direct if he thought the administration required more "flexibility," his answer was "If it can be demonstrated that there will be savings that result." In other words, he was pragmatic and did not support the administration's position of taking advantage of the fiscal crisis by attacking collective bargaining. Quite the contrary, he supported the Union, supported the

facility, supported tenure, and support reasonable changes that would be implemented only if the changes demonstrated actual savings.

D. Financial Overview – Dr. Howard Bunsis

The administration is seeking over \$4 million in cuts that are unnecessary and would hurt academic programs. As early as April 13, 2016, the AAUP-WSU sent a letter to the Board of Trustees stating that the budget deficit needed to be addressed and suggesting multiple concrete ways to do so. Unfortunately, these suggestions fell on deaf ears and have not been implemented. Rather than address the financial problems, the administration instead has chosen to use the financial circumstance to justify unnecessary financial reductions for faculty salary and benefits, and to attack other non-economic protections in the CBA.

The AAUP-WSU presented its financial overview at the Fact-finding hearing through an expert, Dr. Howard Bunsis. As Dr. Bunsis explained, the financial circumstances of the University are the result of mismanagement by the administration and the abdication of fiduciary responsibility and oversight by the Board of Trustees. It is not the result of a lack of revenue. The Chairman of the Board at Wright State has admitted, on a number of occasions, that the financial circumstances are the result of over-spending. The AAUP-WSU and the faculty had no role in these irresponsible decisions – many of which are continuing to this day.

Dr. Bunsis' CV was marked as Union Exhibit 44. There was no dispute at the hearing that Dr. Bunsis is an expert on university finances. He received a Bachelor of Science in accounting from the Wharton School of Business at the University of Pennsylvania, a JD from Fordham University School of Law, an MBA from the University of Chicago, and Ph.D. in accounting from the University of Chicago. Dr. Bunsis is currently a professor of Accounting at Eastern Michigan University.

Dr. Bunsis presented a PowerPoint presentation and testified with respect to the overall financial condition of Wright State University, the timing of the proposed cuts, the administration's response to the threat of fiscal watch, and the reasons for the University's declining performance. He also analyzed faculty salaries under the administration's proposal and conducted a health care analysis. (See Union Exhibit 45).

With respect to the overall financial condition of the University, Dr. Bunsis agreed at the outset that there has been a significant decline. Looking at the University's audited financial statements between FY 2002 to FY 2017, there was a significant decrease in liabilities. (Slide #4). He then looked at ratios for liability, primary reserves, net income, cash flow, and net assets. He looked at these ratios with respect to the Senate Bill 6 scores, the Fichtenbaum-Bunsis scores, and the Composite Financial Index (CFI"). (Slide #6). Looking at the ratio data for Wright State over time in all three categories, the ratios were extremely low. The SB6 score was 0.80 for FY 2017. The Fichtenbaum-Bunsis Composite Score was 1.11, which was low. The CFI score was -0.93. In other words, Dr. Bunsis does not dispute that the University has a significantly declined financial state. The question is why this has occurred.

Dr. Bunsis then provided details on the total reserves over time and testified that the University spent down \$100 million in reverses in five years (Slide #9). As a result, the cash flow ratio over time became negative over the last five years (Slides #10, #11). Compared to the average of other public universities in Ohio, Wright State's performance was very poor (Slide #12). In addition, the bond rating for WSU has decreased from A2 to Baa2. (Slides #13, #14).

Dr. Bunsis testified that the administration's plan to prevent fiscal watch proves that the proposed administrative cuts are too deep. Dr. Bunsis testified with respect to the raw data to compute the SB6 ratio. (Slide #19). He then outlined the revenue forecast behind the simulation.

(Slide #20). According to Dr. Bunsis, the projections by the administration are not realistic. Dr. Bunsis outlined why a -2.5% decline is a more realistic calculation than a -3.5% decline for other revenue. The reasons are that the SSI is the second largest revenue source at 26% of total revenue. According to the Ohio Board of Higher Education, SSI for Wright State in 2018 is forecast to decline only 4.5%. When the administration forecasted the total revenue in their budget documents, they were only forecasting 84% of the total actual revenues, and it is the actual revenues that are used for the SB6 score. The administration was also forecasting additional declines in large revenue items. According to Dr. Bunsis, 2.5% is a more realistic prediction, and even that is very conservative. (See Slides #21, #22). As a result, the administration is trying to implement extra expense cuts of \$4,162,360, which are not necessary to avoid fiscal watch. (Slide #23).

In summation, using budgeted and actual projects, a total revenue decline of 4.8% is more realistic than a 5.4% decline. This leads to a lower revenue decline by \$2.2 million. In order for the administration to arrive at an SB6 composite score of 1.90, given the above revenue decline, they only need to implement an expense reduction of \$47.7 million. They are proposing a reduction of \$51.8 million, which is unnecessary. A steep but realistic revenue decline of 4.8% combined with an expense decline of \$47.7 million would lead to an SB6 composite score of 2.20 - which is well above the 1.90 needed. However, an expense decline of only \$47.7 million would still allow Wright State to avoid fiscal watch. His conclusion is that the administration is proposing unnecessary cuts in the amount of \$4.1 million. This difference alone is enough to negate the need for the health care increases being proposed.

Dr. Bunsis then outlined the reasons for the declining performance. The first issue he identified is the alleged drop in enrollment. Dr. Bunsis disputed the fact that a decline in

enrollment was responsible for the decline in revenue at the University. Slide #26 shows the enrollment of the domestic and international students from FY 2007 through FY 2017. Although there has been a decline in international students in the last two years, there was a steep increase between 2012 and 2017. The current rate of international students still far exceeds the international students between 2007 and 2011. Looking at the total enrollment, it was relatively stable between 2007 and 2017. (Slides #26, #27).

Slide #28 compares the enrollment at Wright State with the enrollment at other public universities in Ohio. As outlined by Dr. Bunsis, seven Ohio public universities had greater declines in enrollment than Wright State, including the University of Toledo, Cleveland State University, Kent State University, Youngstown State University, Central State University, Shawnee State University, and the University of Akron. (Slide #28).

Dr. Bunsis then looked at tuition revenue vs. State appropriations. He examined the change in State appropriations, which peaked around 2009 (the time of the financial crisis). State appropriations continued to decline through 2013, but have steadily increased from 2013 to 2017. (Slides #29, #30, #31).

Dr. Bunsis then examined the instructional salaries and benefits as a percent of total Wright State compensation, the instructional salaries and benefits as a percent of total education and general expenses, and the instructional salaries and benefits as a percent of the total Wright State expenses. (Slide #32). In most universities the expenses are in the low to mid 30% range. His data shows that the amount of money Wright State spends on instruction is below the revenue spent on instruction at other 4-year public institution in Ohio. (Slide #32). Dr. Bunsis looked at the salary and benefits of bargaining unit faculty only as a percent and showed that the compensation paid to faculty has increased modestly over the last number of years and, in 2008, decreased by

6.7%. (Slide #33). Looking at the long-term percent change for bargaining unit compensation between 2013 and 2018, salaries increased over the five years by only 7.7%, benefits increased by only 13.3%, for a total compensation increase over five years of only 8.8%. (Slide #34). This increase barely kept up with inflation.

