

**FACT FINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

IN THE MATTER OF	:	
FACT FINDING BETWEEN	:	
	:	
WRIGHT STATE UNIVERSITY;	:	
PUBLIC EMPLOYER	:	REPORT OF THE
	:	FACT FINDER
-AND-	:	
	:	
AMERICAN ASSOCIATION OF UNIVERSITY	:	
PROFESSORS, WRIGHT STATE CHAPTER;	:	
EMPLOYEE ASSOCIATION	:	

SERB CASE NUMBER: 2017-MED-02-0172

BARGAINING UNIT(S):

Non-Tenure Eligible (NTE) Faculty (Approximately 160 Faculty)

2.3 The Bargaining Unit consists of all Senior Lecturers, Lecturers, Instructors, Clinical Assistant Professors, Clinical Instructors, and Visiting faculty employed full-time by Wright State University, hereafter referred to as Non-Tenure Eligible (NTE) Faculty. Excluded from the Unit are all tenured and tenure-track faculty, hereafter referred to as Tenure Eligible and Tenured (TET) faculty, department chairs and heads, all ranks of deans, all ranks of provosts, all ranks of vice presidents, the President, all other supervisors defined by ORC 4117. 01 (F), all faculty within the Schools of Medicine and Professional Psychology and all other employees not included above. (Unit certified by the Ohio State Employment Relations Board on November 1, 2012.

Tenure-Eligible and Tenured (TET) Faculty (Approximately 421 Faculty)

The Bargaining Unit consists of all full-time tenured and tenure-track faculty employed by Wright State University. Excluded from the Unit are all department chairs and heads, all ranks of deans, all ranks of provosts, all ranks of vice presidents, the President, all other supervisors defined by ORC 4117. 01 (F), all faculty within the Schools of Medicine and Professional Psychology other than those who are tenured or tenure-track, and all other employees not included above. (Unit certified by the Ohio State Employment Relations Board on 11 June 1998).

MEDIATION SESSION(S): January 31, 2018
February 1, 2018

FACT FINDING HEARING(S): April 3, 2018
April 4, 2018
May 22, 2018
May 23, 2018

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR WRIGHT STATE UNIVERSITY

Daniel J. Guttman, Chief Negotiator & Counsel
Larry Y. Chan, Vice President for Legal Affairs & General Counsel, Principal Representative
Walt Branson, Vice President, Finance & Operations, Chief Business Officer
Michael A. Manzler, Associate General Counsel
Steven Berberich, Associate Provost for Faculty & Staff Affairs
Curtis McCray, Interim President – 2017
William Rickert, Former Associate Provost
Shari Mickey-Boggs, Associate Vice President & CHRO
Emily Hamman, HR Business Partner & Staff Labor Relations Director
Jeff Ulliman, Vice President, Business & Finance
David Cummins, Interim Vice Chancellor, Ohio Department of Higher Education

**FOR AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,
WRIGHT STATE UNIVERSITY CHAPTER**

Susannah Muskovitz, Counsel
Rudy Fichtenbaum, Chief Negotiator
Marty Kich, President, AAUP-WSU Chapter
Tom Rooney, Treasurer, Executive Committee Member
Jim Vance, Advisor to AAUP, Executive Committee Member
Alan Chesen, Senior Lecturer – RSCOB
Noeleen McIlvenner, Negotiating Team Member
Robert E. Rubin, Negotiating Team Member
Howard Bunsis, Expert Witness

ADMINISTRATION

By e-mail correspondence dated June 27, 2017 from Donald M. Collins, General Counsel for the State Employment Relations Board, Columbus, Ohio, the Undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Revised Code 4117-14 (C)(3), to facilitate resolution of those issues that remained at impasse between these Parties. The impasse resulted after attempts to negotiate successor Collective Bargaining Agreement(s) proved unsuccessful.

Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed with Principal Representatives the overall Collective Bargaining “atmosphere” relative to the negotiation efforts by and between them and learned, what can be best characterized, as a frustrated collective bargaining relationship due to the overall financial predicament facing this University.

At the preliminary stages of the January 31, 2018 Fact Finding Hearing, the undersigned first met with each Party’s Bargaining Teams and then met with the designated Party Representatives/Chief Spokespersons privately to discuss whether Mediation efforts may be beneficial. Indeed, those efforts proved fruitful and that achieved therein, i.e., certain Tentative Agreements reached, are set forth as such herein. The Parties have stipulated all Tentative Agreements reached prior to the Mediation Session(s)/Fact Finding Hearing(s), as identified herein, and those reached during the course of Mediation and Fact Finding Hearing(s), be included, as agreed to, in the successor Collective Bargaining Agreement(s) upon ratification and approval.

During the Fact-Finding Hearing(s), each Party was afforded a fair and equal opportunity to present testimonial and/or documentary evidence in support of positions advanced. The

extensive evidentiary record of this proceeding was presented to the Fact Finder, who has determined such provides sufficient basis to support the issuance of this Report. Those issues that were the subject of the impasse are identified in this Fact-Finding Report for consideration by Wright State University and the Wright State University Chapter of the American Association of University Professors, Bargaining Unit(s) represented herein – Tenure-Eligible and Tenured (TET) Faculty; and, Non-Tenure Eligible (NTE) Faculty.

STATUTORY CRITERIA

The following recommendations are hereby offered for consideration by the Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Revised Code 4117.14 (C) (4) which recognizes certain criteria for consideration in the Fact Finding statutory process as follows:

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

THE BARGAINING UNIT(S) DEFINED; GENERAL BACKGROUND CONSIDERATIONS; AND, POSITIONS OF THE PARTIES

As set forth in the supporting documentation provided by the Parties, the predecessor Collective Bargaining Agreement(s), with effective dates – August 20, 2014 through June 30, 2017 identifies, in each Agreement at Article 2, titled, “Recognition” the afore-mentioned Bargaining Unit(s) as follows:

Non-Tenure Eligible (NTE) Faculty (Approximately 160 Faculty)

2.3 The Bargaining Unit consists of all Senior Lecturers, Lecturers, Instructors, Clinical Assistant Professors, Clinical Instructors, and Visiting faculty employed full-time by Wright State University, hereafter referred to as Non-Tenure Eligible (NTE) Faculty. Excluded from the Unit are all tenured and tenure-track faculty, hereafter referred to as Tenure Eligible and Tenured (TET) faculty, department chairs and heads, all ranks of deans, all ranks of provosts, all ranks of vice presidents, the President, all other supervisors defined by ORC 4117. 01 (F), all faculty within the Schools of Medicine and Professional Psychology and all other employees not included above. (Unit certified by the Ohio State Employment Relations Board on November 1, 2012.

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* * * * *

Each Party has provided extensive supporting documentation, both based on internal and external comparability, in support of their respective positions. Comparability, as recognized in the statutory process, does not require the unobtainable exactness Parties strive to suggest; it exists as general benchmarks from which comparisons are made and analyzed. Classification “titles” recognized under Collective Bargaining Agreements generally represent one of the few common themes of comparability. A jurisdiction’s population/size, geographic makeup, revenue/funding sources and other budgetary considerations, as well as, the composition of each

Bargaining Unit with respect to age and experience levels, must be addressed when analyzing comparability of jurisdictions providing “similar job functions.” Each jurisdiction represents a “mixed bag” of attributes which, while not exact, can be helpful in determining comparability even though there are generally no “on-point” comparisons, just similarities to be balanced with other components of the job and the work performed. Here, University Faculty, provide educational instruction to the Students at this University; in this regard, this general attribute is similar, if not identical, to others holding the same designation.

The Fact Finder is required to consider comparable Employer-Employee Units regarding their overall makeup and services provided to the members of the respective communities. As is typical, and is required by statute, the Parties in their respective Pre-Hearing Position Statements and supporting documentation, filed in accordance with the procedural requirements of the statutory process as outlined in Ohio Revised Code 4117-9-05 (F), have relied upon comparable higher-education entities concerning what they have deemed “comparable work jurisdictions” in comparison to that provided by this Bargaining Unit. While there are indeed certain similarities among these jurisdictions cited, there are no “on-point comparisons” relative to this Bargaining Unit concerning the statutory criteria; except, as such reference and include “University Faculty”. In other words, while their Classification/Unit titles/job responsibilities, may be exact to other jurisdictions relied upon as the Classification/Unit title(s) suggest, the overall makeup of the higher-education entity will differ with respect to geography, structure, staffing, budget, General Fund receipts and expenditures and the makeup of the Employees performing these and other functions.

It has been, and remains, the position of this Fact Finder that the Party proposing any addition, deletion, or modification of either current Contract language; or, a *status quo* practice

wherein an initial Collective Bargaining Agreement may exist, bears the burden of proof and persuasion to compel the addition, deletion, or modification as proposed. The ultimate goal of this process is to reach a sensible center with respect to whatever recommendations are set forth herein that can be amicably accepted by each Party to the successor Collective Bargaining Agreement(s). Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that represents a previous policy, Collective Bargaining provision, or a practice previously engaged in by the Parties.

These Parties met in pursuit of negotiating successor Collective Bargaining Agreements for both the “Non-Tenure Eligible (NTE) Faculty”; and, the “Tenure-Eligible and Tenured (TET) Faculty”, wherein proposals were exchanged and certain Tentative Agreements were reached regarding numerous Articles recognized in the predecessor Collective Bargaining Agreement(s). Inasmuch as these two (2) Bargaining Units are recognized under two (2) separate and distinct Collective Bargaining Agreements and certain similarities exist, references made herein shall include both Units except where their distinctions require recognition and explanation. During those negotiations, the Parties tentatively agreed to certain Articles in their entirety, or portions thereof, and are to be incorporated as Tentative Agreements, as found in, and supported by, both the Union and the Employer’s respective presentations and accompanying documentation as follows:

Article 1	Preamble
Article 2	Recognition
Article 3	Non-Discrimination
Article 4	Affirmative Action
Article 5	Academic Freedom & Professional Responsibilities
Article 6	Management Rights

Article 8	AAUP-WSU Rights
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Article 9	Academic Calendar
Article 10	Faculty Involvement in Governance

Article 12	Student Evaluation of Learning & Teaching
Article 13 (TET)	Promotion and Tenure

Article 14	Discipline
Article 15 (TET)	Termination & Unpaid Suspension
Article 15 (NET)	Termination & Unpaid Suspension
Article 16	Grievance & Arbitration

Article 18	Institutional Environment

Article 20	Intellectual Property
Article 21	Distance Learning
Article 22	Outside Employment

Article 25	Additional Compensation

Article 28	Vacation & Sick Leave
Article 29 (TET)	Professional Development Leave
Article 29 (NTE)	Pedagogical Development Course Releases
Article 30	Leaves

Article 32	Dues Check-Off & Fair Share
Article 33	Retirement
Article 34	Emeritus Professor
Article 35	Separability
Article 36	No Strike/No Lockout
Article 37	Amendments
Article 38	Agreement Duration

Additionally, during the course of the Mediation Session(s) and subsequent Fact Finding Hearing(s), the Parties reached Tentative Agreement regarding the following Articles or portions thereof:

- Article 7 Entire Article *except* 7.8 – Summer Teaching Assignments

(*See*, TA executed at 7:00 p.m. on February 1, 2018 -Rudy Fichtenbaum for the AAUP; and, Dan Guttman for WSU)

(Also *See*, Article 23, Section 23.6 regarding Compensation for Summer Teaching Assignments and Appendix H in each Agreement)
- Article 27 Life and Disability Insurance
(*See*, TA executed at 4:15 p.m. on February 1, 2018 - Rudy Fichtenbaum for the AAUP; and, Dan Guttman for WSU)
- Article 31 Other Benefits
(*See*, TA executed at 4:15 p.m. on February 1, 2018 - Rudy Fichtenbaum for the AAUP; and, Dan Guttman for WSU)

Such shall be recognized and recommended for inclusion in the successor Collective Bargaining Agreement(s) and the proposed changes thereto be updated in the respective Appendices where applicable.

* * * * *

While the Bargaining Units have been merged; certain distinctions between them remain and are set forth as such herein. This Report and attendant Recommendations in relation thereto sets forth and addresses the following Issues subject to the Impasse:

- Article 7 Faculty Rights & Responsibilities
 Section 7.8 – Summer Teaching Assignments

(Also *See*, Article 23, Section 23.6 regarding Compensation for Summer Teaching Assignments and Appendix H in each Agreement)

Article 11 (TET)	Annual Evaluation
Article 11 (NTE)	Annual Evaluation
Article 13 (NTE)	Appointment and Promotion
Article 17	Retrenchment
Article 19	Workload
Article 23	Compensation
Article 24	Minimum Salaries
Article 26	Medical, Dental & Vision Insurance (Also <i>See</i> , Appendix E)
Appendix I	Cost Savings Days – aka, Furloughs – New Language
Appendix J	Retirement Incentive – New Language

During the Fact Finding Hearing the undersigned advised these Parties that based on the Pre-Hearing Statements; supporting documentation; internal and external comparables; the statutory criteria; and, the stipulations of the Parties, certain modifications are supported by the evidentiary record and warranted, while other changes sought were not and therefore no compelling basis exists to warrant any modification sought. The Parties submitted those issues, bargained to impasse, to the Fact Finder, and requested the Fact Finder to consider the presentations and positions made during the Hearing(s).

The Fact Finder has extensively reviewed the Parties' Pre-Hearing Statements, prior to and following, the Mediation Session(s)/Fact Finding Hearing(s); the voluminous evidence in support of the positions articulated by each Party; the comparables relied upon; the statutory criteria mandated under ORC Chapter 4117; the stipulations reached by the Parties; and, the Tentative Agreements reached during this process. This Report and attendant Recommendations in relation thereto are set forth herein as they relate to the unresolved Issues previously identified.

GENERAL AND BACKGROUND
POSITIONS OF THE PARTIES

WRIGHT STATE UNIVERSITY

It is uncontested Wright State University (“WSU” or the “University”) is undergoing one of the most severe financial crises in the history of higher education in the United States. David Cummins, Interim Vice Chancellor from the Ohio Department of Higher Education, testified the University’s financial health, as measured by the formula recognized under Ohio law, is the lowest recorded for a University of this size. Longtime University Administrator and former Interim President of Wright State, Dr. Curtis McCray, testified that in his 55 years in higher education he never experienced anything like the financial uncertainty the University is currently facing.

Because of the financial crisis, the University can no longer maintain the *status quo* and continue to provide its normal and expected standard of public service. Although Employees not represented by the American Association of University Professors (“AAUP” or the “Union”) have already made concessions in their terms and conditions of employment, including concessions in pay and health insurance, there have been no similar concessions made by AAUP Faculty Members. In fact, the AAUP Collective Bargaining Agreement has remained unchanged through the financial crisis – even as the University ran out of money and depleted the bulk of its financial reserves. The lack of similar concessions from the AAUP, as compared to those made by the rest of the University community, is particularly problematic for the financial recovery because approximately one fourth of University Employees fall within the AAUP bargaining unit, and they are the highest paid group of Employees as a whole.

Despite one of the most severe financial crises in the history of higher education, throughout the negotiation process, AAUP leadership refused to engage in interest-based concessionary bargaining as proposed by the University to address the financial issues collaboratively. Instead, the AAUP used its Blog, newsletters, other public platforms, and

enlisted Students to tell its own version of the “story” and win the “PR battle” blaming past and current Administrators as the sole cause of the financial issues facing the University.

In other words, the AAUP has focused very publicly on threatening and preparing for a strike. It has consistently overlooked the decline in enrollment and revenue, the rise in healthcare costs, and the freezes in State funding and tuition. The apportionment of “fault” for the financial crisis, and upholding at all costs the Union leadership’s staunch philosophical belief in the need to portray Union strength, has been more important to the AAUP than rolling up its sleeves and making similar concessions as the rest of the Campus and the rest of the State’s public workforce when faced with similar financial uncertainty.

The AAUP has tried, many times successfully, to create a hysteria on campus for bargaining leverage even through no concessions have yet been made in the Labor Contract. The AAUP has strategically sought to put undue pressure on the Fact-Finder by labelling customary bargaining proposals that are sought by Employers facing financial distress as “extreme.” These tactics ignore the fact many other Public Employers around the State, have in the past, taken very similar cost-savings measures, such as wage freezes, cost-savings days (furloughs), retrenchment (layoffs), and other contractual concessions for the sustainability of the Employer as a whole.

The Fact-Finder is required by law to correctly apply the statutory factors set forth in the Ohio Revised Code. Simply put, if these financial circumstances before the Fact-Finder do not constitute an “inability to pay” and an inability to maintain the *status quo*, then what does? The Ohio Revised Code guidelines for Fact-Finding were adopted for a reason – and this is it. When financial conditions dictate change, and one Party is not willing to make change, the Ohio Revised Code sets forth a process to ensure that change is recommended by a Neutral. This is critical to the Students, the University community, and the people of Southwest Ohio who rely

on the ongoing viability of this institution. Simply put, the University cannot maintain its normal and expected standard of public service without AAUP Faculty concessions.

The University's proposals are limited in scope. Several have objective financial triggers before implementation. Others have "sunset provisions." All of the proposals, without exception, may be opened and bargained the next time the Parties sit down at the table to negotiate a Successor Agreement. Many of the University's proposals draw their genesis from other Public Employers who have experienced financial harm similar to Wright State and needed concessions to restore sustainability. The most analogous guidance would be how the workforce of the State of Ohio dealt with the financial crisis in the late 2000's. That financial crisis led to the State's "Rainy Day Fund" being used to cover day-to-day expenses and, at one time, being depleted to just 89 cents. For guidance, the Fact-Finder must look to that situation. There, the Parties agreed, via interest-based negotiations, to concessions and cost-savings measures. On the issues that could not be agreed to at the table, the Fact-Finder recommended a wage freeze, further cost-savings days, healthcare and benefits changes, and a freeze on other economic items such as step increases, longevity bonuses and the ability to cash in leaves. In that situation, the Parties worked together at concessionary bargaining and a Fact-Finder pushed the concessions even further that eventually led to a recovery and stability. There were no calls for unrest.

This is a similar situation, where WSU's reserves have been almost entirely depleted and budget cuts have slashed operations to the bone. Here, though, the AAUP leadership is more concerned with rallying the membership for a strike to avoid cost-savings measures and concessions that will help ensure stability in the future, than with cooperating to work through usual and customary changes that are needed during a financial crisis.

The very important role of the Fact-Finder is to look to the statutory factors: can the University pay for the AAUP's *status-quo* proposals and still maintain operations without sacrificing the level of services it provides to the public? Are the AAUP's proposals to maintain *status quo* consistent with how other Ohio Employers have met similar financial challenges? Are current provisions in the Labor Contract, such as issues of staffing, assignment, and health insurance, able to be modified and still be comparable to other terms found in Contracts of other Public Employers around the State? Have other Employees of the University been asked to make the same concessions that WSU is now asking of the AAUP? In some situations, the appropriate recommendation is so obvious and apparent we make it harder than it needs to be. No Public Institution of this size has ever lost so much money so fast (\$130 Million in unrestricted reserves depleted over five (5) years), and no University is facing a future less certain than Wright State faces now. A *status quo* Contract is simply untenable.