Dr. Bunsis identified the cash spent by Wright State on pensions and showed a decline between 2016 and 2017 of \$959,461 (i.e. 3.3%). (Slide #35).

Dr. Bunsis looked at administrative salaries as a percent of education and general spending. His source was from the information available from the Ohio Department of Higher Education for all 13 public universities in Ohio. Wright State was second in the State in administrative salaries as a percent of education and general spending, second only to Ohio State. The average in Ohio is 22%. Wright State is at 28%. If Wright State were to reduce its administrative spending to meet the Ohio average, it would result in savings of almost \$16 million. (Slide #36).

Dr. Bunsis looked at the number of administrators per full time equivalent student. Again, Wright State has more administrators per student than any other university in Ohio other than Ohio State and Central State. The peer average of administrators is 12.4 students per administrator. Wright State is at 9 students per administrator. Wright State currently employs 1,215 administrators. If Wright State reduced the number of administrators to meet the Ohio average, it would eliminate 295 administrative positions, or 24% of the administrators.

Dr. Bunsis then talked about athletics at Wright State. Slide #38 shows the direct athletic revenue, athletic expenses, and the athletic deficit which had to be subsidized by the administration between 2002 and 2017. Between 2013 and 2017 alone, revenues were down 4% and expenses were up 18%. Between 2002 and 2017, the deficit increased two and a half times from \$4.8 million to \$10.4 million. (Slides #38, #39). Dr. Bunsis then examined the subsidy in dollars in percentage

terms. He looked at the school funds, the athletic income or deficit, the total athletic subsidy, and the athletic expenses. His chart shows that, at the present time, the University is subsidizing 82% of athletes. (Slide #40). Comparing the subsidies at Wright State to other Ohio institutions, Wright State is second from the top in Ohio with an 82% subsidy. The average was only 58%. (Slide #41). Looking at the subsidies of other Horizon League institutions, Wright State, at 82%, is well above the Horizon League average of 78%. (Slide #42).

Slide #43 shows the revenue from ticket sales, licensing rights, and academic support. The ticket sales have been very steady and very low between 2002 and 2017. The licensing rights and contributions have been relatively stable. The large increase in spending from athletics comes from taking the money out of academic support. (Slide #43). Where the spending goes is illustrated in Slide #44. Coaching salaries increased from \$1.2 million to \$2.6 million between 2002 and 2017. Administrative salaries solely for athletics increased from \$1.2 million to \$2.4 million over the same time period. Other expenses increased from \$2.3 million to \$4.8 million. Student athletic aide increased from \$1.7 million to \$3 million. Total expenses increased from \$6.4 million to \$12.8 million. This is a doubling in the actual expense (as opposed to budgeted amounts) for athletics between 2002 and 2017. (Slide #44).

Dr. Bunsis then looked at academic vs. athletics and the changes in coaching salaries vs. academic salaries. Between 2013 and 2017, coaching salaries increased 34%. Coaches and athletic administrator salaries increased 26%. Athletic administrator salaries increased 18%. Bargaining unit salaries only increased 15%. (Slide #45).

During the Fact-finding hearing, the administration agreed that the athletic department consistently outspent its budget. For 2018, athletics were budgeted to have a subsidy of \$10.2 million. The Nutter Center is budgeted to have a subsidy of \$875,000. This is an additional subsidy

over and above the subsidy provided from the academic budget to the athletic budget. As a result, the total auxiliaries needed to support athletics from the academic budget is \$13.8 million. Auxiliaries are designed to be self-supporting but they are not. This is due mostly to the fact that athletics at Wright State generate very little revenue.

Dr. Bunsis looked at faculty salaries under the administration's proposals, and examined the faculty salaries for full professors, associate professors, and assistant professors between 2010 and 2020. The actual percent changes take into account promotions, new hires, and losses by attrition. He looked at a zero percent wage increase for all three years of the contract and illustrated this with a chart of the long-term percentage changes in salaries between 2010 and 2017. (Slides #48, #49). He then looked at the average salary increases for Ohio public universities between 2018 and 2020. The average increase for professors in Ohio is between 2.2% and 2.65%.

Wright State is looking at a wage freeze for three years. (Slide #50). As Slides #51 – #53 show, in 2010, professors at Wright State ranked either 3rd or 4th in the State compared to the other 12 universities. With a wage freeze, their ranking will drop to either 9th or 10th place out of 11 universities. In other words, if the faculty at Wright State have no increase in salaries for three years, they will drop to the bottom of faculty salaries in Ohio. (See Slides #54, #55).

Slide #56 shows that the cost of a 1% raise for faculty at Wright State is only \$578,000. This takes into account STRS contributions, as well as Medicare contributions. If no administrators were eliminated but their salaries were cut by 4.05%, there would be sufficient funds to provide for a 1% salary increase for all bargaining unit faculty. This calculation is important because the new premium structure for medical insurance the administration is trying to impose dropped the cost for administrators in the \$100,000+ category down to the \$75,000+ category. Because of this change in categories for administrators, those at the top end of the wage

scale had a smaller percent increase in their health insurance than administrators and other employees in the salary bracket of \$75,000 to \$100,000. There are 84 administrators at Wright State who make over \$100,000, which means that 84 administrators at Wright State have benefited from this change. (Slide #57).

Dr. Bunsis discussed Double Bowler Properties Inc. (Slide #58). As Dr. Bunsis explained, Wright State University has been using a new business organization to buy real estate near the campus as part of an overall growth plan. These buildings are being used to house non-academic units for the school. This business organization is called Double Bowler Properties. According to its IRS 990, the mission of Double Bowler is to expand the educational opportunities available to students, faculty, and staff of Wright State University by developing, operating, and maintaining facilities for the benefit of the University. Greg Sample is the President, CEO, and sole employee of Double Bowler. Mr. Sample stated “We’re being mindful of limited resources, and state resources are limited, you can’t raise student tuition, so you come up with innovative ways to get the job done.” Greg Sample is no longer an employee of Double Bowler but has become an employee of Wright State University and is the 10th highest paid employee at Wright State with a base salary of \$249,000. (Slide #58).

Dr. Bunsis looked at the cost of a 1% raise for faculty in the context of administrative actions. (Slide #59). Double Bowler allegedly has a total revenue of \$2 million. Where did this revenue come from? \$1.3 million was paid by Wright State to lease property from Double Bowler. \$300,000 was paid by Wright State as a “contribution” to Double Bowler. Double Bowler raised only \$400,000 on its own. Double Bowler then reported expenses in its IRS 990 of \$1.8 million. This shows a profit of \$200,000 but, as Dr. Bunsis explained, this profit was not real. The revenue came mostly from payment from Wright State to Double Bowler to cover their expenses that they

could not cover themselves. In addition, the expenses do not include the 2016 principal payments to Double Bowler on mortgages of \$632,000. Double Bowler cannot afford to pay off the mortgages it owes on its own so Wright State covers both the operational loss of Double Bowler and the debt service payments. This is just one example of financial mismanagement of the current administration.

It is important to note that there is a 2016 Board Policy on the Guiding Principles for Affiliated Entities at Wright State University. Guiding Principle No. 5 states that “while affiliated entities may be heavily dependent on the University at their inception, their business strategy should include a plan for achieving self-sufficiency within a reasonable period of time.” However, at the February 16, 2018 Board Meeting, the Board of Trustees voted to adopt an exception to the Affiliated Entities Policy for Double Bowler Properties. This exception resulted in the continuing subsidies to Double Bowler even in the midst of the current financial crisis, and continue to this day. This exception was granted in the year following the time the University achieved an SB6 rating was 0.8. This demonstrates that under the current administration there continues to be substantial subsidies from Wright State to Double Bowler. In other words, the financial mismanagement is not something of the past which has been turned around but continues under the current President and the current Board of Trustees. (Slide #60).

The above evidence shows that the financial crisis is the result of mismanagement. The mismanagement continues even today. The Board of Trustees has shown itself to ignore the academic mission of the University at the expense of its friends.

All of the Union’s positions and the administration’s positions on the open issues should be viewed in light of the above.

IV. UNION POSITION ON OPEN ISSUES

Article 7 – Faculty Rights and Responsibilities and Appendix H – Side Letter on Summer Teaching Assignments

The parties reached a TA on Article 7 with the exception of Section 7.8. As a result, the only language at issue is Article 7, Section 7.8 and Appendix H. The AAUP-WSU proposes current contract language for Article 7, Section 7.8 and for Appendix H. Also, it should be noted that there is sunset language in the administration's proposed change to Section 7.8 but not in the proposal to eliminate Appendix H.

What the administration's proposed language would do is eliminate all protections regarding summer teaching assignments for the duration of the new CBA and beyond. The proposed language changes are unnecessary and not intended to solve any issues that management has identified. The proposed changes simply provide the administration with greater control over the faculty and carry a great risk of abuse. For example, the current CBA provides that summer teaching opportunities are to be rotated among all bargaining-unit faculty, including TET and NTE faculty. The administration proposes eliminating this rotation so that each dean would be able to offer summer teaching opportunities to only the lower paid faculty, or could reward certain faculty members at their sole discretion. Non-bargaining unit faculty could be afforded rights over bargaining unit faculty.

Under the current CBA language, summer teaching opportunities are rotated among both TET and NTE faculty. The administration, however, has misconstrued this rotation. Prior to the time the NTE had a collective bargaining agreement, the TET faculty had priority over NTE faculty for all summer teaching. There were always more courses offered than TET faculty who wanted to teach summer school. NTE faculty (who are paid less) wanted summer teaching opportunities.

When the first NTE collective bargaining agreement was negotiated, the parties agreed to rotate summer teaching opportunities with TET and NTE - as a benefit and a protection to NTE faculty. The language also protected all bargaining unit faculty from having summer teaching assignments given to non-bargaining faculty (i.e. adjuncts). This is a basic protection for bargaining unit work that should be retained.

During the Fact-finding hearing, the administration's counsel argued it wanted "flexibility." It wanted to "treat the university like a business" rather than an institution of higher learning. This is a flawed narrative. Chairs and deans do not have "flexibility" to determine who will be employed in the fall and spring semesters. Summer is an important part of academic programs and faculty assignments should be done fairly and equitably.

In the summer of 2013, the Union and the administration *collectively bargained* to reduce the rate for summer teaching. This is an example of the parties working collectively – and agreeing to a compromise under which the faculty earned less for summer teaching but protected their right to teach summer school over the rights of non-bargaining faculty. The administration's proposals would eliminate these important protections.

Union Exhibit 19 shows the loss of pay for bargaining unit faculty members from summer teaching in 2016 and 2017. The administration wants to increase this loss of income. During the Fact-finding hearing, the administration's attorney incorrectly argued that the proposed language would simply facilitate management's ability to cancel a class. This is not what the language would do. The language would permanently eliminate all the protections in Appendix H and, for the life of the CBA, all the protections in Section 7.8. It is yet another example of the administration unilaterally creating a fiscal crisis, and then profiting from its own misdeeds by seeking permanent changes to the CBA which undermine the collective bargaining process.

There is no justification for these proposed changes. The current language in Section 7.8 and Appendix H should be maintained.

Article 11 – NTE Annual Evaluation of Non-Tenure Eligible Bargaining Unit Faculty and TET Annual Evaluation of Tenure Eligible and Tenured Bargaining Unit Faculty

The language at issue involves merit increases. The AAUP-WSU’s proposal has no money for any merit increases during the term of the new CBA but maintains the negotiated process for faculty to receive merit increases in the future. The administration wants to permanently eliminate any and all criteria for providing merit increases, other than a minimal evaluation threshold, so that the administration can award any amount of money to anyone it wants – even under the new CBA, without limit. This would undermine the right of the AAUP-WSU to negotiate wages.

The administration has argued over and over again that it “is broke.” The administration’s Pre-hearing Statement said: “WSU is out of money.” The administration has presented proposals that, if adopted, would severely reduce the salary and benefits for bargaining unit faculty members. However, the administration also wants to obtain the ability to award anyone with any amount of money for any reason without limit. This is a tactic intended to render the collective bargaining process ineffective and to directly undermine the AAUP-WSU.

This should not even be considered.

Article 13 - NTE Appointment and Promotion

The AAUP-WSU proposes current contract language.

The AAUP-WSU originally presented some minor modifications to this Article, because the Union wanted to clear up the confusion on peer evaluation in Section 13.5.2.3. The AAUP-WSU also informed the administration that we could accept some of the minor proposed language changes contained in the administration’s March 10, 2017 proposal. However, on January 17,

2018, after ten (10) months, the administration put another proposal on the table, which was regressive in a number of substantive ways.

One of the most regressive components is their proposed change to how and when NTE faculty become eligible for a continuing appointment. Under the current CBA, NTE faculty receive a continuing appointment after six years, unless they have been notified otherwise by the beginning of their sixth year of service. The administration proposes to change this to nine years but, as explained during the hearing, the change would actually increase the time to twelve years because it takes at least three years for a Lecturer to be promoted to Senior Lecturer or for a Clinical Instructor to be appointed to the rank of Clinical Assistant Professor. In addition, Lecturers and Clinical Instructors would no longer be eligible for a continuing appointment no matter how long they have been teaching.

In addition, while the administration claims to “sunset” many of its proposed changes, there is no sunset language in the proposal for Article 13.

Under the current language, NTE faculty can be terminated for a number of reasons. In Article 15, Section 15.4 of the NTE CBA, NTE faculty with a continuing appointment may be terminated if there is an enrollment decline extending over at least three academic semesters or because of curricular changes. Under this language, NTE faculty may be terminated for reasons other than poor performance.

One of the Union’s witness at the hearing was Dr. Bobby Rubin. Dr. Rubin testified that he has worked as an NTE faculty member for 25 years. He teaches English. He is a full-time Instructor and teaches multiple sections. He has also worked as a Lecturer and a Senior Lecturer.

Dr. Rubin testified that most first and second year students are taught by Lecturers and Senior Lecturers. Research shows that if a student has a good experience in his or her first or

second year, they tend to stay at their university. Most first and second year students at Wright State are taught by NTE faculty.