The University's proposals must be adopted. Some of the proposals the University seeks are a wage freeze, targeted merit pay to retain talent without overspending, a University-wide health insurance plan that will save the University significant money in administration and benefit negotiation with vendors (and importantly the University's health insurance proposal, if adopted, can of course be renegotiated during the next round of bargaining if the University ignores the "guardrails" carefully set forth in its proposal to treat Union and non-Union Employees equally), staffing summer school in the same manner it now staffs Fall and Spring Semesters to maximize revenue, and allowing for the possibility of retrenchment (layoffs) and cost-savings days (furloughs) to be implemented based on objective factors suggested by the Fact-Finder at Mediation.

The changes the University seeks are necessary and appropriate as WSU can no longer only rely upon cuts to non-AAUP Employees' terms and conditions to maintain day-to-day operations any further. Like the State of Ohio and other Public Employers, who have faced budget deficits and financial difficulties, Wright State asks the Fact-Finder to recommend what is necessary to restore the financial health and sustainability of the University. As the Fact-Finder witnessed during four (4) days of Hearing, the AAUP has offered no solutions or compromises for the Fact-Finder to even consider in lieu of a *status-quo* Contract. This leaves the Fact-Finder with little choice but to adopt and recommend the University's proposals to address the unprecedented and undisputed financial crisis the University is facing.

Section 4117.14(G) of the Revised Code requires the Fact-Finder to consider “[t]he interests and welfare of the public, the ability of the Public Employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.” The AAUP argues WSU should maintain the *status quo* under the Labor Agreement and even increase Faculty salaries by 8 percent over the last two (2) years of the Contract, no matter the consequences on the other services offered by the University. It is absurd to suggest the University's “ability to finance” the *status quo* is a question of what the University can cut. Perhaps the University could afford to maintain the *status quo* Contract if it closes part of the Campus, transitions its Medical School to another Ohio University, or eliminates Athletics. The Statute cannot be construed to require such an absurd result. Whether the University has the “ability to finance” the AAUP's proposals must be a question of what is appropriate, reasonable and fiscally responsible in light of WSU's finances as a whole and the potential impact on other services.

The Ohio Supreme Court has made clear that “ability to finance” cannot be a question of what a Public Employer can actually afford regardless of the consequences. *See, City of Rocky River v. SERB*, 43 Ohio St. 3d 1, 18 (1989) (available as Exhibit C in Volume II). In *City of Rocky River*, the Court explained the Statute was not intended to allow the Conciliator to adopt an Employee proposal that would spell financial disaster for the Public Employer. *See, id.* at 18. However, a Public Employer need not be on the brink of Bankruptcy to be deemed unable to finance a proposal:

Past practice has demonstrated that Conciliators do not hesitate to reject an employee demand which they find to be *beyond the financial means* of the particular public employer.

Id. at 18 (citing decisions in which a Public Employer’s inability to finance caused Conciliator to reject Union’s final wage offer because Employer was in a state of financial distress and could not afford the increase) (emphasis added). *See, also Cleveland Police Patrolmen’s Ass’n v. City of Cleveland*, No. 78427, 2001 Ohio App. LEXIS 5924 (Cuyahoga Cty. Dec. 27, 2001) (Arbitration Panel considered the ability of the Public Employer to finance and determined that the Union’s proposal would *seriously strain the employer’s financial resources*); *Coral Gables Prof. Fire Fighters Ass’n v. City of Coral Gables*, No. CA-84-012 & 84U-191, 1984 FPER (LPR) LEXIS 207, 10 FPER (LPR) P15,235 (Sept. 5, 1984) (“inability to pay” Union’s wage proposal is *consistent* with Employer’s position throughout negotiations that funds were *limited and prioritized*) (emphasis added).

In determining whether the University has the “ability to finance” the AAUP’s proposals, the Fact-Finder should consider what is appropriate, reasonable and fiscally responsible for the University in light of its overall financial picture. In doing so, the Fact-Finder should rely on the

comprehensive testimony and opinions of the experts on the subject matter - Vice President of Finance and Operations and Chief Business Officer Walt Branson, Interim Vice Chancellor from the Ohio Department of Higher Education David Cummins, and well-regarded higher education consultant and former Interim University President, Dr. Curtis McCray - all of whom are in the best positions to determine what the University can, and cannot, afford.

It is undisputed WSU is suffering from one of the most severe financial crises in the history of public Colleges and Universities in this country. There is no legitimate question about the University's financial crisis - the situation is dire. The University is simply out of money. It has spent its financial reserves. Its enrollment and revenue keep falling. It cannot make up the difference by increasing tuition or asking for more State support. It has deferred more than \$30 million in urgent maintenance. It has literally stopped taking out the trash except for one (1) day per week. It has stopped hiring for vacant positions. It banned overnight travel.

Such demonstrates, the University must now implement structural changes to restore its long-term financial sustainability. The numbers speak for themselves. The University faces declining enrollment and higher health care costs while it grapples with millions of dollars in cuts to avoid deficit spending. Charitable contributions to the University dropped by more than half from 2011 to 2015, putting its \$7.2 million total below local Wittenburg University, which is about one-sixth its size. Prior to 2011, WSU's tuition exceeded the national average, but due in part to recent tuition freezes in the State of Ohio, the University's tuition is now almost \$1,000 less than the national average per student. Throughout the last few years, the University struggled to keep its enrollment steady, let alone increase it. From FY 2011 to FY 2017, the University experienced a 12 percent decline in enrollment. *See*, Financial Background Binder, Tab 7. The enrollment of international students (who pay higher tuition than in-state students)

fell by 23 percent in 2016 and by another 29 percent in 2017. *See*, Financial Background Binder, Tab 9. International enrollment has declined by 779 students since 2015, causing a \$15 million blow to WSU's budget over the past two (2) years and a decline in net tuition revenue. Fewer students enrolled from outside Ohio than expected. That resulted in tuition coming in \$4.7 million under projections because non-Ohio residents pay more for tuition than in-state students do. Enrollment in the summer of 2017 was down enough that it caused the University to start out the fiscal year in a nearly \$3 million hole, and Fall enrollment was also projected to be one of the University's lowest in a decade.

The University's net revenue from tuition and fees has fallen by over \$23 million in the past two (2) years alone. Compensation and expenditures for Faculty and other Employees continued to increase by over 14 percent in five (5) years even as enrollment and tuition revenue declined. The University's total operating expenses rose from \$261 million in 2011 to \$329 million in 2016. *See*, Financial Background Binder, Tab 15. The University's operating expenses exceeded its revenue for three (3) years straight, from FY 2015 to FY 2017. *See*, Financial Background Binder, Tab 16. Unbudgeted scholarship and fellowship expenses cost WSU around \$3.5 million last fall. WSU struggled to stay on budget for FY 2018 due to its declining enrollment and increased health care costs. In February 2018, the Board of Trustees learned WSU went \$6 million over its FY 2018 budget on employee health benefits. Medical claims have increased or decreased by as much as \$500,000 in a single week.

The Dayton Daily News – the Newspaper of record for Dayton and the surrounding area – has reported the University “overspent by a combined \$20.7 million” from 2012 to 2014. *See WSU budgets portrayed finances as ‘strong’ while school lost millions*, Dayton Daily News, by Max Filby (March 31, 2017). The Dayton Daily News has further reported spending “eventually

balloon[ed] to \$34.9 million in fiscal year 2016,” those numbers “bring to more than \$120 million the amount of spending that has exceeded revenues over a six-year period.” *Id.* The University’s net financial position decreased each year from FY 2012 to FY 2014 – then fell by \$22 million in FY 2015, by another \$37 million in FY 2016, and by yet another \$47 million in FY 2017. *See*, Financial Background Binder, Tab 18. The market value of WSU’s cash and investments, which was over \$170 million in June 2011, fell by 77 percent to just \$41 million in June 2017. *See*, Financial Background Binder, Tab 19. The University’s claim on cash and investments (its “money in the bank” not designated for specific departments or uses) fell from \$59 million in FY 2014, to \$38 million in FY 2015, to \$10 million in FY 2016, and finally to negative \$11 million in FY 2017. *See*, Financial Background Binder, Tab 20; Univ. Ex. 8. The University’s trustees slashed more than \$30.8 million from the FY 2018 budget in an effort to rebuild its reserve fund.

WSU’s Board of Trustees voted to enact a mandatory furlough policy for Employees outside the AAUP Bargaining Unit in February 2018. WSU needs to cut an additional \$10.5 million from its budget because of enrollment issues, and to cover additional scholarship and fellowship costs. In April, WSU’s President ordered departments to slash their remaining budgets by 66 percent, an attempt to cut \$10 million from spending by June 30. On May 21, 2018, a member of the WSU Board of Trustees called the budget cuts and falling enrollment “a recipe to die.” *See*, Univ. Ex. 12. The Trustee said the budget cuts are not a long-term sustainable solution for the University’s financial problems. He commented: “I’m serious... This is crazy. The university can’t survive this way.”

There is no question about the University’s financial crisis as set forth above. WSU’s finances have been publicly reported by the local Newspaper of record, openly discussed by the

Board of Trustees, confirmed in certified financial statements, examined and established in judicial proceedings before the State Personnel Board of Review, and even publicly acknowledged by the AAUP itself. For example, an Administrative Law Judge for the State Personnel Board of Review confirmed WSU is suffering from a severe financial crisis. *See*, Financial Background Binder, Tab 24. The Judge found WSU “was facing a very serious and unsustainable fiscal crisis for its impending FY 2018 budget, with a shortfall from FY 2017 of nearly \$30,000,000.” *Vaughn v. Wright State University*, SPBR Case Nos. 17-INV-06-0089, 0090, and 0091 (2017). The Judge continued:

WSU was less than one year away from being placed on Fiscal Watch under the Ohio Department of Higher Education. WSU’s executive management and Board of Trustees addressed these issues head-on and made difficult but necessary choices that included abolishing a number of positions for an estimated savings of about \$33,000,000.

Id.

AAUP’s own Blog, publicly available through links on the WSU website, openly acknowledges the University’s financial crisis. *See*, Financial Background Binder, Tab 25. In an entry titled “Cracking the Nut, part 6,” the Union published a chart of WSU’s cash flow over the last fifteen (15) years. *See*, AAUP WSU Blog, *Cracking the Nut, Part 6*, January 1, 2017. The chart shows that WSU had negative cash flow from 2013 to 2016. AAUP acknowledged this was extremely rare for a public university: “*It is important to note that for a public university to have negative cash flow is a relatively rare occurrence, but for a university to have successive years of negative cash flow is almost unheard of.*” *Id.*

Likewise, in a letter to the Board of Trustees, the AAUP again acknowledged the severity of the financial crisis. Union President Marty Kich stated the AAUP believes “that Wright State

is indeed in the midst of a financial crisis.” See, Financial Background Binder, Tab 26. The Union President explained:

We believe that Wright State is indeed in the midst of a financial crisis, because we know that for the first time since the University was required to produce cash flow statements starting in 2002, it has experienced negative operating cash flows for the past three years. That means more cash has been flowing out of the University than has been flowing into the University from the University’s operations. . . . One year of negative operating cash flows should have set off alarm bells. Three consecutive years of negative operating cash flows is prima facie evidence that the administration is incompetent and that the Board of Trustees has abdicated its fiduciary responsibility.

Id.

Based on the financial statements, the annual budgets, the Newspaper articles, the findings of an Administrative Law Judge for SPBR, and the Union’s own articles and letters, the Fact-Finder can only reach one conclusion about the University’s financial condition and ability to finance the AAUP’s *status quo* bargaining proposals. The undisputed testimony and evidence demonstrate WSU is in the midst of a severe financial crisis. Simply put, the University is out of money. The University simply cannot pay for increasing salaries and maintaining a *status quo* Contract while enrollment and revenue continue to decline.

Because of the severe financial crisis, WSU undisputedly had to cut or defer expenses from its budget for FY 2018 by more than \$30 million. This resulted in significant cuts to the “normal standard of public service” offered by the University to Students, Employees, and the surrounding community. For example, the University deferred maintenance on buildings, cut custodial services to once per week, and held off on replacing outdated computers. It stopped filling key vacancies important to the success of the University. It instructed its Strategic Hiring Committee not to approve new hires unless absolutely needed to address health, safety, revenue, or compliance needs. The University banned overnight travel, catering, and cell phone

reimbursements. More than 150 Faculty and Staff have taken a Voluntary Retirement Incentive. WSU cut 20 fulltime jobs and 28 Interns from the research entity WSARC. It eliminated the positions of at least 23 other Employees. It stopped filling key vacancies important to the success of the University. Its Strategic Hiring Committee has been instructed not to approve new hires unless they are absolutely needed to address health, safety, revenue, or compliance needs.

WSU cut the funding for the University Library by more than \$1 million. It stopped subscribing to certain publications and periodicals. It cut the funding for facilities management by more than \$2 million. The budget for Student Affairs was cut by \$1.7 million. Funding for the Provost's Office was cut by over \$2 million. The University cut the budget of the School of Medicine by \$3 million, the College of Engineering and Computer Science by \$2.9 million, the College of Liberal Arts by \$1.4 million, and the College of Business by \$1 million. WSU eliminated foreign language courses in Russian, Italian, and Japanese. It had to cut the funding of every College and Professional School within the University.

Although WSU was able to cut its FY 2018 budget by more than \$30 million, it only accomplished the reduction through one-time austerity measures. In other words, many of the cuts were not sustainable over the long-term. This means the \$30 million WSU cut or deferred from its FY 2018 budget will not necessarily carry over to FY 2019. The University will need to make additional cuts to the "normal standard of public service" just to avoid further spending increases in FY 2019. In addition, as Vice President of Finance and Operations and Chief Business Officer Walt Branson explained at the Hearing(s), WSU still must cut another \$10 million from its budget for FY 2019 even beyond, and on top of, the \$30 million cut the previous year. The Proforma Budget for the years ending June 30, 2018 and 2019 shows how much WSU must cut its total expenditures in FY 2018 and 2019. *See, Financial Background Binder, Tab 23.*

The University incurred \$330 million in expenses for the year ending June 30, 2017. After \$30 million in one-time austerity measures and other spending reductions, WSU cut its expenditures for the year ending June 30, 2018 below \$280 million. That was about \$50 million less than the previous year. Importantly, however, the University will need to cut its expenses even further – to around \$270 million – for the year ending June 30, 2019.

As explained at the Hearing(s) by Mr. Branson and by David Cummins, Interim Vice Chancellor from the Ohio Department of Higher Education, WSU is now on the cusp of “fiscal watch” under the Ohio Revised Code. Ohio’s “Senate Bill 6” looks at three (3) key financial ratios to ensure Public Universities and Colleges are financially accountable. They ask whether resources are sufficient and flexible enough to support the mission of the University (the primary reserve ratio), whether the operating results indicate the institution is living within available resources (the net income ratio), and whether the institution is managing debt strategically to advance its mission (the viability ratio). The highest score possible is 5.00, and a score of below 1.75 for two (2) consecutive years results in an institution being placed on official “fiscal watch” by the State.

WSU’s Senate Bill 6 score for 2017 is only 0.8, less than half the score necessary to avoid fiscal watch over two (2) years. The University received the lowest score of any Public University of its size since Senate Bill 6 passed in the 1990’s. In other words, its financial circumstance is more at risk than any other comparable Public University in Ohio has ever been. If the University is placed on “fiscal watch,” it will be forced to report to State Officials and Legislators and meet even more rigorous requirements to change its fiscal emergency status. Even more importantly, being placed on “fiscal watch” could result in further declines in enrollment and tuition revenue.

The University presented numerous witnesses who testified about the scope of the financial crisis. As noted above, Mr. Branson testified about how the University depleted more than 75 percent of its financial reserves after years of enrollment declines and overspending. Interim Vice Chancellor from the Ohio Department of Higher Education David Cummins testified about the significance of the University's Senate Bill 6 score and its precarious financial position as measured by objective data. The AAUP presented no credible evidence to dispute their testimony about the unprecedented nature of the financial crisis the University is facing.

Perhaps most importantly, longtime University Administrator, well-regarded higher education consultant, and former Interim President of WSU, Dr. Curtis McCray, testified about the impact of the financial crisis and what the University must do to survive it. Dr. McCray has been working in higher education for 55 years. He has helped address financial problems at a number of other Colleges and Universities. He testified WSU is in the worst shape of any College or University he has seen in his career. He explained the University must immediately and drastically implement structural changes to reduce spending under the Labor Agreement.

Dr. McCray testified that to avoid deficit spending, the University has deferred \$10 million of maintenance that needs to be completed now, and \$30 million of maintenance that is also urgent (*See*, University Ex. 9, Wright State University Facilities Deferred Maintenance, also attached hereto at Tab 9); He testified summer courses and teaching assignments are critical for generating positive revenue through increased enrollment and more efficient staffing choices; he testified the University must have flexibility in its health insurance programs to achieve the savings needed during the financial crisis; he testified the University needs an expanded right to implement retrenchment and furlough procedures, and needs to take control of the health insurance plan offered to AAUP members, even if the Union does not like it, in order to preserve

the quality of the University as a whole; he testified that although he would not be happy about it, he would implement these changes proposed by the Administration even facing a possible Strike by the AAUP; he testified the changes proposed by the Administration are in the best interests of the University, its students, and Southwest Ohio; and, he testified the changes proposed by the Administration are necessary to keep the University intact.

The University has proposed reasonable cost savings and revenue-generating measures Dr. McCray believes are necessary to keep the University intact. Despite the unprecedented financial crisis, the AAUP has focused more on rallying its Members for a Strike than on collaborating or making reasonable concessions to help the University achieve cost savings or generate more revenue. WSU's proposals help keep the University intact and restore financial sustainability, in the best interests of its Students and the surrounding community.

WSU faces extreme financial restrictions in FY 2019 and beyond. WSU has only just begun to restore a very small portion of the financial reserves it depleted over the past five (5) years. Even after cutting its budget for FY 2018 by \$30 million, the University was only able to replenish \$6 million of financial reserves; representing less than one-tenth of the financial reserves it depleted from June 2015 to June 2017 alone – and less than 5 percent of the financial reserves WSU depleted since June 2012. At this rate, even without increased expenditures or further declines in enrollment revenue (which are both unavoidable and which the University is already projecting), it will take WSU more than 20 years to get back to the financial position it was in just six (6) years ago. Such demonstrates the financial crisis was far too severe for the University to repair the damage through a single year of austerity measures. This Fact-Finder must base his determination on the statutory factors. When applied to the undisputed evidence, these factors establish the University has proposed reasonable and narrowly-tailored changes to

remedy the financial crisis and restore WSU's short-term stability and long-term fiscal sustainability.