A large percentage of the general education courses at Wright State are taught by NTE faculty. These courses often have very intensive writing requirements, which means that the NTE faculty have a very heavy work load. NTE faculty also participate in a great amount of service for the University. They serve as program directors and program coordinators, coordinate multiple sections, supervise teaching assistants, and are responsible for entire labs. NTE faculty teach the English as a Second Language Program. One of the NTE faculty members coordinates with area high schools on English. NTE faculty are an essential part of the University's need to retain and attract good students.

During the Fact-finding hearing, Dr. William Rickert testified "NTE had been terrific faculty. They are a tremendous asset to the university." Dr. Rickert also testified that the administration "wants to attract and retain high quality [NTE faculty]." Historically, NTE faculty have a high promotion rate because they are so qualified. The primary focus for NTE faculty is on teaching rather than research. NTE faculty are attentive to students and are critical to the mission of the University.

The administration's language would be destructive to the academic mission of the University because it would undermine NTE faculty simply to save money. For the reasons set forth above, it should be rejected.

Article 17 - Retrenchment

The AAUP-WSU proposes current contract language.

If the administration wanted modifications to Article 17, it was to have provided its proposal by March 10, 2017 (under Ground Rule #4). In violation of the Ground Rules, the

administration's first and only proposal (prior to the first scheduled day of Fact-finding) on retrenchment was provided to the Union on January 17, 2018 and included major changes to the process, which the administration has not been able to justify. Then on May 22, 2018, the administration proposed new modified language on Article 17, which was worse than the language proposed on January 17, 2018. The Union objected to the introduction of new language as it violated R.C. 4117.14. In other words, the administration's proposal is not only unsupported by the facts on the merits (as will be described below), it is also procedurally improper as a violation of the Ground Rules, the Ohio Collective Bargaining Act, and because it constitutes regressive bargaining. As will be shown, on both substantive and procedural grounds, the administration's proposal on Retrenchment should be rejected.

In addition, the administration only proposed modifications to the language in Article 17 for the TET bargaining unit, not the NTE bargaining unit. The language for Article 17 in the TET CBA is different than the language in the NTE CBA. At the hearing, both sides stipulated that in the event the language is to be modified, it should at least be internally consistent with the TET and NTE bargaining units.

There are four sections at issue. The four sections are: 17.1, 17.4, 17.5, and for TET – 17.6.9 and for NTE – 17.6.8. The administration's proposed changes to these sections would place Wright State University outside the norm of every public university in Ohio – including those governed by collective bargaining agreements and those not governed by collective bargaining agreements. It would violate the industry standard for academic institutions and would threaten the integrity of the academic mission of the University.

The AAUP Policy Documents and Reports, also called the "AAUP Red Book" is the industry standard for academic institutions. First published in 1968, and now in its 11th Edition,

the Red Book defines and addresses financial exigency. Union Exhibit 27 are excerpts of the notification requirement for financial exigency in collective bargaining and non-collective bargaining state universities in Ohio. The language included for the collective bargaining state universities include: the University of Akron, Bowling Green State University, Central State University, Cleveland State University, the University of Cincinnati, Kent State University, and the University of Toledo. The language included for non-collective bargaining universities include: Miami University, Ohio State University, and Ohio University. The actual CBA language for the collective bargaining universities is included in Union Exhibit 28. The actual policy language for the non-collective bargaining universities is included in Union Exhibit 29.

As shown, the proposal presented by the administration in this case is wholly outside the norm of every public university in Ohio – and would be unprecedented. As with other proposals, it is an example of the administration creating a fiscal crisis, and then using the fiscal crisis it created to obtain language in the CBA that would devastate faculty rights.

Under the current CBA, retrenchment can occur under three circumstances, including financial exigency, a significant reduction in enrollment, or the discontinuation of a College, Department, or Program. The administration originally (in its January 17, 2018 proposal) wanted to add “pursuant to a financial recovery plan under fiscal watch.” Under that proposal, Wright State would have had to have been in fiscal watch, have drafted a fiscal recovery plan, and have had to have a fiscal recovery plan that specifically addresses retrenchment. As stated earlier, under OAC 126:3-1-01(D), the financial recovery plan must be approved by the chancellor of higher education, must analyze the institution’s financial difficulty and causes of significant revenue or expenditure problems, must provide a description of initiative proposed or undertaken by the institution to address its financial difficulties and analyze the effectiveness of those initiatives,

contain contingency plans to address the institution's financial difficulties and any circumstances that could worsen the institution's fiscal condition, contain a financial forecast for three years, and contain any other information requested by the chancellor of higher education. These legal requirements create standards that would prevent the administration from acting in an arbitrary way.

Then on January 30, 2018, the administration changed the new language from adding "pursuant to a financial recovery plan under fiscal watch" to "to avoid the declaration of fiscal watch, or pursuant to a financial recovery plan under fiscal watch." In mediation, the AAUP-WSU pointed out that "avoiding" fiscal watch was ambiguous. As a result, on May 22, 2018, the administration went even further and proposed changing the criteria to allow retrenchment being declared within the 24-month period after the University achieves an SB6 score of less than 2.40 for any two consecutive years or under a financial recovery plan.

In fiscal year 2016, Wright State had an SB6 score of 2.1. In fiscal year 2017, Wright State had an SB6 score of 0.8. That means that even if Wright State is able to avoid fiscal watch by achieving an SB6 score of 2.4 for fiscal year 2018, that under the administration's newest proposal, the criteria have already been met. Under this language, the administration would be able to terminate tenured faculty without declaring financial exigency, without showing a significant reduction in enrollment, and without discontinuing a College, Department, or Program. This would effectively eliminate tenure. In other words, the threshold suggested by the administration has already occurred and will continue to occur under the terms of the new CBA – independent of the success of Wright State's financial recovery. The change from January 17 to January 30 was regressive and the change from January 30 to May 22 was even more aggressive. This should not be allowed.

The second change to Article 17 proposed by the administration is in Section 17.4, and would shorten the time for the Joint Committee on Retrenchment to be created, meet, and submit an advisory recommendation to the University President from 60 calendar days to 20 calendar days. In other words, for a decision as critical to the mission of the University as retrenchment, the administration shows no interest in having thoughtful or responsible recommendation – but would prefer, instead, to simply “go through the motions” – and make a mockery of the Joint Committee on Retrenchment.

The third change to Article 17 proposed by the administration is in Section 17.5 and had said that, after receiving and considering the recommendation(s) [of the Joint Committee on Retrenchment], the Board of Trustees shall make a final determination **to** implement retrenchment. When it was pointed out at the Fact-finding hearing that this proposed language would mandate retrenchment regardless of the recommendation of the Joint Committee, the administration’s counsel back-peddled and agreed to modify the language to read: “...the Board of Trustees shall make the final determination **whether or not to** implement retrenchment.”

The fourth proposed change to Article 17 would eliminate Section 17.6.9 for TET and Section 17.6.8 to NTE. This proposal shows a misunderstanding of the language. Under these two provisions, bargaining unit faculty members whose positions are terminated are to be offered available faculty positions for which they are fully qualified or for which they can become fully qualified within a certain period of time. The administration argues that it would not make sense, if they were eliminating faculty position, to offer these faculty members other positions within the University. However, this fails to take into account that retrenchment may occur with the elimination of a College, Department, or Program. There are times when faculty members could easily be absorbed by another College, Department, or Program – and this language only applies

if there is a faculty position available. It causes no harm to the University, and is simply an example of the administration taking a sledge hammer to a problem, rather than a scalpel.