Negotiations for a Successor Agreement began in January of 2017. Initially, Dr. Steven Berberich, Professor and Associate Provost for Faculty and Staff Affairs, served as the Chief Negotiator for the University and Dr. Adrian Corbett served as the Chief Negotiator for AAUP-WSU. During the course of negotiations, the financial crisis engulfed the University leading to unprecedented change. This financial crisis and change put a temporary halt to negotiations as the University looked to stabilize its economic status and leadership positions. In March 2017, University President Hopkins stepped down; Interim President McCray was brought in from outside the University to serve until June 2017; and, current President Schrader was brought in from outside the University and began her leadership in July 2017. To put the leadership change into perspective – there have only been seven (7) University Presidents since 1966. When the parties resumed bargaining, Dan Guttman of Baker Hostetler LLP served as the Chief Negotiator for the University and Rudy Fichtenbaum, Advisor to the AAUP-WSU Executive Committee, served as the Chief Negotiator for AAUP-WSU. The Parties met in FMCS Mediation with the assistance of George Albu and also conducted negotiations outside of Mediation. The Bargaining Teams met approximately twenty (20) different times.

The AAUP's demands at the bargaining table were unprecedented in light of the University's financial crisis. When Public Employers in Ohio run out of money, Unions have typically agreed to work with the Employer to save costs through concessionary bargaining, which ensures long-term stability and viability. Both Parties typically have a strong interest in restoring the financial viability and sustainability of the Public Employer over the long-term in the best interests of the Employees and the public. Throughout numerous negotiating sessions at

the Bargaining Table, the AAUP openly acknowledged the University's financial crisis. The Union claims the previous Administration created the severe budgetary deficit by overspending, but regardless everyone agreed WSU had no money left. Now, the Union argues the University's finances are healthy enough to sustain an 8 percent raise for Faculty even as revenue continues to decline. It refuses to accept the same health insurance and other benefits the University provides to every other Employee. It will not agree to a temporary, short-term furlough provision that could help WSU avoid further layoffs and reductions in the services it offers to Students and the public. The Union argues it is not responsible for the financial crisis because it believes previous Administrators overspent and made mistakes. Even though the current Contract cannot be administered *status quo*, the AAUP has openly stated at the Table it will not help the University avoid fiscal disaster by making the reasonable proposed economic concessions.

There is a great public interest in making sure the University continues to function and offer classes and services to its Students and the surrounding community in the Dayton area. The Fact-Finding process has always been an extension of the bargaining process and a method by which a Neutral can hopefully assist in resolving negotiations. This Fact-Finding is not about who is to blame for WSU's financial problem. When a Public Employer is suffering from such an extreme and widely acknowledged financial crisis, the usual norm in Ohio is for the negotiating Parties to work together to control or eliminate costs. That is especially so when the Employer cannot increase revenue. That did not happen here. What that means is the Statutory Criteria take on even more importance. Past Collective Bargaining Agreements between the Parties show the Parties have modified many provisions in the past to adapt to changed circumstances. Other University Employees have already made shared sacrifices identical to

what WSU is proposing to the Union on many issues. The interests and welfare of the public strongly favor Public Universities that remain financially viable, rather than raising salaries without the revenue to support it, as formally reflected in Senate Bill 6.

Perhaps most importantly, WSU simply lacks the ability to finance and administer the Labor Agreement based on the AAUP's proposals. It is a matter of undisputed public record. The Union's proposals to maintain the current Labor Contract *status quo* would further erode the public services offered by the University to its Students and the surrounding community.

The University notes it did not choose to unilaterally open its Labor Agreement with AAUP due to "exigent circumstances." It had the right to do so under well-established case law from the State Employment Relations Board (SERB). In *City of Toledo*, the City of Toledo faced a budget deficit of \$37 million. SERB 2011-001 (April 28, 2011). To balance its budget, the City unilaterally eliminated pension pick-ups, required payment of 20 percent on all healthcare costs, and reduced wages by 10 percent. *Id.* SERB held the City did not commit an Unfair Labor Practice by unilaterally modifying the Labor Contract "due to exigent circumstances that were unforeseen at the time of the negotiations." *Id.* SERB found that "facing a 24% funding deficit and requiring a budget that must be balanced ... certainly fits the description of exigent circumstances in the present case." *Id.*

Here, too, the University could have unilaterally altered the AAUP's Labor Agreement due to a funding deficit that clearly constituted "exigent circumstances." Instead, WSU went to the Bargaining Table in good faith and tried to work through its financial issues with AAUP through the Administration's proposed modified interest-based bargaining. The University sought to engage in "big picture discussions" about potential solutions to the financial crisis and the budget deficit, but the Union refused and insisted on an exchange of traditional bargaining

proposals. WSU went along with the Union's approach and presented good faith financial proposals intended to help improve its sustainability; however, such were rejected.

The University's proposals are measured and narrowly tailored changes to address WSU's financial crisis. Many of the proposals track compensation, insurance, and benefit terms that already apply to every other University Employee. WSU is not asking Faculty Members to bear a disproportionate burden of the financial strain – it is asking them to help solve the financial crisis just like the Staff, Administrators, and every other Employee. Many of the University's proposals also include specific language that only relates to this Contract term, making it clear WSU intends to give the AAUP an opportunity to bargain about the prior language (or new language) once the financial crisis is addressed.

AAUP POSITION

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 (2) 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 (2) 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 (2) 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.

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 the CBA would remain in effect until a new CBA was ratified. The Parties also agreed 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, 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, 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 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 Hearings, Dr. McCray testified, and confirmed, 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 W. Stanton, Esq. as Fact-Finder. 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. The Parties agreed to meet with FMCS Mediator George Albu and did so 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 (2) sessions. As a result, the AAUP-WSU insisted on scheduling the Fact-Finding Hearing(s).

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 the AAUP-WSU should simply accept these changes.

Although the University has serious (albeit self-inflicted) financial challenges, from which the University is recovering, the Administration is trying to benefit from these challenges by gutting the collective bargaining process. A review of the Administration's proposals shows they are trying to eliminate the AAUP-WSU's ability to bargain over mandatory subjects of bargaining. This is not good faith and 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 the Parties engage in Mediation, which occurred on that date and on February 1. A few new Tentative Agreements were then reached. After that time, there were four (4) 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, over the Union's objections, regarding 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.

The Hearing(s) 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 to be exchanged by the Fact-Finder after receiving them from both Parties.

* * * * *

ORC 3345.72 requires the Office of Budget and Management to work with the Auditor of State, the Chancellor of Higher Education, and two (2) 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 would

terminate. Pursuant to the mandate of ORC 3345.72, OAC 126:3-1-01 was implemented to govern the fiscal watch of State institutions of higher education.

OAC 126:3-1-01(A)(4) sets forth calculation ratios used to determine the fiscal condition of State Institutions of Higher Education. OAC 126:3-1-01(B) sets forth the criteria for determining when an Institution of Higher Education will enter 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;
- (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.

Additionally, 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;

(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.

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 quarterly report is to be prepared in the same manner 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 Institution to eliminate fiscal watch conditions, the Institution'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 (3) 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. The AAUP-WSU does not know the SB6 score for

Wright State for FY 2018. However, the Board of Trustees has indicated they believe they will be able to achieve an SB6 score above 1.75 and will avoid fiscal watch.

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 (2) years and their SB6 score would have to fall at or below 1.75 for FY 2019, as well as, FY 2020.

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). President Kich advised the Board the AAUP-WSU believed the Administration should commit itself to finding savings of \$24 million in the following nine (9) areas:

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. 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 attempted 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 Exhibit 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 (7) 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 Hearings the financial circumstances at Wright State are “not an issue of fault” to which the AAUP-WSU strongly disagrees. 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 the Parties negotiated over years.

The evidence presented at the Fact-Finding Hearing(s) demonstrates 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 “fault” is not an issue, is to ignore

reality. It is imperative all of the Administration's proposals be evaluated in light of the "fault" around the financial circumstances and the fact many of the Administration's proposals would give even more power to the Administration to continue to mismanage at the expense of the mission of the University.

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 was called to testify on behalf of Management, but much of his testimony supported the AAUP-WSU's position on many of the outstanding issues. Dr. McCray testified when he came to Wright State, he discovered the prior Administration had burned through \$100 million in reserves over five (5) 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 (5) years when the University was burning through its reserves, but they did not. Dr. McCray testified 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 they would jeopardize the existence of the University in order to protect it?

Dr. McCray testified 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 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 when he first came to Wright State, he talked to many of the Employees and learned 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 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 Wright State currently has the correct number of facilities and he surprised the Administration's Counsel when he said "yes." He then explained he believes in tenure - Tenure doesn't come easy and it should be protected. He recognized the value of the work of Faculty and 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 he respected the Union and thought the Union at Wright State did a good job for its membership.

Although he did not testify in any depth about the specific proposals the Administration was presenting, he indicated if there was a financial exigency which necessitated the lay-off of Faculty Members, the 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

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

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 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 these financial circumstances 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, 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(s) 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 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 (3) 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 the University has a significantly declined financial state. The question is why this has occurred.

Dr. Bunsis provided details on the total reserves over time and testified the University spent down \$100 million in reserves in five (5) years (Slide #9). As a result, the cash flow ratio over time became negative over the last five (5) 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 the Administration's plan to prevent fiscal watch proves 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 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 projections, 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 \$51.8 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. He concluded 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 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 (2) 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 (7) 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 institutions in Ohio. (Slide #32). Dr. Bunsis looked at the salary and benefits of Bargaining Unit Faculty only as a percent and showed 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 (5) years by only 7.7%, benefits increased by only 13.3%, for a total compensation increase over five (5) 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 2.5 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 demonstrates, 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(s), the Administration agreed 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 (3) 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 (3) 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 (3) years, they will drop to the bottom of Faculty salaries in Ohio. (*See*, Slides #54, #55).

Slide #56 shows 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 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 University. 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 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 there is a 2016 Board Policy on the Guiding Principles for Affiliated Entities at Wright State University. Guiding Principle No. 5 states “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 of 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 evidence demonstrates the financial crisis is the result of mismanagement that continues even today. The Board of Trustees continues to ignore the academic mission of the University at the expense of its friends. All of the Union's positions and those of the Administration on the open Issues should be viewed in light of the above.

PRELIMINARY CONSIDERATIONS AND DISCUSSION

As is set forth in the extensive and voluminous evidentiary record, this dispute involves the Wright State University, under two (2) Collective Bargaining Agreements, one covering Tenure Eligible and Tenured Faculty; while the other Collective Bargaining Agreement covers Non-Tenure Eligible Faculty. The record demonstrates, by virtue of the June 2, 2016 Amendment of Certification issued by the State Employment Relations Board, these Bargaining Units were combined into one Bargaining Unit. As previously indicated, eventhough these Bargaining Units have been merged, certain distinctions remain and are addressed as such herein for inclusion in the Successor Collective Bargaining Agreement. As indicated on/in the respective Collective Bargaining Agreements, each had an effective date of August 20, 2014 and an expiration date of June 30, 2017. The Parties executed an Extension Agreement during the course of negotiations subject to the submission of this Fact Finding Report with respective recommendations.

It indeed goes without saying the crux of the Parties' respective positions, there attendant documentation in support thereof, and that provided to the Fact Finder for consideration herein, stems from recent financial issues experienced by, and in many ways created, by the University. The overall atmosphere between the Parties as gleaned from the Undersigned's experiences with

the respective Bargaining Teams during the course of Mediation and the Fact Finding Hearings, suggests that a better course of action may be necessary to repair what appears to be a strained and mistrustful Collective Bargaining relationship. Certain events occurred during the course of the Undersigned's involvement in this process that in many ways derailed what gains that were made at the table and diminished the trust garnered between the Parties during the course of this painstaking process. Obviously, these Parties are in dire need of recognition of the quagmire facing them with respect to the current, yet hopefully reconcilable, financial crisis that serves as the basis for, and the theme of, this Fact Finding Report.

Numerous instances and examples of this financial crisis were discussed and submitted for consideration. Such demonstrated the enrollment of international and non-resident students decreased. The University invested millions of dollars in start-up expenses for the Wright State Applied Research Corporation and the Wright State Research Institute and spent millions of dollars in its efforts to host the United States Presidential debate between Donald J. Trump and Hillary R. Clinton in the fall of 2016. At the time, compensation and expenses of the Faculty and its other attendant Employees continued to increase and ultimately the Administration and Board of Directors depleted over \$100 million dollars in its unrestricted financial reserves. Its banking account and investment account fell by 75% requiring a 2018 budget reduction of nearly \$30,000,000. These, and other examples, clearly establish and support the mandate for spending reductions and reform to begin recovery efforts to restore the financial sustainability of this Institution. Drastic times require drastic measures...for all involved and concerned.

Additionally, the University has banned overnight travel, catering of certain events at the University and cell phone reimbursement. More than 150 Faculty Members and attendant Staff accepted a Voluntary Retirement Incentive. The University cut 20 full-time jobs and 28 Interns

from the afore-referenced research entity and eliminated the positions of 23 other Employees. It did not fill vacancies and its Strategic Hiring Committee was instructed not to approve any new hires unless they were absolutely necessary to address Health, Safety, Revenue, or Compliance requirements. The University's Library Fund was cut by more than \$1,000,000. Facility management was cut by \$2,000,000 and such even affected the frequency in which trash was collected in certain offices. The Student Affairs budget was cut by \$1.7 million. Funding for the Provost Office was cut by over \$2,000,000 and the School of Medicine by \$3,000,000. The College of Engineering and Computer Science was cut by \$2.9 million; the College of Liberal Arts by \$1.4 million and the College of Business by \$1,000,000. It eliminated foreign language courses such as Russian, Italian, and Japanese, not to mention the funding cuts that occurred for other Colleges and Professional Schools within the University. Clearly, drastic measures have resulted to address the financial issues facing this University.

The evidence of record demonstrates the University sustained a Senate Bill 6 score for 2017, of 0.8, which represents approximately 50% of a score necessary to avoid fiscal watch over two (2) years. While positive measures have been endeavored by the newly hired University President, Cheryl Schrader, there are other concerns that are inevitable unless the University, its Administration, and Members of this Bargaining Unit, i.e., the Faculty, recognize the importance of collaborative efforts in an attempt to address regaining the financial viability; sustainability; and, what is required for maintaining the status this University, as an acclaimed Institution of Higher Education, has established since its inception. It is indeed important to recognize the Parties' inability to collectively recognize what temporary measures are necessary in order to address the fiscal crisis largely created by certain factors beyond the control of the

University with respect to enrollment, State budget cuts, etc., but also those self-inflicted, based on the amount of money expended on other matters that are now being called into question.

The record also reflects Union Officials attempted to, not only inquire about certain expenditures that were being endeavored, but also to discuss the impact such would have ultimately on the overall budget and the University's ability to fund even modest increases and certain economic contractual benefits under the Collective Bargaining Agreements. The record demonstrates attempts were made by Union Officials to “raise the awareness” of University Officials, the Board of Trustees and the Administration concerning what it was observing from afar with respect to the financial picture the University was painting. It is important to note the score recognized under Senate Bill 6 represents one of the lowest scores, if not THE lowest, in the history since this scoring mechanism for Colleges and Universities in the State of Ohio was created. Indeed, there is a great public interest in ensuring this University, strategically located between the University of Cincinnati in Southern Ohio, Ohio State University in Central Ohio, Miami University, northwest of this University, as well as, the University of Dayton in closer proximity, and their other Community Colleges and other Institutions within close proximity to Wright State University, continues to remain a respected and viable option of higher learning. Wright State University provides an economical and highly respected curriculum for Undergraduate and Graduate students, including a School of Medicine.

Given recognition of the Fact Finding process as an extension of Collective Bargaining, the Undersigned engaged in numerous days with each respective Bargaining Team and was provided enough information via correspondence, communications and discussions about the overall tenor of these negotiations to lead to the conclusion that great endeavors must be undertaken to salvage this collective bargaining relationship and re-establish the sense of trust

necessary to engage in day-to-day and long-term objectives under a Collective Bargaining Agreement. It is important for the Parties to recognize, not to say that they have not, or do not, the significant importance of collaborative efforts in order to fix this unprecedented financial crisis and to re-establish the viability and sustainability of this University. While neither Party is solely to blame, both Parties must recognize a “new day is on the horizon” with respect to what is necessary in reaching a level of sustainability, viability and financial stability necessary for this University to continue to operate.

The overall recognition and analysis of these Bargaining Unit Members represents, by and large, Employees that have enjoyed, at, or reasonably consistent with, “market” compensation and other attendant benefits. Such can be attributed to these Employees maintaining a high level of educational expertise as compared to other Institutions of Higher Education, as well as, the Employer's ability to fund and finance the same. These equities must be balanced and adjusted as needed. The Faculty of such Institutions are the commodity that drives the value of the Degree obtained at such Institutions. Overall, the Recommendations contained herein address reasonably, the “cost-saving endeavors” the University seeks to avoid fiscal watch and obtain financial sustainability, while also limiting the complete elimination of core negotiated contractual rights of the Bargaining Unit(s). To obtain and achieve these goals of each Party, the duration of these “modifications” are for the life of the Successor Collective Bargaining Agreement and would be subject to collective bargaining upon the expiration of that Agreement.

The theme of this Fact Finding Report therefore must be consistent with the goals and objectives of ensuring the very existence of this University as it exists, as well as, maintaining financial stability, viability and sustainability for the very near future. The University President

has engaged in numerous difficult, yet cost-saving, endeavors and in a short period of time has managed to cut costs where needed. Moreover, while the Faculty should not be expected to shoulder the brunt of that which exists with respect to the financial crisis this University is facing, it, too, must recognize that for the short term, significant budgetary adjustments are necessary.

The Fact Finder's role in this dispute resolution process, as recognized in the Ohio Revised Code, requires adherence to, and application of, the statutory criteria which must serve as the objective guidelines and/or benchmarks with respect to analyzing the financial data, the respective positions of each Party, and that which makes fiscal sense, while also taking into consideration the Employee's desire to continue to receive enhancements to their economic stature as valued Employees of this University. At times, however, including this instance, certain drastic measures must be employed in order to correct that which has gone off rail for approximately the last five (5) years. The Parties are to be commended for the number of Tentative Agreements reached, however, as in the case with any Fact Finding, there are issues that simply are too important to both Parties that a resolution thereof could not be obtained. The Undersigned engaged in numerous discussions with each Bargaining Team in an effort to emphasize the importance of Mediation wherein attempts were endeavored to seek agreement wherein the Parties could maintain control over what a particular contractual provision would look like for the duration of the Successor Agreement. While in many ways that process allowed the Parties to vent and discuss more readily/thoroughly their respective positions, it also brought to light the significance, with respect to the impact on the Employees and more importantly the overall atmosphere of this relationship, when each side's back is against the wall and hard decisions must be made.

This matter has garnered a great deal of attention throughout the State, the State Administration, various media outlets, etc. with respect to what has been characterized as mismanagement by the University. However, while the Undersigned recognizes the importance of maintaining that which resulted in painstaking efforts at the Bargaining table, drastic, and likely harsh, recommendations with respect to sustainability concerns of the University, must be addressed and made. As will be referenced throughout this Report, the Undersigned is attempting to balance the equities between maintaining core contractual rights with the exigent circumstances facing this Institution of Higher Education. The Parties' Collective Bargaining history, the recognition of the financial status of the University, as well as, the impact such will have for the duration of this Agreement on those discharging the duties in this Institution of Higher Education, the Faculty, serves as the basis for that contained herein.

It is the objective and desire of the Undersigned to provide each Party a Collective Bargaining Agreement which recognizes the primary goal of maintaining this Institution of Higher Education in the Greater Dayton, Ohio area without necessarily “gutting” and/or eliminating core provisions impacting members of the Bargaining Unit. Moreover, those Recommendations contained herein with respect to the “drastic modifications”, as they may/will impact Members of the Bargaining Unit. Such are to be recognized for the duration of this Collective Bargaining Agreement while containing “Sunset Provisions” which may initially, but temporarily, modify the negotiated contractual language which may have existed for some time, but nonetheless will not result in elimination from the Collective Bargaining Agreement as written.

As previously indicated, it is indeed the Undersigned's hope and desire the Parties recognize the purpose and application of the statutory criteria because such serves as the objective basis for the recommendations and rationale in support thereof contained herein.

THE UNRESOLVED ISSUES

I. ARTICLE 7

FACULTY RIGHTS AND RESPONSIBILITIES

APPENDIX H - SIDE LETTER ON SUMMER TEACHING ASSIGNMENTS

UNIVERSITY POSITION

The University has gone into great detail to explain what it characterizes as the dire financial condition that currently exists. It emphasizes that while it has made many one-time cuts, those are simply not sustainable over the long term. It has deferred tens of millions of dollars in urgent maintenance endeavors that must be undertaken in the near future. It emphasizes that an opportunity exists with respect to summer term classes. It seeks to raise enrollment and revenue by assigning Summer courses to Faculty members in the same manner it does for the Fall and Spring semesters. Maintaining the *status quo* as suggested by the Union does not raise additional money when scheduling Summer courses; a different way, based on Student needs, is require. If the *status quo* were to remain, it would not be able to pay for existing operations and keep the same level of public services. Maintaining the *status quo* with respect to the Summer School Program does not allow the University to generate more revenue to maintain its current level of services. The current system of making Summer teaching assignments based on rotating seniority has been in place since approximately 2015. The credit hours taken by the Students in the Summer term since that timeframe has fallen from approximately 49,137 to 40,350, which has a direct impact on the University's Summer

enrollment revenue. For calendar year 2017, the University's enrollment revenue from Summer courses fell by \$1,000,000. In support thereof, the University references a May 14, 2018 Dayton Daily News Article indicating Summer revenue is down by \$1,000,000 for calendar year 2018. The University emphasizes the cost incurred for paying Faculty members to teach Summer courses are only down by a few percentage points bolstering its contention that the current system of assigning these courses prevents the University from choosing Summer course assignments based on what the Students are required to take.

It submits its proposal provides a more efficient and practical method of assigning Summer teaching that will generate more revenue. The current rotation of seniority system is not ensuring the best Professor teaches the right class at the right time to ensure high demand. In this regard, it proposes that the assignment of such summer teaching courses will be at the discretion of the Department Chair with the approval of the Dean based on Student and curricular needs; the same manner in which the Fall and Spring semesters are addressed. The current system is based on seniority and the needs of the Faculty rather than the needs of the University and, more importantly, the Students. It contends to change this practice would indeed drive revenue and allow the University to schedule courses Students actually want to attend during Summer sessions. To base the scheduling of such classes on seniority rotation results in Faculty members teaching courses that do not attract Students during the Summer. Such needs to be within the discretion of Management that meets the needs of the Students and increase its enrollment.

The University references the testimony of Dr. McCray wherein Summer teaching should generate revenue for the University. The distribution of Summer teaching assignments directly affects the University's financial crisis and the current practice is not a long-term provision that

the Parties implemented many years ago; such has been in effect since approximately 2016. This adjustment would allow the distribution of Summer teaching assignments consistent with the financial needs and efficiency of the University. Such would be consistent with the manner in which the Fall and Spring semesters are handled wherein the University determines the course schedule that meets the needs of the Students. Its proposal is intended to drive revenue for Summer teaching assignments.

It emphasizes Cleveland State University, wherein its Contract indicates, "summer and intersession teaching opportunities shall be determined by the Dean in consultation with the Department Chair and Faculty." Moreover, Kent State University does not recognize the Summer session as part of the academic year and contains no right for the Faculty members to teach Summer classes. The University of Toledo allows Department Chairs to assign full-time Faculty to teach Summer courses. These Public Universities, in comparison, exercise discretion to distribute Summer teaching assignments consistent with Student needs, not based on the seniority of the Faculty members. This University, given its current financial dilemma, must have the discretion to assign Summer teaching courses in an effort to generate revenue. It submits it must have the discretion to increase Summer enrollment to drive revenue and assist with the financial recovery necessary for the sustainability of the University.

AAUP POSITION

The Union emphasizes the Parties were able to reach Tentative Agreement on Article 7 with the exception of Section 7.8 with respect to Summer teaching and the assignment of Summer teach assignments. It proposes to maintain the current Contract language for both Article 7, Section 7.8 and Appendix H as such impacts this Article. It emphasizes that while there is "sunset language" in the University's proposal to change Section 7.8, such simply does

not exist in Appendix H. Moreover, the University's proposed language would eliminate all protections regarding Summer teaching assignments for the duration of the new Collective Bargaining Agreement and beyond. Those proposals simply provide the University greater control over the Faculty and carry a great risk of abuse.

The current practice allows Summer teaching opportunities to be rotated among all Bargaining Unit Faculty, including TET and NTE Faculty. The Union notes the University proposes to eliminate this rotation based on Bargaining Unit seniority and allow each Dean to offer Summer teaching assignments to the lower paid Faculty, or in the alternative, reward certain Faculty members over others at the Dean's discretion. It suggests non-Bargaining Unit Faculty could be afforded the Summer teaching assignment rights over Bargaining Unit Faculty. The current language provides these Summer teaching opportunities on a rotation among the afore-referenced Faculty members. Prior to the time the NTE had a Collective Bargaining Agreement, the TET Faculty possessed priority over NTE Faculty for all Summer teaching assignments. Then, there were always more courses offered and the TET Faculty, who wanted to teach Summer school, could. The NTE Faculty, who are paid less than the TET Faculty, wanted these teaching assignments. When the NTE Agreement was negotiated, the Parties agreed to rotate Summer teaching opportunities with these two (2) groups as a benefit and a protection to NTE Faculty. That language also protected all Bargaining Unit Faculty from having Summer teaching assignments assigned to non-Bargaining Unit Faculty, i.e., Adjuncts. This basic protection for Bargaining Unit work must be protected and retained.

To counter the University's argument requiring flexibility and to treat the University like a business rather than an Institute of Higher Learning, the Chairs and Deans simply do not have the flexibility, as characterized, to determine who will be employed in the Fall and Spring

semesters. Summer sessions are an important part of an academic program and, more importantly, Faculty assignments should be made fairly and equitably. The Union emphasizes that in 2013 the Parties bargained to reduce the rate of Summer teaching. The Parties agreed to a compromise under which the Faculty earned less for Summer teaching assignments; however, their rights to teach a Summer school assignment over the rights of non-Bargaining Unit Faculty, were maintained.

The current proposal of the University would eliminate that protection. The Union emphasizes Exhibit 19 demonstrating the loss of pay for Bargaining Unit Faculty members from Summer teaching in 2016 and 2017. The University's proposal would increase this loss of income for these Employees. During the course of the Fact Finding Hearing, the University argued the proposed language would simply facilitate Management's ability to cancel a class. It submits this position is flawed. The University's language would permanently eliminate all protections of Appendix H, and for the life of the Collective Bargaining Agreement, all the protections contained in Section 7.8. The Union submits there is simply no justification for these proposed changes and requests the *status quo* language for Section 7.8 and Appendix H be maintained.

RECOMMENDATION AND RATIONALE

Throughout this lengthy and contentious process, much discussion ensued, and evidence was presented, concerning the financial picture for this University which would have a direct impact on members of this Bargaining Unit. It goes without saying that drastic times require drastic measures and as previously indicated in the "Preliminary Considerations", the bulk of this Report purposely recognizes that which the evidence of record supports - this University must

address its financial condition in order to remain viable and sustain its existence in this academic field of play.

First, the Parties must be commended on their ability to reach Tentative Agreement on majority of Article 7, and as such, those provisions are recommended for inclusion in the Successor Collective Bargaining Agreement. Secondly, as was indicated in the Preliminary Considerations, it seems as though, based on a review of the University's position and proposed language, most of which have sunset provisions, which the Undersigned interprets to mean they are in place for a defined period of time and upon the expiration of that timeframe such revert back to the *status quo*, whatever that might resemble.

Here, the University's proposal contains sunset language with respect to these teaching assignments, however, Appendix H simply does not contain any reference thereto. It would seem the University, and ultimately members of the Bargaining Unit, Staff and other Employees, must seize the opportunity to take advantage of whatever revenue generating endeavors that potentially exist. Based on the evidence presented, it is clear Summer School opportunities provide Students with classes that may not be offered during the Spring and/or Fall or allow certain Students the opportunity to take courses to allow them to reduce coursework in the subsequent academic years. There are many reasons why Summer School courses are offered, and more importantly, why Students take them. To potentially maximize the revenue-generating opportunities must be at the forefront with respect to this University given its current financial hardships. The public interest, based on the statutory criteria, would not be served if the Undersigned were to ignore any opportunity to generate additional revenue given this financial crisis facing this University.

As previously indicated, these circumstances will have an adverse impact on all involved if certain financial issues are not addressed. It would seem that to offer courses that are less attractive in the bigger scheme of things is simply not cost efficient. Each Department Head, each Dean or Chair of a respective discipline would be in the best position to determine what courses may be necessary to achieve the goals being sought. Those goals not only address the needs of the Students, but also an opportunity to streamline those opportunities of the University and potentially maximize revenue-generating opportunities.

During the course of the Fact Finding Hearings, when scheduling issues arose with respect to the Parties procedural steps - the ratification voting process - following the issuance of the Fact Finding Report, it was often referenced that Faculty members are simply unavailable during the Summer months. While obviously this does not take into account each and every Faculty member, it would indeed be something that must be taken into consideration. The sunset language provided in the University's proposal does indeed place an end time, or an expiration, upon what it is seeking to accomplish in the short term. It seems reasonable, based on these financial conditions, to engage in whatever revenue-generating measures that must be addressed in the interim.

In this regard, it is hereby recommended the Parties adopt the University's proposal with respect Article 7, Section 7.8 recognizing and emphasizing the sunset protections contained therein; and, that those same sunset protections be contained in Appendix H, which has a direct impact on the interpretation and application of Article 7, Section 7.8. Such, in the opinion of the Fact Finder, certainly not only addresses the financial ability of the University to fund its overall mission and objectives, but also takes into consideration the better interest of the public

consistent with the statutory guidelines contained in 4117 and affords the University the ability to generate, more efficiently, revenue attendant with Summer School.

II. ARTICLE 11

MERIT PAY/ANNUAL EVALUATION

NTE ARTICLE 11.6 – 11.6.2; AND, 23.1

TET ARTICLE 11.7 - 11.7.2; AND, 23.1

UNIVERSITY POSITION

The University emphasizes the once-in-a-generation financial collapse of this Public Institution is obvious. However, while increases to compensation and other economic benefits are simply unavailable, the University proposes a more efficient and practical way to financially reward those Faculty members who help drive revenue for the University. It contends this proposal would reward Faculty Members, who help drive revenue, enhance the University's reputation, and perform well above the expectations that currently exist. This proposal would grant the Dean of each Department the ability to provide merit pay increases to those Faculty members who are performing in an exceptional manner.

At the present time, the University simply does not have the resources to continue forward with the Union's version of a merit pay system that would spread out additional money across the entire Faculty. The University's proposal would afford each Dean the ability to determine how to award merit pay based on performance of those individual Professors, after meeting a qualifying score, based on the current evaluation system now in place. Such would allow the University to retain exceptional Faculty members through the current financial crisis that may lead to those "star performers" leaving for greener pastures.

Under the current merit pay provisions, the distribution of merit pay is processed through a formula set forth in the Agreement. The criteria results typically in a majority of the Faculty members qualifying for merit pay. Such disburse any merit pay based on criteria unrelated to driving revenue and enhancing the University's reputation, or exceptional performance. However, it prevents the University from rewarding truly exceptional performance and providing encouragement to the high-quality Faculty members important to the success of any University. Maintaining those talented individuals is at the heart of this proposal. Such is essential in retaining these individuals through this financial crisis even though the University would be unable to afford raises, other than by promotion, during the term of the Successor Agreement. Such is necessary to maintain its academic standing and a small amount of merit money can sometimes be the key to retaining these valuable Members on the Faculty.

It proposes that rather than distributing merit pay through a formula to among many qualified Faculty Members and cost the University far more than this targeted approach, each Dean would determine the allocation of such pay to a much smaller number of Faculty members based on their individual performance. For example, a high performing Professor might obtain more research grants for the University, publish a ground-breaking study for a peer reviewed journal, or attract more Students to enroll in his or her courses. The Dean would distribute merit pay in a manner not inconsistent with the Faculty member's annual evaluations as set forth in Article 11 of the Labor Agreement.

It submits such is a reasonable approach that only benefits Bargaining Unit Members much more than the Union's position of eliminating the merit plan. It argues such is absolutely necessary to ensure the University maintain top quality Faculty members throughout this unprecedented financial crisis requiring numerous budget cuts. It submits the Union can re-

negotiate this merit pay provision that disburses such payments more equally when this Labor Agreement expires if the financial sustainability of this University has improved. During the course of the Successor Collective Bargaining Agreement, the Administration must have the ability to reward exceptional talent and maintain the University's best Professors despite a very challenging financial environment.

AAUP POSITION

The AAUP Proposal contains no money for any merit increases during the term of the Successor Collective Bargaining Agreement but maintains the negotiated process for Faculty to receive such a merit increase in the future. The University proposes to permanently eliminate any and all criteria for providing merit increases other than a minimal evaluation threshold, so the Administration can award any amount of money to anyone it desires. Such would be the case in the Successor Collective Bargaining Agreement without limitation and thereby eliminating and undermining the right of the Union to negotiate wages.

While the University has argued it is out of money and is broke, it has presented proposals that, if adopted, would severely reduce the salary and benefits for Bargaining Unit Faculty Members. It wants to obtain the ability to award anyone with any amount of money for any reason without limitation. Such tactic is intended to render the Collective Bargaining process ineffective and directly undermine the AAUP.

RECOMMENDATION AND RATIONALE

Throughout the course of the Mediation Sessions and Fact Finding Hearings, it was emphasized on numerous occasions the dire financial conditions the University finds itself in at the present time based on excessive spending and depletion of hard-earned reserve cash funds. Given the nature of the financial situation existing at this University, it would certainly seem

inconsistent, with the goal and objective of the University to position itself financially to weather this financial crisis and rebuild its financial coffers and sustainability, if it expended that which it claims does not exist.

Moreover, given the obvious financial aspects of this proposal, it also lends itself to the potential of abuse and favoritism. The rub, if you will, against a complete merit-based incentive program is the subjective considerations with respect to friendships, relationships, and favoritism. This is not to suggest, under any circumstance, that members in this Administration would be guilty of that, but the potential, given the overall mistrust and the manner in which the financial conditions of this University are viewed by this Bargaining Unit, it certainly runs counter with the University's objectives of reducing and/or eliminating certain financial expenditures in an effort to regain financial viability and stability.

While indeed the objective has some merit with respect to the retention of "star performers" as characterized, it certainly runs counter to the overall objective of cost savings to address the current financial circumstances the University faces. Moreover, if in fact there is an opportunity for any type of compensation to be expended for the term of the Successor Collective Bargaining agreement, it would seem more cost efficient to "spread the wealth" to members within a certain discipline and/or Department as opposed to singling out any one particular individual as suggested.

The primary basis for recommending the *status quo* be maintained is the overall cost that potentially could exist in an effort to retain those "star performers". Such, in the opinion of the Fact Finder, runs counter to the overall objective and position taken by the University that it simply does not have the funding to provide any kind of financial enhancements in the way of

compensation for *any* members of the Bargaining Unit. As such, a recommendation for the *status quo* is hereby recommended.

III. ARTICLE 13

APPOINTMENT AND PROMOTION

UNIVERSITY POSITION

The University proposes a longer path to an automatic continuing contract for Non-Tenure Eligible Faculty until certain criteria are met. It submits it simply cannot afford to pay additional monies that simply do not exist. For the same reasons that have been argued concerning its overall financial condition, such are applicable with respect to this Issue. It emphasizes the Union has refused to push back the timeframe for granting continuing contracts for Non-Tenure Eligible Faculty members. While it could have proposed to eliminate continuing contracts for Non-Tenure Eligible Faculty members, it chose to delay the consideration for a continuing contract for a few years to assist with improving its financial condition. Its proposal would "grandfather" those already granted a continuing appointment in 2018 or before. The requirement that an applicant have nine (9) or more years of service as a full-time Faculty member at the University and have been appointed or promoted to the rank of Senior Lecturer, or Clinical Assistant Professor, is clear and reasonable given current norms and the University's economic condition. Such represents a reasonable adjustment to achieving a quasi-permanent contract for these Non-Tenure Eligible Faculty.

To grant automatic continuing contracts to Non-Tenure Eligible Faculty members is the exception among comparable Universities. Most other comparable Universities do not offer career-length jobs by affording a continuing contract to Non-Tenured Faculty. Few Universities provide this level of job security for Non-Tenure positions. This University proposes to keep the

system of granting continuing contracts; however, delaying such until that individual has nine (9) or more years of experience and meet a level of prior achievement.

By the end of a Non-Tenure Eligible Faculty's fifth year, the University must decide whether to advise that Employee whether they will have a continuing contract or terminate their employment. To maintain the *status quo* and commit to quasi-permanent employment will result in the unnecessary termination of quality Employees. This University can simply not afford to undergo that commitment based on the unprecedented financial uncertainty it faces. It submits its proposal would not eliminate continuing contracts of any Non-Tenure Eligible Faculty Member who already have one; it would only delay the University's decision on Non-Tenure Eligible Faculty Members while it attempts to recover from its financial crisis.