As has been shown, the administration's proposed changes to Article 17 are outside the norm of every single other public university in Ohio – both collective bargaining and non-collective bargaining universities alike. The changes, if adopted, would be destructive to the mission of Wright State as an institution of learning, and would take advantage of the financial problems that the administration created by undermining the role of the faculty and their right to bargain collectively for their mutual aid and protection.

It should be rejected.

Article 19 – Workload

The AAUP-WSU proposes current contract language. The current language does not define workload. It simply states that faculty workload requirements are set forth in a faculty workload policy that the University and the AAUP-WSU agree will be included in the *Faculty Handbook*, and are enforceable. There is nothing illegal or problematic about the language as is. It should be maintained.

The administration wants to eliminate the faculty workload policy that the University and the AAUP-WSU agreed would be included in the *Faculty Handbook*, claiming it is a prohibited subject of bargaining under RC 3345.45. In addition, the administration claims a need for “flexibility” again, in light of the financial crisis it created. As outlined below, the AAUP-WSU disagrees that the language negotiated into Article 19 violates RC 3345.45 or Chapter 4117. In addition, and as will be shown, there is no need for greater “flexibility” with respect to workload. The policies that has been agreed upon in the past have worked well and it is essential that they be

protected if the administration and faculty are to work together for the benefit of the University moving forward.

As previously discussed, the tenure and tenure track faculty were initially certified on June 11, 1998. The first CBA that was negotiated was effective December 8, 1999. At the time, the parties directly addressed the effect of RC 3345.45 on the issue of workload.

On July 1, 1993, five years before the TET bargaining unit was certified, the Ohio Legislature adopted RC 3345.45, a statute titled: Instructional and Faculty Workload Standards Policy. Also enacted as part of the same statute was an uncodified section which provided as follows:

Pursuant to Section 3345.45 of the Revised Code, the Ohio Board of Regents shall work with State universities to ensure that no later than Fall term 1994 a minimum 10% increase in statewide undergraduate teaching activity to be achieved to restore the reductions experienced over the past decade. Notwithstanding Section 3345.45 of the Revised Code, any collective bargaining agreement in effect on the effective date of this act shall continue in effect until its expiration date.

Immediately after the statute was enacted, the Central State University Chapter of the AAUP filed an action in court seeking to declare the statute unconstitutional. On September 30, 1998, the Ohio Supreme Court declared RC 3345.45 to be unconstitutional. *AAUP, Central State University Chapter v. Central State University*, 83 Ohio St. 3d 229. That decision was reversed by the United States Supreme Court on March 22, 1999. *AAUP, Central State University Chapter v. Central State University*, 526 U.S. 124. On October 20, 1999, the Ohio Supreme Court then reversed its earlier decision, *AAUP, Central State University Chapter v. Central State University*, 87 Ohio St. 3d 55.

In response to the uncodified section referenced above, on February 18, 1994, the Regents Advisory Committee from the State of Ohio issued a Report on Faculty Workload Standards and

Guidelines. (Union Exhibit 37). In the Report, the Advisory Committee specifically stated that the legislative mandate required that faculty workload guidelines result in a statewide recovery of a 10% reduction in teaching that had been observed by the task force between the 1980-81 and the 1990-91 academic years. The Regents also requested workload policies from all state universities with respect to their workload.

On June 14, 1994, the President of Wright State University submitted the Wright State University Board of Trustees adopted workload policy, which had been adopted on June 11, 1994. (Union Exhibit 38).

On August 11, 1994, the Chancellor for the Ohio Board of Regents issued a memorandum to the Ohio House of Representatives stating that the Board of Regents had received statements regarding university faculty workload policies from all Ohio universities. (Union Exhibit 39).

The legislative history behind the enactment of RC 3345.45 was outlined in the initial decision of the Ohio Supreme Court. As stated by the Court, the objective of the legislation was not to increase the total faculty workload. The objective was to effect a change in teaching and research in order to correct an imbalance at four-year undergraduate state institutions that was created by a faculty reward system that rewarded research over teaching. The legislature expressed concern over the quality of undergraduate education, which was found by the Court to be a legitimate government interest. The legislature chose to correct the decline in teaching-related activity at the time by mandating an increase in teaching responsibility relative to research responsibility.

In other words, the statute does not even address workload. It addresses the ratio of teaching to research. It does not mandate an increase in overall workload for faculty. It likewise does not define what types of activities are to be counted as teaching. For example, the statute is

silent with respect to issues such as independent studies, laboratory courses, field-based courses, team teaching classes, or advising.

When the law was first enacted, Wright State University complied with the law by enacting a faculty workload policy, which was adopted by the Wright State University Board of Trustees on June 11, 1994. The faculty workload policy, however, does not define how workload is to be calculated or how certain activities are to be credited. It did, however, address the ratio of teaching to research as required. As a result, the intent of the legislation was thus accomplished by Wright State University in 1994. Under the legislation, there is no continuing obligation placed on Wright State to further change the ratio of teaching to research, or to promulgate any new policies.

When the negotiations for the first Wright State Chapter of AAUP were underway, the Union placed a proposal on the bargaining table regarding workload. On May 13, 1999, the University filed an unfair labor practice charge against the Union claiming a violation of 4117. On June 22, 2000, SERB issued an Order dismissing the Unfair Labor Practice on the basis that the Union placed the language on the table during the time period in which the Ohio Supreme Court had declared RC 3345.45 to be unconstitutional, and before that decision was reversed. However, contrary to the University's claim in this case, SERB did not find workload to be a prohibited subject of bargaining.

Following the SERB Order, the WSU-AAUP filed an appeal with the Greene County Court of Common Pleas. After the Union filed its appeal and submitted a brief on the merits, both SERB and the University filed Motions to Dismiss, arguing that the Common Pleas Court was without subject matter jurisdiction. Under Chapter 4117, any party may appeal a SERB Order if the party is "aggrieved." The issue raised by SERB and the University in each of their respective Motions to Dismiss was whether the Union was "aggrieved" by the SERB Order. Ironically enough, both

SERB and the University argued that the Union was not “aggrieved” because SERB did not, in fact, rule that RC 3345.45 prohibited bargaining over faculty workload.

The Greene County Court of Common Pleas agreed with SERB and the University in its October 20, 2000 Judgment Entry and dismissed the case for lack of subject matter jurisdiction. (Union Exhibit 40). In doing so, the Court made three definitive statements. The following are exact quotes from the Judgment Entry:

1. SERB’s Order clearly limits its decision *to the timing of the conduct in question*. SERB’s Order only addressed whether AAUP violated RC 4117.11(B)(3) between March 18, 1998 and October 8, 1999. As WSU points out, nowhere does SERB’s Order state that all matters directly or indirectly related to the issue of faculty workload are prohibited subjects of collective bargaining under RC 4117.11.
2. Furthermore, SERB’s Order does not affect AAUP’s rights under the collective bargaining agreement.
3. Finally, SERB’s Order does not deny AAUP the right to bargain over faculty workload.