Such allows the University to retain more Non-Tenure Eligible Faculty Members whereas the Union proposes to uphold the *status quo* based on the belief the current financial situation is "not their fault." Under the *status quo*, some Faculty members would lose their jobs. To grant this proposal would be in the best interest of the University, the Students, the culture of the School, and the Non-Tenure Eligible Faculty Members. The University's proposal is precipitated by its current financial condition and no uniform comparable exists for this continuing contract system.

AAUP POSITION

The Union proposes maintaining the current contract language and/or the *status quo*. It originally presented minor modifications to this Article because it wanted to clear up the confusion regarding Peer Evaluation in Section 13.5.2.3. It acknowledges it advised the University it could accept some of the minor proposed language changes contained in the March 10, 2017 proposal. However, on January 17, 2018, the University proposed what it believes are

substantive changes that are regressive in nature. It submits those proposed changes regard how and when NTE Faculty become eligible for a continuing appointment. Under current language, NTE Faculty receive a continuing appointment after six (6) years unless they have been notified otherwise by the beginning of their sixth year of service. The University proposes to change this to nine (9) years, but to do so would increase the time to twelve (12) years because it takes at least three (3) 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. Additionally, Lecturers and Clinical Instructors would no longer be eligible for a continuing appointment no matter how long they had been teaching. It emphasizes that while the Administration claims it is “Sunsetting” many of the proposed changes for the Successor Agreement; there is no such language in this proposal for Article 13.

The Union emphasizes under the current Contract language, NTE Faculty can be terminated for a number of reasons based on a decline in enrollment for at least three (3) academic semesters, or because of curricular changes. They may be terminated for reasons other than poor performance. It emphasizes the testimony of Dr. Bobby Rubin, who has worked as an NTE Faculty Member for 25 years as an English Professor. He is a full-time Instructor; teaches multiple Sections; and, has worked as a Lecturer and Senior Lecturer. He indicated most first, and second year Students are taught by Lecturers and/or Senior Lecturers. It submits research demonstrates that if a Student has a good experience in his/her first or second year, they tend to stay at that particular University. Most first and second year Students at Wright State are taught by NTE Faculty. A large percentage of the General Education courses are taught by NTE Faculty many of which have very intensive writing requirements equating to a heavy workload for the NTE Faculty. They also serve in a great amount of service as Program Directors and

Program Coordinators, coordinating multiple Sections, supervising teaching assignments and are responsible for entire labs. The NTE Faculty teach the English as a Second Language Program and one (1) NTE Faculty Member coordinates with area High Schools on English.

It also emphasizes the testimony of Dr. William Rickert wherein he indicated, "NTE Faculty had been terrific and a tremendous asset to the University." The University desires to attract and retain these high-quality Faculty Members and they have a high promotion rate because they are, in fact, so qualified. They primarily focus their activities on teaching rather than research and as such are more attentive to Students. It submits the University's proposal would be destructive to the academic mission of the University and undermine NTE Faculty simply for cost-saving measures.

RECOMMENDATION AND RATIONALE

The crux of the University's position is to lengthen the time from which these Non-Tenured Faculty Members can attain a continuing appointment, as characterized as "Tenure-light". It insists such maintains a system awarding a Non-Tenure Faculty Member with a continuing automatic renewal contract but increases the length of time for fixed-term employments to continuing contracts from six (6) years to nine (9) years and includes an initial requirement of attaining the rank of Senior Lecturer, or Clinical Assistant Professor. It would also grandfather those who have already attained what is characterized as continuing status in 2018, or before.

While the Fact Finder recognizes the impetus of this proposal from the University is based on financial considerations and postponing the inevitable with respect to the length of time these individuals receive a continuing contract, if you will, such, while the numbers may be subject to different totals, seemingly do not pose a significant financial impact during the life of

this Collective Bargaining Agreement; at least to the level presumably required to meaningfully address the current financial concerns. Given the duration of the Successor Collective Bargaining Agreement, it would seem the overall financial benefit, if anything, to the University would not be realized for some time. While the evidence of record does indeed demonstrate there are certain individuals this would be applicable to during the life of the Successor Agreement, the framework, as proposed, of extending years of service to nine (9) instead of six (6) does not seem to “meet the mark” with respect to significant financial savings for the University immediately.

Moreover, and of additional importance, is the fact that if indeed these individuals are going to be subject to being "let go" then they will be let go regardless of the timeframe within which they obtain this higher status and receive a continuing contract. As testified to by Mr. Rubin, he has been in his position for 25 years and it does not seem that, obviously, he will not be going anywhere anytime soon, but he nonetheless continues in that capacity. The University would not be forced to retain individuals it deems sub-par with work performance issues. It certainly can do so at any time within the current framework in place. This, in the opinion of the Fact Finder, based on the manner in which a Lecturer is promoted to a Senior Lecturer, or a Clinical Instructor is appointed to be a Clinical Assistant Professor - the progression, if you will, as it currently exists, and as proposed by the University, the overall timeframe within which these step increases occur equates to approximately twelve (12) years based on the number of years it takes to reach/progress to the afore-referenced positions and status titles.

Under the current Collective Bargaining Agreement, there is in fact language that affords the University to severe employment with these Non-Tenure Eligible Faculty Members, including a decline in enrollment over at least three (3) academic semesters, or the curriculum

changes. There are reasons other than poor performance that can result in the termination of the NTE Faculty Members. Given the manner in which certain other issues at impasse have been addressed in this Report, wherein such affords the University more drastic measures to implement, there seems to be no compelling reason to recommend the University's proposal in this regard. As such, the recommendation of the *status quo* is supported.

IV. ARTICLE 17

RETRENCHMENT

SECTION(S) 17.1, 17.4, 17.5, AND 17.6

UNIVERSITY POSITION

The University, emphasizing its current financial status, proposes to consider this proposal and other structural financial changes to restore long-term sustainability. As such, it proposes to limit changes to Article 17 to allow for the retrenchment of Faculty members within a specific window of time measured by objective criteria under State law. The University's proposal would only allow retrenchment based on objective measures of its financial well-being and sustainability as set forth in Ohio Revised Code when the Senate Bill 6 score falls below 2.40 for two (2) consecutive years. It recognizes a Senate Bill 6 score of 2.40 or above is the required level indicating financial sustainability that allows a Public College or University to emerge from fiscal watch status indicating a University is on its way to financial recovery. Ohio Administrative Code Section 126:3-1-01(F)(1)(a) sets forth the criteria for termination of fiscal watch when the University achieves a composite result of the ratio analysis calculated in accordance with Senate Bill 6 of at least 2.40 for a fiscal year. It emphasizes that no other Public University in the State had a Senate Bill score of less than 2.40 in fiscal year 2016. Wright State had a Senate Bill 6 score of 2.10 in fiscal year 2016; however, only one other Public University,

Cleveland State, had a Senate Bill 6 score of less than 3.0. Cleveland State's score was 2.8. Bowling Green State University, Cleveland State University, Kent State University, Miami of Ohio, Ohio State University, Ohio University, Shawnee State, University of Akron, University of Cincinnati, University of Toledo and Youngstown State University all had Senate Bill 6 scores above 3.0.

The University submits its proposal regarding this is narrowly tailored to address an extreme financial crisis the University is currently experiencing. Of the 13 Public Universities within the State of Ohio, none currently have a Senate Bill 6 score low enough to trigger retrenchment under Wright State's proposal. It does not propose to trigger retrenchment after a single Senate Bill 6 score below 2.40 and would only be triggered after two (2) consecutive years with a score below 2.40. Retrenchment would only be triggered after two (2) consecutive years of a Senate Bill 6 score well below the current level of financial sustainability of any other Public University in the State of Ohio. Moreover, the window for retrenchment is open for a limited period of time consisting of 24 months. Given these attributes, it is both objective and limited that has a built-in end.

Additionally, the documentation provided by the University demonstrates that of the 23 Community Colleges in the State of Ohio, none had a Senate Bill 6 score below 2.4 in fiscal year 2016. Such demonstrates the University's proposal would only allow retrenchment during a sustained two-year period of severe financial consequences that would be worse than any other Community College in the State of Ohio. Given the current financial situation, other University Employees have been subject to lay-offs in its attempt to reduce its budget by \$40 million dollars over two (2) years. No AAUP member has been subject to layoff. Such, it contends, demonstrates restraint in utilizing the retrenchment procedures beyond the objective measures

requiring two (2) straight years of Senate Bill 6 scores worse than any other Public College and/or Community College or University in the State.

Such lay-offs would not be certain for Faculty and would hopefully be unnecessary; however, such exists in fiscal emergencies when financial circumstances require such. Its proposal contains very generous lay-off and severance payments and long notice periods contained in Section 17.6.10. Such are not disturbed or decreased based on the University's proposal. It contends it must have the ability and flexibility to engage retrenchment procedures to protect the financial sustainability of the University during a financial crisis. It has indeed depleted its financial reserves by more than 75% to make up for declining enrollment revenue, overspending on salaries, benefits and other expenditures.

AAUP POSITION

The AAUP proposes current Contract language. It submits that if the University wanted to modify this Article, such would have been necessary to provide its proposal by March 10, 2017, under Ground Rule 4. The Administration's first and only proposal was provided to the Union on January 17, 2018 and included major changes to this process. These changes simply have not been justified by the University. On May 22, 2018, the University proposed new modified language regarding this Article which was regressive in nature than that proposed on January 17, 2018. Over its objections, the University's proposal is not supported by the facts of this matter; is procedurally improper; and, in violation of the Ground Rules agreed to by the Parties, the Ohio Collective Bargaining Act, and because it constitutes regressive bargaining and as such, should be rejected.

Additionally, the University's proposed modifications to Article 17 only applies to the TET Bargaining Unit and not the NTE Bargaining Unit. At the Fact Finding Hearings, it

recognizes that both Parties stipulated that in the event the language is to be modified, it should at least be internally consistent with both Bargaining Units.

Nonetheless, the University's proposals, with respect to retrenchment would place Wright State outside the norm of every Public University in the State that are governed by Collective Bargaining Agreements and those that are not. It would violate industry standards for academic institutions and threaten the academic mission of this University. In support thereof, it cites the "AAUP Red book", which represents industry standards for academic institutions. In its 11th edition, it finds and addresses financial exigency. It recognizes 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 as those with Collective Bargaining language relative thereto. Those without Collective Bargaining Agreements include Miami University, the Ohio State University, and Ohio University. That Collective Bargaining language is set forth in its exhibits and also the respective Policies of those Universities that do not have Collective Bargaining Agreements.

To include the University's proposals herein would be unprecedented and represent yet another example of the Administration creating a financial crisis and using that crisis as a means to obtain language in the Collective Bargaining Agreement that would devastate Bargaining Unit rights. The current Collective Bargaining Agreement contains retrenchment language, including financial exigency, a significant reduction in enrollment, or the discontinuation of a College Department or Program. In the University's January 17, 2018 proposal, the University proposed to add language that would be "pursuant to a financial recovery plan under fiscal watch," which requires the University to have been in fiscal watch, have drafted a fiscal recovery plan and had to have a fiscal recovery plan that specifically addresses retrenchment. Ohio Administrative

Code Section 126:3-1-01(D) requires the financial plan must be approved by the Chancellor of Higher Education, must analyze the Institution's financial difficulty and causes of significant revenue or financial 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 difficulty in any circumstances that could worsen the Institution's fiscal condition, contain a fiscal forecast for three years, and contain any other information requested by the Chancellor of Higher Education. Such legal requirements create standards that would prevent this Administration from acting in an arbitrary way.

The AAUP notes that on January 30, 2018, the Administration changed the new language to include, "to avoid the declaration of fiscal watch, or pursuant to a financial recovery plan under fiscal watch." When the Union pointed out to the Administration that the word "avoiding" was ambiguous, on May 22, 2018 the Administration proposed changing the criteria to allow retrenchment being declared within the 24-month period after the University achieves a Senate Bill 6 score of less than 2.40 for any two (2) consecutive years or under a financial recovery plan. For fiscal year 2016, Wright State had a SB 6 score of 2.1; in fiscal year 2017 0.8. Even if this University is able to avoid fiscal watch by achieving a SB 6 score of 2.4 for fiscal year 2018, 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. Such would effectively eliminate tenure.

The threshold suggested by the Administration has already occurred and will continue to occur under the terms of the new Collective Bargaining Agreement independent of this

University's financial recovery. The changes proposed by the University from January 17 to January 30, were regressive in nature and those proposed from January 30 to May 22 were even more regressive.

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 a 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 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 it would not make sense, if they were eliminating Faculty positions, only to offer these Faculty Members

other positions within the University. However, this fails to take into account 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.

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 and would take advantage of the financial problems the Administration created by undermining the role of the Faculty and their right to bargain collectively for their mutual aid and protection.

RECOMMENDATION AND RATIONALE

Much discussion ensued concerning what sudden and/or immediate measures would be necessary for the University to address the financial condition it is facing. Certain financial circumstances exist, that in many instances, are beyond the control of the Parties to a Collective Bargaining Agreement. Neither Party has any control over enrollment of in-state or out-of-state Students and, as characterized as a significant basis for revenue generation, the enrollment of International Students. No University has control over whether or not they may be chosen by prospective Students to attend their Institution of Higher Learning. These factors are obviously beyond the control of the contracting Parties. However, the record is replete with characterizations and evidence of the manner in which certain reserves have been depleted, whether those were in fact prudent, fiscally responsible, or otherwise. Those instances, obviously, are within the control of the Administration. As previously indicated, the evidence of

record supports the conclusion that, for various reasons, some self-created, others not, the University finds itself in a position of financial recovery.

As the record demonstrates, international enrollment is down, overall enrollment has declined and not to mention the unfettered spending engaged in by the prior Administration. During the course of the Mediation Sessions and the Fact Finding Hearings, the Undersigned discussed with the Parties the vagueness and broadness of the language contained in Article 17 and suggested that perhaps a more objective criteria could be included that would make the decision more objective in nature. The composite score component of Senate Bill 6, of 2.40, is a required level indicating financial sustainability that allows a Public College or University to emerge from fiscal watch status and is on its way to financial recovery. The very concept of Retrenchment is obviously analogous to the effectuation of a layoff where, for various reasons, business entities simply, for financial purposes primarily, do not need the number of personnel they currently have and therefore reduction thereof is considered and, at times, implemented. The University seeks to enhance its ability to address the current financial crisis it finds itself in by expanding its ability to utilize Retrenchment to reign in its budgetary expenditures.

The new President has implemented various cost-saving measures to reduce the overall budget of the University and those efforts are commendable in her attempts to address the financial circumstances the University faces. It is not at all uncommon when any entity, regardless of the services it provides, whether it be in the Public, Private, or Federal sectors to implement whatever cost-saving measures are necessary, including the reduction in personnel, which carries the largest budgetary component with respect to compensation packages, benefits, etc., especially under a Collective Bargaining Agreement. Benefits are expensive, contractual entitlements are expensive and compensation packages are expensive. The question arises as to

whether or not each and every proposed cost-saving measure articulated/proposed by the University achieves the goals in the short term that will address the budget reduction the University seeks.

As previously indicated, drastic measures are sometimes necessary and whether or not each and every attempt to implement such a drastic measure is warranted, must be afforded careful consideration. It is clear based on the language contained in the current Collective Bargaining Agreement(s) certain measures are currently in place that afford the University to engage in personnel reduction based on objective criteria while the enumerated items may be overly broad, objective criteria do in fact exist. It would seem beneficial to the Parties, based on the current impact of the Senate Bill 6 scoring, that that component be included in the existing criteria that includes, fiscal exigency; significant reduction in enrollment over four (4) or more academic semester; and, the discontinuation of a College, Department or Program. Moreover, the ultimate goal, under the afore-referenced circumstances that exist at this University financially, is to reduce its overall budgetary constraints. However, prudence is warranted to balance the University's objective of addressing its budget constraints and the impact of drastically reducing personnel - Faculty - the commodity that drives the University's attraction to prospective Students. Given the other cost-saving Recommendations contained in this Report, personnel reductions can be achieved by other means while maintaining qualified and experienced Faculty.

As indicated, Article 17.1 currently contains language which sets forth three (3) instances where/when the University can implement Retrenchment, i.e., fiscal exigency, significant reduction in enrollment over four or more academic semesters and/or the complete discontinuation of a College, Department, or Program. The University is proposing to include

language that would supplement that which currently exists to include the impact of a Senate Bill 6 score, within a 24-month period, of less than 2.40 for any two (2) consecutive fiscal years, or pursuant to a financial recovery plan under fiscal watch. Moreover, it seeks to reduce the timeframe for the Committee to make recommendations concerning such and eliminates the current requirement that Employees subject to Retrenchment, be automatically offered other available Faculty positions. The current language concerning severance payments and notices of decision periods that impact Bargaining Unit Faculty Members would remain.

The quality of the Faculty necessarily equates to the desire/attraction of prospective Students enrolling at any University. The curriculum offered, and those who are teaching it, are indeed concerns for many prospective, incoming Students. Additionally, while much discussion ensued concerning the elimination of Division I Athletics, such, in the opinion of the Undersigned, simply is not productive when viewing the overall attraction to any University of the stature of Wright State University. There are many individuals that pursue athletic endeavors who, in some situations, would not attend higher education opportunities if not for the ability to engage in athletic endeavors. Division I Athletics, and those of the lower Divisions, still require costs to operate. The total elimination thereof, it is simply not practical or necessary even though the financial circumstances of this University are in much need of recovery and drastic measures are in many ways, and in many areas as set forth in this Report, supported by the evidentiary record; the “stepping down” to a lower NCAA Division and/or the total elimination of Athletics, is not. Certain Conference and/or NCAA “penalties” and/or costs are associated with such measures – additional expenditures this Institution cannot afford.

While the Undersigned does indeed recognize the University's desire to have available these various avenues of addressing cost-containment measures, it already has in place the ability

to effectuate and implement Retrenchment. It does indeed make sense to include language addressing a fourth triggering criteria, if you will, that would include that recommended by the University concerning the obtainment of a Senate Bill 6 score below 2.40 for two (2) years in succession to invoke the Retrenchment process. Such associates the overall financial picture for this University based on objective means, i.e., the addition of the Senate Bill 6 score below 2.40.

Based thereon, it is hereby recommended the Parties maintain the *status quo* language concerning that contained in Section 17.1 but add to that the proposal set forth on page 47 of the University's Post-Hearing Brief regarding the Senate Bill 6 score, the impact thereof to become effective January 1, 2019. It is also recommended the timeframe identified in Section 17.4 on page 48 of the University's Post Hearing Brief, be reduced from 60 calendar days to 30 calendar days to provide a shorter timeframe to effectuate the Retrenchment process. It is further recommended the language contained in Section 17.5 be modified to include that affording the President, once he or she forwards the recommendations to the Committee on Retrenchment with her recommendation to the Board of Trustees, shall determine "whether or not" to implement Retrenchment. Obviously, a decision has to be made and obviously those Boards, the Committee on Retrenchment, the President of the University and the Board of Trustees are ultimately responsible for making any kind of decision like this, so that addition to Section 17.5 is indeed reasonable.

Finally, it is recommended the Parties continue to maintain 17.6.9 for the TET and 17.6.8 for NTE, recognizing the extrinsic value of a Tenured Professor and/or a Professor who has not attained Tenured status, but nonetheless has been in the realm of Higher Education for a number of years. In the opinion of the Fact Finder, it is indeed beneficial to the University to maintain quality, experienced Faculty members and offer positions, if available, and for which they are

qualified to teach, to them. Obviously, I recognize those individuals generally garner higher wages and benefit packages, nonetheless they continue to provide an attraction to prospective Students wishing to attend Wright State University.

V. ARTICLE 19

WORKLOAD

UNIVERSITY POSITION

The General Assembly of the State of Ohio has decided Public Universities must have the management right to determine the “workload” of their Faculty Members. Over the years, Public Universities gradually gave away their management right to control Faculty workload. The General Assembly decided to restore that inherent management right. As a matter of mandatory State law, Public Universities are now prohibited from bargaining on the workload of Faculty Members.

WSU and the AAUP did not follow mandatory Ohio law. They entered into Memoranda of Understanding restraining the University’s management right to determine the workload of Faculty Members. Being able to control workload and ask Employees to do more is a basic approach management takes in response to financial constraints. The University must have the ability to control workload, especially in light of its unprecedented financial difficulties. The Fact-Finder would be going against the General Assembly and common sense by not adopting the University’s proposal – especially given the unprecedented financial crisis, and even beyond mandatory State law.

This is an important proposal for the University – and a topic where the AAUP is presenting a legal smokescreen rather than acknowledging their “end around” of mandatory State law has gone on long enough and must come to an end given the financial crisis of the

University. WSU proposes workload requirements, set forth in University Policy Number 2020, consistent with Revised Code 3345.45. WSU proposes this provision should reflect that any Memoranda of Understanding and other agreements with AAUP pertaining to workload are void as prohibited subjects of bargaining, not appropriate for collective bargaining, and no longer in effect.

This issue of staffing and scheduling control is so obvious and apparent for a School in financial crisis. It is outrageous this issue was not agreed-upon at the bargaining table given the clear mandate of the Ohio General Assembly, the Ohio Supreme Court, and the State Employment Relations Board (“SERB”). WSU needs the ability to make changes in Faculty workload requirements, in light of the financial crisis. It may be necessary for the University to increase workload if appropriate to help generate additional tuition revenue and control expenses.

WSU’s proposal is specifically addressed by Ohio law. It is mandatory. The University and the Union are prohibited from bargaining about the workload policy. Revised Code Section 3345.45 provides each Public University should adopt a Faculty Workload Policy, that workload policies are not appropriate subjects for collective bargaining, and that workload policies adopted by a Public University prevail over any conflicting provisions of a Collective Bargaining Agreement or negotiated provision.

The evidence presented by the University clearly supports its proposal on workload. This evidence is contained in the binder marked “WSU Fact-Finding Other Open Articles.” The Fact-Finder should turn to the tab in this binder marked “Article 19 Workload.” Tab 1 behind this tab contains Section 3345.45 of the Revised Code. Section A requires Public Universities to develop “standards for instructional workloads for full-time and part-time faculty in keeping with the

universities' missions and with special emphasis on the undergraduate learning experience.” Further, the workload standards must “contain clear guidelines for institutions to determine a range of acceptable undergraduate teaching by faculty.” Section B requires the Universities to “take formal action to adopt a faculty workload policy consistent with the standards developed under this section. The Statute goes on to prohibit Universities from engaging in collective bargaining on workload policies:

Notwithstanding section 4117.08 of the Revised Code, the policies adopted under this section are ***not appropriate subjects for collective bargaining.***

O.R.C. § 3345.45(B) (emphasis added).

Tab 2 in this section of the University's binder contains the decision by the United States Supreme Court in *Central State University v. American Association of University Professors, Central State University Chapter*. This decision upheld the constitutionality of ORC § 3345.45, requiring Public Universities to develop standards for Professors' instructional workloads and exempting those standards from collective bargaining.

Similarly, Tab 3 of the binder contains the Ohio Supreme Court's decision in *American Association of University Professors, Central State University Chapter v. Central State University*. In this decision, like the U.S. Supreme Court, the Ohio Supreme Court upheld the constitutionality of ORC § 3345.45 as a valid exercise of legislative authority. The Fact-Finder should recommend that the University follow the clear precedent established by the U.S. Supreme Court and the Ohio Supreme Court in upholding ORC § 3345.45.

Tab 4 of the binder contains an AAUP newsletter called “The Right Flier.” This newsletter outlines the history of bargaining Faculty workload at WSU. In the newsletter, the AAUP acknowledges the State Employment Relations Board “concluded that if AAUP-WSU had asked to bargain over workload after the Ohio Supreme Court's reversal of its original

decision then it would have committed an ULP.” SERB’s decision referenced in the Newsletter is also contained in the binder at Tab 9.

The AAUP newsletter found at Tab 4 further acknowledges if WSU took the issue of workload to Fact-Finding, the Fact-Finder “would have almost certainly ruled in favor of the Administration and the new administration would have been free to impose a new calendar and unilateral changes in workload.” Based on the AAUP’s own Newsletter describing avoiding Fact-Finding in a prior WSU negotiation, the AAUP understands the Fact-Finder should make a recommendation consistent with ORC § 3345.45 and the precedent upholding it from the U.S. Supreme Court and the Ohio Supreme Court.

Tab 5 contains a decision from the State Employment Relations Board (“SERB”) dismissing an Unfair Labor Practice complaint filed by the Youngstown State University Association of Classified Employees. The Union alleged YSU committed an Unfair Labor Practice by unilaterally altering the workload of Employees in the Bargaining Unit. SERB dismissed the Complaint with prejudice, holding the “issue of faculty workload is a prohibited subject of bargaining and the failure to bargain over a change in faculty workload is not an unfair labor practice.” SERB also denied the Union’s Motion for Reconsideration. This shows WSU has the ability to unilaterally alter the workload of AAUP members, so the Fact-Finder should adopt the University’s proposed language in his recommendation as a clear mandate from SERB.

Tab 6 contains an Arbitration Decision between the AAUP and the University of Toledo. The AAUP alleged the University of Toledo modified the workload procedure by implementing a new component. The University of Toledo argued the modification was permissible under ORC § 3345.45. The Arbitrator agreed with the University of Toledo and found that since

Faculty workloads are not subject to collective bargaining, they cannot be subject to Arbitration under a Collective Bargaining Agreement.

Beyond the clear precedent from the U.S. Supreme Court, the Ohio Supreme Court, SERB, and Arbitrators around the State of Ohio, other comparable Employers also support the University's proposal on workload. Tab 7 contains the University of Akron's collectively bargained workload provision. The provision states the Board of Trustees has adopted a Faculty Workload Policy consistent with ORC § 3345.45. Further, it states "modification to this policy shall be at the sole discretion of the University in consultation with appropriate constituencies, including the Akron-AAUP."

Similarly, Tab 8 contains Central State University's collectively bargained workload provision. Like the University of Akron, Central State University's Labor Agreement states the Board of Trustees has adopted a Faculty Workload Policy consistent with ORC § 3345.45. The provision only gives the Faculty Senate the ability to make recommendations for proposed changes to the workload policy. This shows other comparable Employers have adopted collectively bargained provisions consistent with ORC § 3345.45, and consistent with the provision proposed by the WSU Administration. The University anticipates the AAUP will attempt to put up a "smokescreen" of legal argument against this change because they know it is a clear-cut proposal before this Fact-Finder. This issue is clearly supported by every single area of law that controls the labor negotiation process in Ohio. It must be awarded.

AAUP POSITION

The AAUP-WSU proposes current Contract language. The current language does not define "workload". It simply states Faculty workload requirements are set forth in a Faculty Workload Policy 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 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 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 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 (5) years before the TET Bargaining Unit was certified, the Ohio Legislature adopted ORC 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 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 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 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 ORC 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 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 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 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, 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 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 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 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, given the above, the AAUP was not “aggrieved” by claim or issue preclusion. In other words, the Greene County Court of Common Pleas agreed SERB did not hold 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 the issue of workload was a mandatory subject of bargaining in spite of the constitutionality of ORC 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 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 (2) Collective Bargaining Agreements.

Union Exhibit 30 represents 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 (3) 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 believed 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 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 the MOUs have been negotiated with both sides in good faith specifically to comply with ORC 3345.45.

Furthermore, teaching load is addressed throughout the CBA. For example, under Section 8.7, the University grants nine (9) 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, ORC 3345.45 only references ORC 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 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 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 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.

RECOMMENDATION & RATIONALE

With respect to Article 19, Section 19.1, titled "Workload", the University seeks to clarify Workload must be governed by University Policy as required by State law and as recognized, such is a prohibited subject of bargaining pursuant Ohio Revised Code, Section 3345.45. Moreover, pursuant to that Statute, the University Policy is determinative of Workload, not the Collective Bargaining Agreement or any Memorandums of Understanding. Those simply cannot tie the University's hands regarding the Management Right of staffing and the assignment of workload to its Faculty. Moreover, it seeks to remove these Memorandums of Understanding that address ways to challenge the Workload assignments that potentially disrupt the instruction to Students. The Union, on the other hand, insists the Parties have, for an extended period of time, acknowledged in the Faculty Handbook agreed to by the University and the Union, "Workload". The Union submits the current language and practice simply does not violate the Statute as relied upon/suggested by the University.

The record clearly indicates the matter of Faculty Workload has been adjudicated in the United States Supreme Court, Ohio Supreme Court, SERB and at least one Arbitration decision concerning whether or not such is a prohibited subject of bargaining. The determination relative to the assignment of work generally is recognized in the Management Rights provision and to

ask Employees to perform more functions during a financial crisis where such may have not been exercised previously, does not render or constitute a waiver of the Employer's ability to insist upon the ability to do so at this juncture. It appears that based on the Court decisions both at the Ohio Supreme Court and the United States Supreme Court levels, such indeed reflect the ability of the Employer to designate Workload. Ohio Revised Code Section 3345.45 indicates each Public University adopt a Faculty Workload Policy which exists currently. Moreover, that Revised Code Section indicates Workload Policies are not appropriate subjects of Collective Bargaining and they prevail over any conflicting provisions of a Collective Bargaining Agreement.

Section A of that Statute indicates and requires Public Universities to develop standards for instructional Workloads for full-time and part-time Faculty in keeping with the University's mission and with special emphasis on the Undergraduate learning experience. Moreover, it indicates those Workloads must contain clear guidelines for Institutions to determine a range of acceptable Undergraduate teaching by its Faculty. Additionally, Section B requires Universities to take formal action to adopt Faculty Workload Policies consistent with the standards developed under this Section. Finally, the Statute indicates, "notwithstanding Section 4117.08 of the Revised Code, the policies adopted under this Section are not appropriate subjects for Collective Bargaining". The United States Supreme Court upheld the Constitutionality of Ohio Revised Code Section 3445.45 requiring Public Universities to develop standards for Professors and instructional workloads and exempting those standards from Collective Bargaining. Moreover, the Ohio Supreme Court also upheld the Constitutionality of Ohio Revised Code Section 3345.45 as a valid exercise of legislative authority.

The State Employment Relations Board addressed an Unfair Labor Practice Complaint filed by the Youngstown State University Association of Classified Employees wherein the Union alleged Youngstown State committed an Unfair Labor Practice by unilaterally altering the Workload of its Employees in the Bargaining Unit. SERB dismissed that Complaint with prejudice indicating, "the issue of Faculty Workload is a prohibited subject of bargaining and the failure to bargain over a change in Faculty Workload is not an Unfair Labor Practice. Moreover, an Arbitration Decision between the University of Toledo and the AAUP resulted in the finding that since Faculty Workloads are not a subject of collective bargaining, they cannot be subject to Arbitration under a Collective Bargaining Agreement. Other Universities, as set forth in the evidentiary record, i.e., the University of Akron and Central State University were also a party to the Ohio Supreme Court and the United States Supreme Court decisions previously referenced, to demonstrate other Employers have adopted provisions consistent with Ohio Revised Code Section 3345.45.

Despite the Union's assertion this Statute does not address Workload, but addresses the ratio of teaching to research, the current state of Federal law, State law, and that of the State Employment Relations Board, as well as, and at least one (1) Arbitration Decision, indicates this determination is one that is deferred to management to decide the Workload of its Employees; i.e., the Faculty. It is generally viewed that whatever is not addressed in a Collective Bargaining Agreement would be subject to the exercise of Management in a good faith effort to engage in its day-to-day operations, whatever those might be. Here, the current financial state the University, for various reasons, finds itself in, provides compelling reasons to follow/recommend the legal precedent as articulated in the various Court Decisions - the United States Supreme Court; the Supreme Court of Ohio; the State Employment Relations Board, and in Arbitration, wherein the

determination of “Workload” is viewed as an inherent Management Right. That being said, it is recommended the Parties adhere to the current state of the law recognizing Workload as such.

VI. ARTICLE 23

COMPENSATION

UNIVERSITY POSITION

The University proposes that for academic and fiscal years 2017 through 2019 Bargaining Unit Faculty members receive no raises. It insists, as has been the theme throughout this process, it simply does not have the money to raise Faculty salaries. It emphasizes it cut or deferred expenses from its 2018 budget by \$30,000,000; it laid off approximately 57 employees as part of an overall elimination of 189 positions; it fully depleted over \$100,000,000 in unrestricted financial reserves; its bank account and investment balances fell by 75%; and, it formed a Strategic Hiring Committee which has been instructed to not approve any new hires unless absolutely needed to address health, safety, revenue, or compliance needs. The Chairman of the Trustee's Finance Committee has indicated the University is operating on "at razor thin levels with no margin for errors going forward." It was reported by the Dayton Daily News the University needs to slash an additional \$10.5 million from its budget for 2019 because of unexpected fellowship and scholarship costs and enrollment issues. The University simply does not have the ability to finance further salary increases and to do so would threaten its financial sustainability and result in the reduction of services to students and the public. It submits it simply cannot pay the existing salaries of its Employees, is unable to fill current vacancies, pay current salaries and benefits of Faculty members without drastic cuts to the services it offers to Students and the surrounding community, and simply cannot raise salaries by the 8% being sought by the Union.

It submits the overwhelming evidence of record supports its position regarding the unprecedented financial crisis as seen in the cost comparison of the University's proposal and that of the AAUP. As contained in the University's binder titled "WSU Fact Finding, Other Open Articles" at the tab identified as Article 23, "Compensation", a comparison of the University's proposal and that of the AAUP demonstrates the costs associated with each year of the three-year Successor Collective Bargaining Agreement including salary and pension contributions. The University emphasizes the Union's proposal would cost the University an additional \$7,000,000 in the final two (2) years of the Successor Agreement. Additionally, based on the AAUP 2016-2017 Faculty Compensation Survey, the average salary for Professors at Public Universities in Ohio wherein Wright State Professors earn an average of \$117,000 per year - more than the average salaries of Professors at comparable Universities. Only three (3) Universities pay their Professors a higher average salary than Wright State. These Professors earn a higher than average salary than those at Bowling Green State University, Cleveland State University, Ohio University, and the University of Akron.

Moreover, the average salary for Associate Professors at other comparable Public Universities in Ohio compared to Wright State demonstrate the Associate Professors at this University earn more than the average salary than the Associate Professors at all but two (2) other comparable Universities. Wright State University Associate Professors earn more than the average salary of comparable Employees at Bowling Green State University, Cleveland State University, Kent State University, Ohio University, the University of Akron, and the University of Cincinnati.

With respect to Assistant Professors at other comparable Ohio Universities, Assistant Professors at Wright State earn more than the average salary of all but three (3) other comparable

Universities - Bowling Green State University, Cleveland State University, Kent State University, University of Akron, and the University of Cincinnati. Instructors at Wright State, on average, earn more than comparable Instructors at Bowling Green State, Miami University, University of Akron, and the University of Cincinnati. As contained in this Exhibit, the University notes that from fiscal year 2003 to fiscal year 2017, AAUP Members compared to Non-Union Staff received cumulative wage increases of 38.75% for the Non-Bargaining Unit Staff compared to AAUP Members receiving cumulative wages increases of 44.25%. From fiscal year 2015 to fiscal year 2017, when the University depleted more than 75% of its financial reserves, Union Members still received cumulative increases of 9.75%. At the same time, Non-Bargaining Unit Staff only received a wage increase of 5.5%. The Non-Bargaining Unit Staff also received no wage increase for fiscal 2018, which demonstrates these Employees have received significantly less than Bargaining Unit Employees.

Based on the cost-saving measures described, State trends, based on the Fact Finding process, support the University's overall position taken herein. It references the financial difficulties experienced by the State of Ohio in 2009 following the financial disaster and the "Great Recession" experienced by this Country. It cites a Fact Finding Report issued by Fact Finder David M. Pincus concerning the State of Ohio, the largest Public Employer and the largest bargaining Unit in the State of Ohio, wherein similar financial circumstances existed. Recommended therein were numerous cost-saving measures that should serve as the precedent established concerning the State of Ohio and OCSEA as a guideline facing this University that is unprecedented and undisputed regarding its financial crisis.

AAUP POSITION

The AAUP proposes no wage increase in year one (1); a 4% across-the-board increase in year two (2); and, a 4% across-the-board increase in year three (3) of the Successor Collective Bargaining Agreement. It emphasizes the year-two proposal is directly related to the Administration's proposal to increase the premium contributions and deplete the plan design for all health insurance plans in an amount that, if recommended and adopted, would amount to a 4% wage reduction for Faculty Members. It emphasizes the year-three proposal is based on the assumption the current financial circumstances will be alleviated sufficiently enough to allow for an increase for salaries across-the-board in academic years 2019-2020. The Union argues even though the Administration proposes a three-year wage freeze, it wants to retain its right to award merit increases without any criteria or limitations. Such, it insists, is unacceptable and runs counter to the University's overall objective. The Union proposes no merit pool during any of the three (3) years of the Successor Collective Bargaining Agreement; however, it proposes to maintain the mechanism for awarding merit increases set forth in Article 11 in the future. The Union is proposing to delete the language in Article 23 providing for market/equity increases given the current financial situation of the University.