The Court held, therefore, that given the above, the AAUP was not “aggrieved” by claim or issue preclusion. In other words, the Greene County Court of Common Pleas agreed that SERB did not hold that workload was a prohibited subject of bargaining.

This issue has not been litigated by SERB since this time. As a result, the Greene County Common Pleas Court ruling is good law and binding.

In this case, the parties negotiated their first CBA during the time RC 3345.45 was being litigated. As a result, the parties adopted language in their collective bargaining agreement on December 8, 1999 that if RC 3345.45 was declared unconstitutional, or if SERB and/or a Court issued a decision that the issue of workload was a mandatory subject of bargaining in spite of the constitutionality of RC 3345.45, the University, upon request, would bargain with the Union regarding any proposed changes to the University’s faculty workload policy or its college faculty

workload policies using the normal dispute resolution process contained in ORC 4117.14. This language was incorporated, unchanged, in every CBA negotiated between the parties between December 8, 1999 and October 12, 2011. (Union Exhibit 41).

Then in the October 12, 2011 CBA, the parties modified the CBA language to specifically reference workload policies in the faculty handbook. The language in that CBA also provided that if the language in the faculty handbook was violated, members could submit the matter to an external arbitrator within thirty (30) days of receiving a response from the Provost with respect to an appeal. (Union Exhibit 41). In other words, the parties agreed to address workload outside the collective bargaining process but still in a manner which was mutually acceptable to both parties and enforceable. This method has worked well for the past two collective bargaining agreements.

Attached as Union Exhibit 30 are multiple MOUs which have been negotiated between the parties between 2008 and the present time. Both parties have honored the MOUs and have worked under them in good faith. The three primary MOUs (which have been modified from time to time) are as follows:

- 1. March 2, 2009 MOU** – This MOU addressed workload and the conversion to semesters. It was signed before the current workload policy was agreed to in the other two workload MOUs. Section 3 of this MOU states, in pertinent part: “The parties recognize that the complete university workload policy will be outside the CBA and will pertain also to faculty not in the bargaining unit.” In other words, it was the parties’ intent that this agreement be outside the collective bargaining agreements, in order to comply with RC 3345.45.
- 2. November 12, 2010 MOU** – This MOU contains the workload policy for TET faculty members. The MOU specifies certain changes that would be made to the CBA, not the

other way around. Again, the parties both believed that this MOU complied with RC 3345.45. In addition, the MOU has been updated by the mutual agreement of both parties.

3. September 20, 2013 MOU – This MOU contains the workload policy for NTE faculty members. As with the other MOUs, it was agreed to outside collective bargaining and is not subject to fact-finding. In fact, the MOU specifically states: “The parties recognize that the complete university workload policy will be outside the CBAs....”

The administration’s proposal for Article 19 is designed to nullify the agreed upon work of the parties concerning workload and, instead, references WSU “Wright Way” Policy #2020. (Union Exhibit 42). Policy #2020 specifically states that it applies to faculty not represented by collective bargaining. There is no language in Policy #2020 describing what faculty workload would be. Again, this is an attempt by the administration to undermine faculty and to act unilaterally on working conditions. The Administration’s position that workload is a prohibited subject of bargaining is untrue. The clear legislative history, and the bargaining history between the parties establishes that the MOUs have been negotiated with both sides in good faith specifically to comply with RC 3345.45.

Furthermore, teaching load is addressed throughout the CBA. For example, under Section 8.7, the University grants nine course releases per fiscal year to the Union. Under Article 11, workload is addressed very specifically. In fact, department chairs are to assign a workload-based percentage to members under Section 11.2.6. Section 23.5 defines overload salary when bargaining unit members are offered and agree to teach overload classes. How can an overload be assessed if there is no understanding of the load? Section 30.8 references partial unpaid leave to tenure bargaining unit faculty members for personal and professional reasons. How can a partial unpaid leave be established if the load is not established?

Clearly, this issue has been addressed mutually by the parties since the inception of collective bargaining between the parties in 1999. Suddenly, the administration is trying to take advantage of its own fiscal irresponsibility to achieve something in negotiations which it could not have achieved otherwise.

Furthermore, RC 3345.45 only references RC 4117.08 and 4117.10(a). It does not reference 4117.03(a)(4), which protects employees' rights to bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement and enter into collective bargaining agreements.

In addition, workload has been addressed by other collective bargaining universities in Ohio for years. Union Exhibit 31 are excerpts from the workload language in collective bargaining agreement in the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University (tenure and tenure track bargaining unit), Kent State University (non-tenure track bargaining unit), Shawnee State University, the University of Toledo (tenure and tenure track bargaining unit), the University of Toledo (non-tenure track bargaining unit), and Youngstown State University. (See also Union Exhibits 32-36). Clearly, the norm in Ohio is has been for public universities to negotiate workload policies with their faculty unions. That is precisely what Wright State University has done up until now.

Given the above, the administration has failed to prove that Article 19 should be eliminated. The Union simply wants to maintain the language that recognizes that faculty workload requirements are set forth in a faculty workload policy in the *Faculty Handbook*. This language

does not prevent the administration from modifying the faculty workload policy. It simply makes it enforceable. Wright State Policy # 2020 is insufficient to accomplish this and is not enforceable.

The language which has been negotiated, and the multiple MOUs that the parties have worked under for years, make sense. Eliminating it would be destructive to the relationship, particularly at a time when the administration is also seeking significant cuts in wages and benefits. As such, the administration's proposal to delete Article 19 should be rejected.

Article 23 – Compensation and Article 24 – Minimum Salaries

The AAUP-WSU proposes no wage increase in Year 1, a 4% across-the-board increase in Year 2, and a 4% across-the-board increase in Year 3. The Year 2 proposal is directly related to the administration's proposal to increase the premium contributions and worsen plan designs for all the health insurance plans – in an amount that if adopted, would translate to a 4% wage reduction for faculty. The Year 3 proposal is based on the assumption that the current financial circumstances will be alleviated sufficiently to allow for an increase in the 2019-2020 academic year.

The administration proposes a three-year wage freeze, but wants to retain their right to award merit increases without criteria or limitations. This proposal is unacceptable to faculty.

The AAUP-WSU is proposing no merit pool during any of the three years of the CBA. However, the AAUP-WSU proposed to maintain the mechanism for awarding merit increases (contained in Article 11) so that, in future CBAs, the negotiated mechanism can still be utilized. In addition, the AAUP-WSU is proposing to delete the language in Article 23 that provides for market/equity increases, given the current financial situation.

The AAUP-WSU believes that any increases for faculty salaries under Article 23 should be distributed equally through across-the-board increases only. When the University's finances

have recovered sufficiently to allow for merit increases and/or market/equity increases, the parties can discuss these other mechanisms at that time.

The AAUP-WSU proposes no increase for minimum salaries in Year 1, a 5% increase in Year 2, and a 5% increase in Year 3. The administration stated during the Fact-finding hearing that it was not seeking any increases or decreases to minimum salaries during the term of the new CBA. However, there was discussion during the Fact-finding hearing that the administration's proposal did not accurately reflect this. As a result, the parties drafted and agreed on language for Article 24 which, if adopted, would maintain minimum salaries with no increase or decrease during the duration of the new CBA.