It submits any increases to Faculty salaries under Article 23 should be distributed equally through across-the-board increases only. When the University's finances have recovered sufficiently enough to allow for merit increases and/or other market/equity increases, such can be discussed by the Parties when those situations so provide.

RECOMMENDATION AND RATIONALE

Again, it goes without saying the evidence of record demonstrates the overwhelming financial shortfalls that exist at Wright State University. The evidence of record demonstrates it

is indeed altogether plausible, if not likely, that unless drastic measures are taken, the University will find itself in fiscal watch subject to day-to-day scrutiny with respect to any and all expenditures made. As previously indicated, indeed drastic times demand drastic measures with respect to a Public Institution of Higher Learning of this size and magnitude and restoration of its financial viability and sustainability must be at the forefront for all concerned.

Given the testimony of those charged with the day-to-day operations and the overall financial components of operating a Public University of this size, and taken in conjunction with that articulated by Howard Bunsis, the financial expert called by the AAUP, what exists as a common theme from both presentations is the University has expended much, if not all, of its reserves and now finds itself in dire financial circumstances on the verge of being placed on fiscal watch if its overall economic status does not improve. It certainly does not take a great deal of time to "run through" the amount of money allegedly expended by University Administration if funding supervision is lax or non-existent; however, to regain that amount of money on such a short period of time likely will not occur. Cost-containment efforts under a three-year Collective Bargaining Agreement, under State guidelines, simply affords very little time to regain the financial sustainability this University enjoyed approximately five (5) years prior.

Obviously, drastic measures must be undertaken to afford a meaningful opportunity to effectuate these goals. Given the fact the Parties are already in the second year of the Successor Collective Bargaining Agreement, the overall impact of the recommendations contained herein, subject to approval and ratification, nonetheless would not demonstrate an immediate financial impact recognizing the overall goal of the University to regain financial sustainability and reduce the likelihood of it being placed on fiscal watch. As previously indicated, these issues,

unfortunately, regardless of who is to blame with respect to the overall financial picture the University is facing, they truly exist and must be addressed. Universities of this size and stature do not grow exponentially overnight and are driven, as the evidence of record demonstrates, by many factors, including the overall economy, the influx of international students, and sustainability of in-state and out-of-state Student enrollment.

The University must be, and remain, an attractive commodity with respect to higher education and these types of status-measuring devices start and end with the quality of the Faculty and the educational mission of the University. This is not to say this recommendation would include a declassification from Division I athletics to a lower Division because the evidence of record also demonstrates that such represents an overall attraction to many students whether they are athletes or not in any learning institution. They are a viable attraction that draws Students to Universities generally and given the recent successes of Wright State University in certain Division I sports, including baseball and basketball, such simply does not warrant any modification to its current Division I status.

Indeed, the financial status of this University is in jeopardy and recovery is not something that occurs overnight or in the short timeframe of a three-year Collective Bargaining Agreement. Long-term objectives and goals and more importantly, mindsets of those in charge of expenditures, must change in recognition of the financial condition that currently exists and the lessons learned from it. These considerations are not to be taken lightly by all concerned – both the Administration and Members of this Bargaining Unit. The collaborative efforts of the Parties to address these financial issues and constraints must be an on-going process with both Parties demonstrating the willingness to engage in accommodation and open discussion about whatever means may be employed to address the best interests of all concerned. For the purpose of the

Successor Collective Bargaining Agreement and based on the overwhelming evidence of record demonstrating the financial position of the University, it is recommended there be no wage increases for the duration of the Successor Collective Bargaining Agreement.

VII. ARTICLE 24

MINIMUM SALARIES

UNIVERSITY POSITION

The University proposes that minimum salaries not be increased for the academic and fiscal years 2017 to 2019, respectively. Again, it bases this on the current financial status of the University given the overwhelming financial evidence contained in this record. It submits average salaries at Wright State are already above most of other peer Universities within the State of Ohio and the Union's proposal to raise the minimum salaries even further demonstrates the lack of understanding of the current and severe financial challenges facing the University.

The University emphasizes the evidence of record demonstrating the minimum salaries for Professors at comparable Universities in the State of Ohio is more than \$9,000 higher than Kent State, \$12,500 higher than the University of Cincinnati and nearly \$15,000 higher than Youngstown State University. It is \$15,000 higher than Cleveland State, almost \$20,000 higher than Bowling Green State University and more than \$30,000 higher than the University of Toledo. Such, it contends, demonstrates this University's minimum Professor's salary is well above market relative to comparable Employees. Additionally, the minimum salary for Associate Professors at comparable Universities indicates Wright State's minimum Associate Professor salary is significantly higher than Kent State, University of Cincinnati, Youngstown State University, Cleveland State University, Bowling Green State University, Shawnee State, Central State, and University of Toledo. This University's minimum Associate Professor's salary

is more than \$13,000 higher than the average minimum salary at comparable Universities in the State of Ohio.

It emphasizes its evidence regarding the minimum salaries for Assistant Professors compared to Wright State University. This University has a higher minimum salary for Assistant Professors than any other of the peer Universities, which is \$4,000 higher than the minimum salary for Assistant Professors at the next closest University, Cleveland State.

The minimum salary for Lecturers at the comparable Universities demonstrates Wright State has the second highest salary for its Lecturers. It has a higher minimum salary for Lecturers than Kent State, Bowling Green State University, Shawnee State, and the University of Toledo. The minimum salaries for Instructors demonstrate Wright State has a higher minimum salary for Instructors than Youngstown State, Bowling Green State University, Shawnee State, Central State, and the University of Toledo.

AAUP POSITION

The Union proposes no increase for minimum salary in year one (1); a 5% increase in minimum salaries across-the-board in year two (2); and, a 5% increase in minimum salaries in year three (3). It emphasizes the University's position during Fact Finding that it was not seeking any increases or decreases to minimum salaries during the term of the Successor Collective Bargaining Agreement. However, there was discussion at the Fact Finding Hearing the Administration's proposal did not accurately reflect this position. The Parties drafted agreed-on language for Article 24, which, if adopted, would maintain minimum salaries with no increase or decrease during the duration of the Successor Collective Bargaining Agreement. Even though it agreed to that language accomplishing and maintaining the minimum salary levels as set forth, it did not agree there should be no increase in minimum salaries. Minimum salary only affects

the lowest paid Faculty Members in each rank. Increasing minimum salaries is necessary because any change in healthcare affects the lowest paid Faculty members the most.

RECOMMENDATION AND RATIONALE

Again, it must be re-emphasized the existing financial turmoil facing Wright State University. Given the magnitude and the impact of recommending anything other than maintaining that already in place would undermine the University's goals and objectives of regaining financial stability and sustainability. Where the Parties may have drafted language that would maintain minimum salaries with no increase or decrease during the Successor Collective Bargaining Agreement, such is hereby recommended herein.

The University simply would not be in a position to finance or fund in any way, shape or form if it no longer exists. While indeed this sounds extreme and drastic, the possibility certainly exists, unless drastic and extreme measures are undertaken for at least a short timeframe until such time the University gets “back on its feet” and begins to recognize what can occur when unrestrained spending runs contrary to fiscal prudence.

Based thereon, the language as referenced as agreed to by the Parties, is recommended demonstrating *no increases and/or decreases in minimum salaries* for the duration of the Successor Collective Bargaining Agreement. This certainly does not prevent the Parties from revisiting these considerations when negotiating the Successor to the Successor Collective Bargaining Agreement at issue before the Undersigned.

VIII. ARTICLE 26

INSURANCE BENEFITS -

Medical, Dental & Vision Insurance

Appendix E – Summary of Medical, Dental & Vision Benefits

UNIVERSITY POSITION

Besides wages, the University's healthcare proposal is perhaps the most important issue the University needs the Fact-Finder to award. The University has deferred tens of millions of dollars in maintenance costs and made one-time cuts of more than \$40 million over two (2) years, but it has not made structural changes with regard to staffing levels, workload assignments, and benefit costs for AAUP employees. The easiest of these structural changes to address, with the least amount of disruption, is a unified healthcare plan covering all University Employees.

This is the one issue where the Parties can save money by negotiating better prices with vendors and providers. However, the University can only do that by negotiating a healthcare plan for the workforce as a whole. WSU's inability to continue normal operations without drastic reductions in routine services, such as maintenance, trash collection, library materials, computers, etc., puts the Fact-Finder in a position where he must adopt the Administration's request to put in place a uniform healthcare plan for this Campus. This is particularly so because the Union has already agreed to eliminate one (1) part of its healthcare plan (the 90/10 plan) that is distinct from the rest of the University; put another way, a uniform plan would not cause disruption in healthcare services. A unified plan would not cause any Faculty Members to leave their Doctor, enter a new network of healthcare providers, sign up with a new health system, or seek a structural change in services.

This change would allow flexibility when the University brings a uniform plan out to bid. It would allow for ease of administration, and there would be one campus-wide policy for the benefits staff to manage. This truly is the University's most important proposal because it cannot

maintain the current piecemeal approach to healthcare given it is in the worst financial condition of any University of its size in the United States.

WSU is managing healthcare plans that cover more than 2,000 lives – yet it lacks the flexibility to make reasonable changes to modernize the plan covering more than 500 AAUP Members, encourage consumer-driven behavior, and keep costs increasing at a sustainable rate. Many other comparable Employers do not manage healthcare plans of this size and scope without flexibility. This has to change to help WSU restore its financial sustainability. The University can no longer afford unpredictable, piecemeal, and inflexible healthcare provisions that increase expenditures needlessly as enrollment and revenue continue to decline.

The University's healthcare costs for AAUP Members are increasing at an unsustainable rate. In February 2018, as reported by the local newspaper of record, the Board of Trustees learned healthcare expenditures would cost \$6 million more than the University anticipated. The increased expenditure occurred during a year when WSU implemented austerity measures to cut more than \$30 million from its budget. The University can no longer pay for unpredictable increases in healthcare costs by depleting its financial reserves and having to wait every three (3) years to address healthcare changes with its single largest group of Employees. It must be given flexibility to survive in its current state.

Most large Employers use flexibility and economies of scale to reduce the growth of their healthcare costs and keep their plans sustainable. However, this University has been unable to modernize its healthcare plan – even during the financial crisis – because it cannot include AAUP Members in the same healthcare plan that covers all other WSU Employees, from the President of the University and other high-ranking members of the Administration to the clerical and support staff Employees. The changes proposed by the University will keep its healthcare

costs sustainable by providing flexibility, the ability to adapt to ever-changing healthcare costs, and an opportunity to negotiate with the vendors as a uniform buyer of health care services. This proposal is necessary to provide the single largest cost savings by having one uniform plan to ensure the University remains intact over the long-term, in the interests of the public, the Faculty, and other WSU Employees.

By way of example of the dire consequences of not adding healthcare flexibility, even a two (2) percent difference in the growth of healthcare costs has a massive impact on the University's expenditures on the healthcare plan. This is because the annual increase in healthcare costs compounds over time. The impact of just a two (2) percent difference in the growth of healthcare costs cannot be overstated. It submitted a chart demonstrating the impact of a two (2) percent difference in the growth of healthcare premiums over ten (10) years. This chart shows that the long-term financial sustainability of the University hinges on its ability to control the growth of healthcare costs.

Further, increased flexibility that is received by one (1) uniform plan is necessary for WSU to make limited plan design changes to address the changing landscape of healthcare. The University simply cannot afford to set the details of the healthcare plan in stone every three (3) years indefinitely for more than 500 AAUP Members regardless of the cost – especially not while WSU tries to recover from one of the most severe financial crises ever faced by any Public College or University in the Country.

The AAUP makes the rather absurd and emotional argument that the University seeks to “bust the Union” by preventing it from bargaining on healthcare. That is simply not true. The AAUP will have the same opportunity to bargain on healthcare coverage every single Contract term when the Labor Agreement expires. If WSU has recovered financially at that time, the

AAUP can request to return to a separate healthcare plan that only covers Faculty Members. However, WSU must have the flexibility to offer AAUP Members the same healthcare coverage that all of its other Employees receive.

The AAUP argues Faculty Members are different than other Employees, and they should continue to receive their own separate healthcare plan that is set in stone and remains *status quo* for three-year intervals. This argument is outdated and unsupported. The health of a Faculty Member is no more or less important than the health of any other University Employee. WSU is only proposing that Faculty Members receive the same healthcare coverage all Employees receive – from the President and other Administrators to clerical and support staff. The argument that the Administration would intentionally provide inferior healthcare coverage for their own families makes no sense. The reality is AAUP Members are seeking to maintain better and significantly more expensive healthcare coverage than the Administration and other Employees receive. This is simply not sustainable for a University in the midst of a severe financial crisis.

The evidence presented by the University demonstrates the Fact-Finder must adopt its proposal on healthcare. The Fact-Finder can find evidence on healthcare in the binder labeled “WSU Fact-Finding Insurance and Benefits.” Behind Tab 1 is a chart showing the historical increases in healthcare costs for the University. The chart shows that in the past five (5) years alone, WSU’s healthcare costs have increased by \$5 million – despite the changes in the healthcare plan provided to Employees outside the AAUP Bargaining Unit. This illustrates the University cannot achieve the necessary savings on healthcare without the ability to cover all Employees with the same plan.

Tab 2 contains an Excess Claims Report reflecting certain medical and pharmaceutical payments for AAUP Members from 2014 to 2016, and Tab 3 includes another chart showing WSU's expenditures on medical, prescription drugs, dental, and vision. In just two (2) years, the medical and pharmaceutical payments for AAUP Members increased by more than \$1 million from \$6.57 million to \$7.59 million - an increase of more than 15 percent. The University cannot continue to finance increasing and unpredictable expenditures on healthcare as State funding remains stagnant and enrollment and revenue continue to decline. Further, as reflected in Tab 4, Union Members paid less than 10 percent of the cost of medical and prescription drugs. This is less than the percentage of medical and prescription costs paid by other comparable Employees.

Tab 5 includes a chart showing WSU's medical expenditures per AAUP Member compared with averages for other Colleges and Universities. The average medical expenditure per Faculty Member nationally is \$12,345, and the average in Ohio is very close at \$12,406. The chart shows that WSU is an outlier. The University pays an average of \$14,744 per AAUP Member for medical costs – almost 20 percent higher than the average expenditures for other Colleges and Universities both nationally and in Ohio. Obviously, WSU cannot continue to finance a healthcare program that results in expenditures 20 percent above market.

Importantly, Tab 7 shows that other comparable Union Employees at WSU use the same healthcare plan as Non-Union Employees. All other Union-represented Employees at this very University have the same health insurance plan as Non-Union Employees, and the same premium contribution for single and family coverage. The University police officers, sergeants, communications center operators, truck drivers, warehouse, sales, service, and casino employees already have the same health insurance plan and contributions as other Non-Union Employees.

Only AAUP-represented Faculty Members receive a static, inflexible health insurance plan different from every other WSU Employee, with different contributions for single and family coverage. This shows that other comparable WSU Employees are all covered by the same healthcare plan. The AAUP can offer no reasonable explanation for why the University should treat Faculty Members different than everyone else – especially during an unprecedented financial crisis made worse by the lack of flexibility under the AAUP healthcare plan.

Tab 8 includes a chart summarizing the health insurance plans for staff and Non-Bargaining Unit Faculty, and Tab 9 compares their health insurance plan to other comparable Colleges and Universities. The summary shows that the healthcare plan contains deductibles and costs within industry and geographical averages. By contrast, Tab 10 includes a chart summarizing the health insurance plans for AAUP Members. The summary shows that the AAUP's healthcare plan is well below industry averages for deductibles and out-of-pocket expenses. WSU cannot continue to finance an above-market healthcare plan as it tries to recover from the financial crisis.

Tab 11 includes a chart showing the University's savings on healthcare costs for 2017. The chart shows that WSU saved over \$1.3 million based on plan design changes to the health insurance plan covering staff and Non-Bargaining Unit Faculty. Again, this is the same healthcare plan that covers other Union-represented Employees outside the AAUP, the Administration, and every other WSU Employee. The University was not able to achieve any cost savings in the healthcare plan offered to AAUP Employees despite the unprecedented financial crisis.

Tab 12 is even more important. It shows the potential cost savings the University could have achieved in 2018 by putting AAUP Members on the same health insurance plan as every

other WSU Employee. By making reasonable adjustments to the healthcare plan and including AAUP Members, the University could save almost \$4.5 million in 2018 alone. Those savings are critically important as WSU attempts to recover from the financial crisis.

Tab 13 summarizes the changes made to WSU's health insurance plans in 2017 and 2018. These are reasonable changes consistent with the healthcare plans offered by other comparable Colleges and Universities in Ohio and around the Country. This shows other comparable WSU Employees have already received adjustments in their healthcare plans to bring them in line with industry averages and achieve cost savings. AAUP Members should receive no better and no worse healthcare coverage than other WSU Administrators and Employees, consistent with industry averages.

Tab 14 contains the SERB 2017 Health Insurance Report. The SERB Health Insurance Report reinforces again WSU's healthcare plan offered to other Employees outside the AAUP is more than reasonable relative to comparable Employers. The Report shows the majority of Colleges and Universities have deductibles comparable to or higher than the deductible in WSU's health insurance plan for non-AAUP Employees. Similarly, Tab 15 includes a national survey on health insurance. It shows the average Employee contributes 18 percent of the premium for single coverage and 31 percent of the premium for family coverage. WSU's healthcare coverage for non-AAUP Members is in line with national trends.

Tab 16 summarizes the health insurance benefits at Ohio University; Tab 17 for Miami University; and, Tab 18 for Ohio State University. These summaries show other well-known Ohio Universities have adopted a uniform, consistent approach with Faculty and Staff health insurance coverage. These are three (3) of the most respected, well-run Universities in the State of Ohio. A uniform, campus-wide health plan approach at Ohio University, Miami University

and Ohio State did not lead to campus unrest or poor healthcare, and it will not at Wright State! Faculty Members at Ohio University, Miami, and Ohio State receive the same healthcare coverage as other Employees; WSU Faculty Members should also.

The AAUP argues WSU should not be compared to these other Universities despite the many similarities because their Faculty Members are not in a Union; however, the Ohio Revised Code does not limit the consideration of “comparable Employees” to those represented by a Union. The Fact-Finder must consider a comparison of the healthcare coverage “relative to the employees in the bargaining unit . . . related to other public and private employees doing comparable work.” Unquestionably, Faculty Members at Ohio State, Ohio University, and Miami University are doing comparable work to that performed by WSU Faculty members and the University community continues to function in an orderly, professional and successful fashion!

Tab 19 includes a Report from the University’s health insurance consultant, Horan. The Report shows the average claims per member for WSU is 22.3 percent higher than the national average. The University must have the ability to reduce the growth of healthcare expenditures by offering AAUP Members the same plan as every other WSU Employee.