Although agreeing that the new language would accomplish this, the Union did not agree that there should be no increase in the minimum salaries. As stated during the Fact-finding hearing, minimum salaries only affects the lowest paid faculty members in each rank. The AAUP-WSU believes that increases to minimum salaries are necessary because any changes in health care affect the lowest paid faculty members the most.

As such, the Union's position on wages and minimum salaries should be adopted.

Article 26 – Medical, Dental & Vision Insurance and Appendix E – Summary of Medical, Dental & Vision Benefits

The AAUP-WSU is proposing no change to Appendix E, other than the elimination of the 90/10 plan effective January 1, 2019. Under the AAUP-WSU's proposal, employee contributions toward premiums would be unchanged in 2018, and would increase by 10% in 2019 and by another 10% in 2020.

The administration's proposals for Article 26 and Appendix E is to simply eliminate provisions defining what bargaining unit members pay toward premiums, or the level of coverage

provided. Instead, the administration's proposals take health insurance – a clearly mandatory subject of bargaining – outside the realm of bargaining so that medical, dental, and vision coverage would be provided solely at the discretion of management. Under the administration's proposal, medical, dental, and vision coverage could be modified at any time and for any reason – without limitations, and without bargaining. This is not good faith.

In November 2017, effective January 1, 2018, the administration unilaterally reduced health care for all non-bargaining employees by increasing the cost of premiums for employees, increasing co-pays and deductibles, and increasing the maximum out-of-pocket expense limits. If these changes were imposed upon bargaining unit faculty, it would be equivalent to a 4% wage reduction. The faculty at Wright State would have the worst health care provided to faculty in any state university in Ohio. (See Union Exhibits 20, 21, 22, 26).

In this case, the parties have been bargaining since January 2017. At no time did the administration talk to the AAUP-WSU about proposed design plan changes, or other modifications. Instead, the administration refused to discuss health care, and instead unilaterally reduced benefits for non-bargaining employees – and now is trying to impose those changes on faculty. During the Fact-finding hearing, the administration's counsel stated he wanted to remove health care from the collective bargaining agreement because he wanted to remove “the emotion” of the room from health care. This assertion is insulting to the faculty members at Wright State who chose to bargain collectively for their health care.

There are at least two public universities in Ohio - the University of Cincinnati and Kent State University - where the faculty have better health care benefits than non-faculty. At Kent State University, faculty have more health care options than non-bargaining employees, and faculty monthly employee contributions are lower. The deductibles and out-of-pocket maximum

amounts are better for faculty than non-faculty. The co-insurance is also more favorable for faculty than for non-faculty. (See Union Exhibit 23).

At the University of Cincinnati, the monthly contribution levels for faculty are significantly lower than the monthly contribution levels for non-faculty. Doctor co-pays, urgent care co-pays, deductibles, and out-of-pocket maximum levels are better for faculty than for non-faculty. The co-insurance for faculty is lower than the co-insurance for non-faculty. Pharmacy benefits for faculty at the University of Cincinnati are better than for non-faculty. (See Union Exhibit 24).

The current Wright State CBA defines monthly contributions and the levels of coverage. It also contains some critical protections when an employee receives services in a network hospital from an out-of-network provider (such as an anesthesiologist or a pathologist, over whom the patient generally has not choice or control). (See Union Exhibit 25). These negotiated protections would be eliminated under the administration's proposal.

Current premiums for bargaining unit faculty in the CBAs have four levels for different salaries, as follows:

Tier 2 - \$30,000 - \$49,999

Tier 3 - \$50,000 - \$74,999

Tier 4 - \$75,000 - \$99,999

Tier 5 - \$100,000 and above

The administration used to have five tiers for all other employees, but effective January 1, 2018, they combined the lowest tier (which was for employees earning less than \$30,000) with the next higher tier. The administration also eliminated the highest tier (for employees earning \$100,000 and above) and placed these employees in the same tier as those earning \$75,000 or

more, thereby hurting the lowest paid employees and benefitting the more highly compensated administrators.

Under the AAUP-WSU's proposal, health insurance would still be defined in the CBA. Employee contributions toward premiums would be increased effective January 1, 2019 by 10% and on January 1, 2020 by another 10%. The AAUP-WSU also proposes to eliminate the 90/10 plan, effective January 1, 2019. Under this proposal, the plan design for the 80/20 plan and the HDHP plan would remain the same.

The administration's proposal on health care is not to change the plan design. It is not to increase contributions to the premium. It is to eliminate a core mandatory subject of bargaining from negotiations, take it completely out of the collective bargaining agreement, and allow the administration unrestricted right to do anything they want at any time they want for any reason they want. That is unacceptable to this Union.

During the Fact-finding hearing, the administration's counsel falsely claimed that it was common for unions to waive their right to negotiate health care. In support of this claim, he presented excerpts from 127 collective bargaining agreements. Luckily, the AAUP-WSU had the opportunity to review these excerpts to see if they supported this claim. After reviewing the excerpts, the AAUP-WSU determined that only 22 out of the 127 collective bargaining agreements supported the administration's claim, or 17%. The other 105 excerpts contained language that included some controls over health care, whether those controls were to define the percent employees paid, caps in the potential increases to cost-sharing, controls on plan design, etc. In addition, these 127 excerpts did not include any colleges or universities. In fact, it did not even include any school districts. (Union Exhibit 46).

Union Exhibit 26 contain excerpts of health care language in collective bargaining agreement at other public universities in Ohio. As shown, none of them have waived their right to negotiate health care. All of them recognize that health care is a core subject of bargaining that should be addressed in the collective bargaining agreement.

During the Fact-finding hearing, the administration's counsel argued that the administration had formed a "committee" to review health care. What he neglected to say was that the AAUP-WSU had no involvement in that committee – even though it was meeting while the parties were actively engaged in negotiations and the AAUP-WSU was trying to address health care options. In other words, the administration effectively shut the AAUP-WSU out of any discussions, unilaterally imposed changes to non-bargaining employees, and is now attempting to remove health insurance from the AAUP-WSU collective bargaining agreement so it can continue to act unilaterally. This is not good faith.

The administration presented Sheri Mickey-Boggs, an Associate Vice President and Chief of Human Resources, as a witness. Ms. Mickey-Boggs called the administration's changes to health care "aggressive" multiple times throughout her presentation. She claimed that the administration explored a number of options, but admitted that the AAUP-WSU was never involved in any of these discussions and never invited to any health care informational meetings.

Ms. Mickey-Boggs claimed that the health care at Wright State was not the worst health care at universities in Ohio – a claim that is incorrect. As examples, she cited deductibles or out-of-pocket maximums, while ignoring the overall benefits which included monthly contributions or other plan limits at other universities.

In contrast, the Union's expert witness, Dr. Bunsis, testified with respect to health care at other public universities in Ohio. (See Union Exhibit 45). As Dr. Bunsis testified, the AAUP-

WSU bargaining unit members are 25 percent of the total employees at Wright State University. (Slide #62). Slide #63 shows where AAUP-WSU employees fall within the current five tiers of the University. Slide #64 shows the premiums paid by AAUP-WSU members. Slide #65 shows the proposed total premiums that would be paid by AAUP-WSU members if the AAUP-WSU members were required to assume the same health care premiums that were unilaterally imposed upon other bargaining unit members. This would amount to an additional \$572,000 for the bargaining unit or an average \$1,000 increase for the bargaining unit. A \$1,000 increase would equal 1.1% of salary. In other words, it would equal a 1.1% reduction in salary solely for the premium increase. Slide #66 shows that the annual premiums for the 80/20 plan for employees in the \$50,000 to \$74,000 range would result in a decrease in salary of 2%. Slide #67 shows the difference between the deductibles, out of pocket maximums, co-pays, etc. for the existing and proposed plan. Slide #68 shows that, factoring these into the calculation, looking at both the proposed increase in premiums and the cost shifting through increases and deductibles, co-insurance, etc. would result in a decrease in salary for bargaining unit members of over 4%.

Slide #69 shows proposed annual premiums at Wright State vs. peer institutions. The proposed increases at Wright State would place Wright State in the worst position among its peers. Likewise Slide #70 shows that the deductibles would likewise place Wright State in the worst position among its peer institutions. Slide #71 shows the out of pocket maximums would likewise place Wright State in the worst position among its peers. Looking at the proposed changes to premium contributions, deductibles, and out of pocket maximums, collectively, Wright State would be in the worst position among its peers. (See Slide #72).

The conclusion reached by Dr. Bunsis is that the health care changes proposed would result in significant pay cuts for Wright State faculty. The proposal would position Wright State faculty

either last or next to last in relationship to other Ohio peer institutions. It would likely leave the Wright State faculty with the most expensive health care of any Ohio peer institution.

The AAUP-WSU believes that all employee should share in the cost of health care, and not shift costs to those with illnesses or injuries. This is precisely what the proposed changes would do.

Accordingly, the AAUP-WSU requests that its proposal on health insurance be adopted.

Appendix I – Furloughs

There is no current language in the CBA on furloughs. The proposed new language for a new Appendix I is language that the administration placed on the table for the first time on January 19, 2018. It is unprecedented. No collective bargaining agreement at any public university in Ohio has such a provision. On May 22, 2018, in violation of the Ground Rules and RC 4117.14, and over the objections of the AAUP-WSU, the administration tried to “put lipstick on a pig” by renaming furloughs with the euphemism “cost savings days.” The concept is the same. If implemented, it would be a unilateral wage reduction for bargaining unit faculty without negotiations. The faculty would never accept this language.

The job of TET bargaining unit faculty involve three basic responsibilities – teaching, scholarship, and service. The job of NTE bargaining unit faculty involve two basic responsibilities – teaching and service. University faculty have demanding jobs, but they do not have set hours other than when they teach or perform other scheduled responsibilities, such as office hours, committee meetings, etc. Under the administration’s language, bargaining unit faculty members would have their salary reduced with no change in their teaching responsibilities, their scholarship responsibilities (for TET faculty), or their service responsibilities. In other words, under the

administration's proposed language, these would be "fake furloughs" because they would reduce salary with no commensurate reduction in work.

Under the administration's language, the right to implement these "fake furloughs" could occur within the 24-month period after the University achieves an SB6 score of less than 2.40 for any two consecutive years. As stated earlier, in fiscal year 2016, Wright State had an SB6 score of 2.1. In fiscal year 2017, Wright State had an SB6 score of 0.8. That means that even if Wright State is able to avoid fiscal watch by achieving an SB6 score of 1.90 for fiscal year 2018, that under the administration's proposal, it could unilaterally reduce the salary of bargaining unit faculty during the entire term of the new CBA. In other words, this threshold has already been met.

The administration argued, during the Fact-finding hearing, that faculty would be protected because it could only implement its "fake furloughs" if a furlough was first or simultaneously implemented "for other University employees (either faculty or staff) who are not represented by collective bargaining." Under this language, the administration could change a clerical employee from a 40 hour position to a 30 hour position, call it a furlough, and reduce faculty salaries by 25%.

Wright State General Counsel Larry Chen testified during the Fact-finding hearing that when he was the General Counsel at Bowling Green State University, he was once forced to take a 3-day furlough. He also said, however, that he was a 12-month administrative employee, and was entitled to three weeks of vacation each year. In his case, the three unpaid days was simply a 0.87% wage reduction with an additional three days of vacation.² For faculty at Wright State, a 5-

² For a 12-month employee who works 52 weeks x 5 days = 260 days (in pay status, inclusive of paid holidays and vacation). Three unpaid days = 0.87% of 260 days.

day furlough is a 7.5% wage reduction with no additional time off, because they only work (and are only paid) for nine months (other than fiscal year faculty) and are not on contract during winter or summer break. In other words, Mr. Chen's situation and the situation for faculty members (who were *not* furloughed at Bowling Green) is not comparable.

Under the administration's proposed language, there are no limits, no criteria, no protections, and no due process. The AAUP-WSU would be unable to provide any protection to its membership. The wage language in the CBA would be worthless. The right to bargain collectively over wages would be eliminated.

No CBA in Ohio has such language. This CBA at Wright State, if it means anything – should not have such language.

This proposal must be rejected in full.

Appendix J – Retirement Incentive Program

The AAUP-WSU is not opposed, in theory, to an early retirement incentive program. There is no current language in the CBA providing for an early retirement incentive and the AAUP-WSU objects to putting this language into the CBA without any criteria or protections. The administration's proposal has no details, and their chief negotiator, as well as members of their negotiating committee, were unable to answer basic questions when this proposal was first introduced on January 24, 2018, or during the Fact-finding hearing.

In 2016, the administration came to the AAUP-WSU with a proposed retirement incentive program. The AAUP-WSU asked for some modifications to the program and many of the proposed modifications were adopted. The program was then offered to bargaining unit faculty members.

In this case, the AAUP-WSU has no indication of how a new retirement incentive program would be designed. For example, if there were layoffs, would the newly retired faculty have the right to come back to Wright State to teach the classes formerly taught by laid off faculty? Obviously, this would be a huge problem. Would any alleged violations to the new retirement incentive program be subject to the grievance and arbitration procedure in the CBA, even if the violation affected retired bargaining unit faculty? Would some faculty members be entitled to significant pay-outs as an incentive to retire early while other faculty members have lower wages and reduced benefits?

If the new CBA contains language that allow for a retirement incentive program to be implemented – without any criteria or protections – it would communicate to all bargaining unit faculty that the AAUP-WSU is “on board” with such a program – even if it is ill-conceived and/or financially detrimental.

Again, the AAUP-WSU is not opposed, in theory, to an early retirement incentive program. The AAUP-WSU has worked with the administration in the past to design and implement an early retirement program. However, the language as written allows the administration to implement any type of program and to hide behind the auspices that the program as “mutually agreed” because it originated in language in the CBA. This should not be allowed.

V. **CONCLUSION**

For the foregoing reasons, the AAUP-WSU respectfully requests that its position on the unresolved issues be awarded.

Respectfully submitted,

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