Finally, the tab labeled “Uniform Approach to Benefits” demonstrates dozens of Public Employers around the State of Ohio have provided Bargaining Unit Members with the same or similar health insurance plans as other Employees. We encourage the Fact-Finder to review these provisions to see the uniform approach to healthcare is part of an ongoing, modern trend across this State. Other Public Employers overwhelmingly provide comparable provisions in their Labor Contracts consistent with the University’s proposal. The AAUP may argue about the details of some of these Contracts, but that is “missing the forest for the trees”. Many Public

Employers throughout Ohio have modernized their healthcare coverage by offering the same or similar plans to most if not all of their Employees.

In sum, the evidence overwhelmingly establishes AAUP Members are receiving above-market health insurance coverage. Their healthcare plan is out of line with the healthcare coverage offered to other comparable Faculty Members at Colleges and Universities around the Country, other Public Employers in Ohio that offer the same healthcare coverage to Bargaining Unit and non-Bargaining Unit Employees, comparable institutions like Miami and Ohio University, and perhaps most importantly, every other WSU Employee. The evidence indicates the University could save \$4.5 million every single year by extending the same healthcare coverage to this Bargaining Unit that all other WSU Employees receive. The AAUP has not offered any realistic solutions or compromises to help the University achieve those savings. In light of the undisputed and unprecedented financial crisis, the Fact-Finder must adopt the University's proposal to offer AAUP Employees the same healthcare coverage the President of the University and every other Employee receives.

AAUP POSITION

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 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).

The Parties have been bargaining since January 2017 and 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(s), 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 (2) 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 no 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 (4) 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 (5) 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 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 Agreements at other Public Universities in Ohio. As shown, none of them have waived their right to negotiate health care. All of them recognize 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 the Administration had formed a "Committee" to review health care. What he neglected to say was 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. She characterized called the Administration's changes to health care "aggressive" multiple times throughout her presentation. She claimed the Administration explored a number of options but admitted the AAUP-WSU was never involved in any of these discussions and never invited to any health care informational meetings. She also claimed 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 and 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 represent 25 percent of all Employees at Wright State University. (Slide #62). Slide #63 shows where AAUP-WSU Employees fall within the current five (5) 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 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 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 all Employees 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 its proposal on health insurance be adopted.

RECOMMENDATION AND RATIONALE

Since the implementation of Ohio Revised Code 4117 Wages and Insurance Benefits contractually defined have been at the forefront of this statutory resolution process. It goes without saying that in most instances, the two (2) main issues before a Fact Finder and/or a Conciliator, under the statutory process, involves the economic benefits/issues concerning wages/compensation and that recognized under the umbrella of insurance. The statewide trends concerning health insurance has taken on various changes and modifications over the past several years resulting from increased cost, uncertainty with health care benefit options and coverage levels attendant therewith. Moreover, throughout this Country, and specifically the State of Ohio, pharmaceutical costs passed on to the consumer have been the subject of ongoing debate, increases recognized and dwindling options with respect thereto.

The Fact Finder is indeed mindful of the impact such has on any group of affected Employees when the cost of these benefits for basic medical care and pharmaceutical care in conjunction with situations like this where reductions must be considered and effectuated to address the financial concerns that exist. This evidentiary record does indeed support the conclusion this University's financial status is in grave jeopardy unless certain unprecedented cost-containment and reduction measures are taken regardless where the fault may lie. The two most expensive items with respect thereto concerning an Employee's "benefit package" provided in any employment setting, as such relates to personnel, are compensation and insurance.

As previously indicated, and to place emphasis on the drastic measures being recommended and supported by the evidentiary record, taken in conjunction with the Statutory criteria recognized in this process, it was recommended the Successor Collective Bargaining Agreement maintain current levels with respect to minimum compensation as set forth in Article

24 and recognizing no wage increases for the duration of the Successor Collective Bargaining Agreement.

The recommendation contained herein is not intended to eliminate the Union's ability to bargain over health insurance, generally, premium contribution levels, etc., specifically, and that with respect to pharmaceutical costs. This recommendation is not intended to undermine and/or diminish the role of the exclusive Bargaining Agent, the AAUP, with respect to negotiating benefits, including that recognized in Article 26 and specifically Appendix E concerning medical, dental and vision benefits. The crux of this recommendation recognizes the University's dire financial picture that in many ways has been self-created and also in other ways is a bi-product of elements and components beyond the control of either contracting Party.

Indeed, the Universities within the State of Ohio recognize, as in any employment setting, for that matter, certain benefits including insurance. In order to remain competitive, the state trend has been to streamline the application and implementation of an entity-wide insurance program/plan that would allow the Employer, and indirectly in many ways, the Employees to address and attempt to maintain insurance coverages under these "unified plans". The State trend, by and large, is recognizes the adage "negotiating strength in numbers" is indeed applicable with respect to negotiating terms and conditions of insurance plans and coverage levels, and consequently, premiums passed on to the Employees when a larger group can be proposed as opposed to several smaller groups. Such certainly does not eliminate the ability of the Union to bargain over this particular contained in the Collective Bargaining Agreement, such is a mandatory subject of bargaining; simply for the duration of the Successor Agreement that proposed by the University makes financial sense given the current financial status of the University and the need to reign in expenditures.

The University's proposal takes into consideration the unified approach, which State trends seems to suggest, to afford the entities of various sizes, the greater ability to negotiate a more economically feasible insurance plan for affected Employees. Greater benefit levels can be obtained and in many ways the cost for these benefits can be reduced when the numbers are greater and provides the "entity" the negotiating power to seek that it would otherwise be unable to seek if the entity was fragmented with the same number of Employees, however, under various and individual groups. With any unified plan comes flexibility when it comes to seeking bids on insurance coverage overall and a campus-wide policy would provide administrative streamlining for the duration of the Successor Agreement. As previously indicated with respect to other cost saving measures, if you will, recommended herein, this Article, too, would have a Sunset provision with respect to the duration of this Successor Collective Bargaining Agreement. Moreover, as the record demonstrates, the Union has agreed to eliminate the 90-10 plan.

The emphasis of this recommendation obviously must take into consideration the objective of the University to regain financial sustainability, avoid fiscal watch and address its out-of-control spending that must be reined in in order to meet these goals. Moreover, this drastic measure also takes into consideration, for the duration of this Successor Collective Bargaining Agreement, an opportunity for the University to hopefully gain, in a more fiscally prudent manner, cost-containment measures that will assist in reducing its overall budgetary outlays as needed to avoid being placed in fiscal watch. As was articulated at the Mediation Sessions and Fact Finding Hearings, and as is set forth in the pre and post Hearing Statements of the University, these changes not only would include members of this Bargaining Unit, but all Employees of the University from the President and other Administration to the Clerical and Support Staff. The overwhelming evidence of record concerning the financial picture for this

University warrants, even on a temporary basis for the duration of this Successor Collective Bargaining Agreement, drastic and immediate changes in the way in which this particular benefit is handled for this specified duration.

Given the difficulty in implementing any plan on a University-wide basis, the implementation date for this recommendation be January 1, 2019 and run for the duration of the Successor Collective Bargaining Agreement as recognized and proposed by the University. Such affords the Parties the ability to negotiate this, other affected benefits and other terms and conditions of employment for inclusion in the Successor to this Successor Collective Bargaining Agreement.

IX. APPENDIX I

COST SAVINGS DAYS – FURLOUGHS

UNIVERSITY POSITION

WSU has few options available to cover unanticipated cost increases or revenue declines. Over the past six (6) years, the University covered for unanticipated expenditures by depleting its financial reserves – but they are now mostly gone. If enrollment declines further than expected in the Fall, for example, the University may have less revenue than it projected. It cannot make up for the lost revenue by falling back on its depleted reserves, so how can the University cover the shortfall? Retrenchment may be necessary to achieve long-term sustainability, but it does not help the University address short-term budget deficits because many Faculty Members selected for retrenchment may receive a full year of severance, based on length of service, so the University does not realize any savings from retrenchment in the first year.

The University must have the option of implementing “cost-savings days” to avoid any more deficit spending. As recognized by the General Assembly and other prominent

Universities around the State, as well as, by other Public Employers facing financial difficulties, cost-savings days or “furloughs” are sometimes necessary to make up for budget deficits. Over the past four (4) years, WSU has faced some of the largest budget deficits in the history of higher education in the United States. If cost savings or furlough days are not appropriate at WSU, then they should not exist. The University’s unprecedented financial crisis makes it abundantly clear cost-savings days need to be available to the Administration to pay the University’s bills.

WSU proposes that Faculty Members may be scheduled for “cost-savings days” as a result of financial exigency, or only within a two-year period after WSU receives two consecutive Senate Bill 6 scores below 2.40, or pursuant to a financial recovery plan under fiscal watch. WSU’s proposal would give the University the flexibility to schedule cost-savings days (furloughs) for the same reasons WSU can implement furloughs University-wide. This proposal would give WSU the ability to save a significant amount of costs without permanently laying off Employees or permanently cutting their base salary. This is necessary in light of the financial crisis. A cost-savings day is a less drastic means for the University to save money than retrenchment. This allows Faculty Members to keep their jobs, and maintain their base pay, while the University works through any financial emergency. The University’s proposal includes guardrails that require the Administration to only schedule cost-savings days if a furlough is first or simultaneously implemented for other non-Bargaining Unit Employees.

Similar to retrenchment, under the University’s proposal, it could only implement cost-savings days when facing severe financial difficulty. First, financial exigency only applies where severe financial problems exist which threaten the University’s ability to maintain its academic operations at an acceptable level of quality. Second, a Senate Bill 6 score of 2.40 for two (2) consecutive years means that for a two-year period the finances of the University were in

a significantly worse position than any other Public University or Community College in the State of Ohio. As explained in the retrenchment section, no other Public University or Community College in the State of Ohio currently has a Senate Bill 6 score below 2.40 – the level necessary to demonstrate sufficient financial recovery to emerge from fiscal watch under Ohio Administrative Code Section 126:3-1-01(F)(1)(a). Moreover, the University would only have the ability to implement cost-savings days for a 24-month period. Third, the University would only implement a financial recovery plan under fiscal watch status as recognized in the Ohio Revised Code.

The evidence supporting the University’s proposal on cost-savings days is in the binder labeled “WSU Fact-Finding Other Open Articles, Appendix I Furlough”. The second page behind Tab 1 in this section describes a chart showing the savings the WSU could achieve through cost-savings days. The chart shows the amount the University would save from instituting one or five cost savings days, broken down by Employee Classification. For non-Bargaining Unit Employees, WSU would save \$253,268 by implementing just one cost-savings day, and five (5) cost-savings days would save the University over \$1.26 million. For Bargaining Unit Faculty, WSU would save \$250,683 by implementing one (1) cost-savings day, and over \$1.25 million from five (5) cost-savings days. Cumulatively, including the Teamsters and FOP, the University would save over \$619,000 through a single cost-savings day. Five (5) cost-savings days across WSU would save the University more than \$2.63 million.

Tab 2 includes a chart of furlough policies (similar to cost-savings days) for other Ohio Universities. Other comparable Employers have cost-savings days or furlough days available when needed.

Tab 3 contains a recommendation from Cleveland State’s Budget Advisory Task Force in 2011 advising the University may have to consider possible furloughs to balance its budget after an anticipated reduction in the subsidy from the State of Ohio. Cleveland State projected the savings from a five-day furlough would exceed \$2.6 million. Other comparable Universities would strongly consider implementing furloughs or cost-savings days due to budgetary shortfalls much less severe than the recent deficits at WSU, and peer Universities project a very similar level of savings.

Tab 4 contains YSU’s Furlough Policy, Tab 5 contains Miami University’s Furlough Policy, and Tab 6 contains the Furlough Policy for Ohio University. All three Universities have implemented Furlough Policies to achieve spending reductions to address budget deficits. The purpose of the YSU Policy, for example, is to “provide for Employee cost-sharing measures in order to achieve spending reductions due to a significant operating budget deficit.” The Policy states a budget deficit could occur because of “a loss of state funding, a decline in institutional enrollment, or other actions that affect the operating budget in a significant manner.” Miami’s Policy includes very similar language. Again, this shows that other peer Universities implement furloughs or cost-savings days when they encounter budgetary deficits.

Tab 7 includes WSU’s internal briefing regarding a potential Furlough Policy. The briefing explains the Furlough Program would be used to maintain financial solvency at WSU. WSU has been much more reluctant to implement furlough days than other peer Universities, which plan for furlough days to address budgetary deficits rather than to maintain financial solvency. Importantly, the implementation of a Furlough Policy by the Board of Trustees is consistent with House Bill 153, which is included at Tab 9.

Finally, and perhaps equally important, Tab 8 includes another copy of the Fact-Finder's Report from Fact-Finder David Pincus in 2009, issued to the State of Ohio and OCSEA. Fact-Finder Pincus recommended the State implement cost-savings days due to the recession and the resulting budgetary shortfall. The Parties agreed on a number of cost-savings measures but reached impasse on cost-savings days. Fact-Finder Pincus recommended the insertion of Article 36.11 into the Labor Contract. The provision stated, "Full-time permanent employees in bargaining units 6, 7, 9, 13, and 14 shall take ten (10) days off without pay, for a total of eighty (80) hours, in each fiscal year beginning on July 1, 2009 and ending on June 30, 2011." Fact-Finder Pincus also recommended cost-savings days for other Employees to be assessed on holidays.

This Fact-Finder's Report demonstrates the norm in the State of Ohio when a Public Agency faces significant budgetary shortfalls is to implement cost-savings days. Cost-savings days allow Employees to keep their jobs without forcing the Employer to implement layoffs to make up for a budgetary deficit. The Fact-Finder's recommendation was accepted by the State of Ohio and by OCSEA. The precedent established by the adoption of similar Policies around the State, the adoption of House Bill 153, and the implementation of cost-savings days by Fact-Finder Pincus, the State of Ohio, and OCSEA indicates the University's proposal is reasonable. WSU is undisputedly out of money, and it continues to face a significant budget deficit. The University should have the ability to implement cost-savings days, like the State of Ohio, to make up the deficit without necessitating retrenchment or further layoffs. WSU's proposal would not allow the Administration to ask Faculty Members to bear more of the burden for the financial crisis than other Employees – as WSU could only implement cost-savings days at the

same time or after implementing furlough days for other non-Bargaining Unit Employees. This proposal should be adopted by the Fact-Finder.

AAUP POSITION

There is no current language in the CBA on furloughs. The proposed new language for a new Appendix I is language the Administration placed on the table for the first time on January 19, 2018 and 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 ORC 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 (3) basic responsibilities – teaching, scholarship, and service. The job of NTE Bargaining Unit Faculty involve two (2) 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 (2) 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. Even if Wright State is able to avoid fiscal watch by achieving an SB6 score of 1.90 for fiscal year 2018, 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, 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 Y. Chan testified during the Fact-finding Hearing(s) 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 (3) weeks of vacation each year. In his case, the three (3) unpaid days was simply a 0.87% wage reduction with an additional three (3) days of vacation. For a 12-month Employee who works 52 weeks x 5 days = 260 days (in pay status, inclusive of paid holidays and vacation). Three (3) unpaid days = 0.87% of 260 days. For faculty at Wright State, a 5-day furlough is a 7.5% wage reduction with no additional time off, because they only work (and are only paid) for nine (9) months (other than Fiscal Year Faculty) and are not on contract during winter or summer break. In other words, Mr. Chan'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.

RECOMMENDATION & RATIONALE

Indeed, the inclusion of what the University identifies as “Cost-Savings Days” and the Union as “Furloughs”, would be new language contained in the Successor Collective Bargaining Agreement(s) as previously identified. Pursuant to discussions initiated by the Undersigned to place objective criteria in the Collective Bargaining Agreements with respect to triggering and effectuating certain cost-savings measures, (*See*, Retrenchment, Wages, Insurance, etc.) and address the negative connotation of the term “Furlough”; experience suggests a more positive light can be cast on such measures, on an otherwise adverse situation; as such, the phrase “Cost-Savings Days” has gained growing acceptance throughout the State. All concerned and affected can readily understand what cost-saving days are and how such will affect them when implemented.

The Union contends, given the current status of the University with respect to its Senate Bill 6 score at the time of these proceedings, and based on what score it would receive for 2018, would automatically “trigger” the implementation of this, as well as, other cost-saving measures to the detriment of the Bargaining Unit(s). The discussions that ensued included consideration of, and is subject to, dispute and objection by the Union since it contends the proposal of the Administration first occurred in January 2018 and a modified version in May 2018 in violation of the Negotiated Ground Rules and Ohio Revised Code 4117.14.

As was emphasized on numerous occasions to each respective Bargaining Team, the Undersigned views, as does the majority of the neutral community within the State of Ohio,

Mediation is an extension of Fact Finding and both are an extension of the Collective Bargaining Process. The Parties' ability to continue to modify and exchange proposals, while they may indeed “technically” violate the spirit and intent of negotiated ground rules, nonetheless, in the opinion of the Fact Finder, demonstrate the Parties' willingness to listen to, and act upon, concerns raised by the Neutral and/or the other side and make modifications in relation thereto that may be viewed as more palatable in the general scheme of things. Again, the consideration of the Senate Bill 6 score is at the very theme of many, if not all, of these cost-reduction/containment measures being sought by the University and an objective approach to what triggers the ramifications of such seems reasonable.

It would seem beneficial to all, rather than creating such subjective triggering event(s), to establish something that is identifiable, and objective based on an outside determination of a triggering criteria, i.e., the designation by the Department of Higher Education of the Senate Bill 6 score for all Public Colleges and Universities. It would indeed make sense the University have the ability, rather than eliminating positions, to impose Cost-Savings Days and/or Furloughs, for Employees to realize and recognize an immediate impact to its overall expenditures with respect to personnel. Such certainly seems to provide a more tempered approach to cost-saving measures than to effectuate layoffs if such were not an option.

As was previously discussed, reduction of personnel is one of the most common means by which any business entity Public, Private, Federal or those in Higher Education, typically turn to in order to address certain cost-saving measures. This situation is no different. These Cost-Savings Days are intended to afford the University some immediate relief with respect to its overall budgetary concerns/expenditures and is certainly not an uncommon means by which this can be achieved. Indeed, the State of Ohio and the largest Public Sector Union had in place, at

one time, the ability to implement Furloughs when the financial crisis occurred, and drastic measures were necessary in order for the State to reign in its expenditures as such pertained to its operating the various Governmental Agencies throughout the State. According to the record, the University maintains a Furlough Policy for other Non-Bargaining Unit Employees and, according to that Policy, these Employees must be furloughed before, or at the same time, as Bargaining Unit Faculty members. Such obviously puts into place a more expansive use of Cost-Savings Days and/or Furloughs by including not only Faculty, but other Employees of the University.

The number of days subject to this recommendation based on that which would assist the University in achieving its cost reduction/containment endeavors would, in the opinion of the Fact Finder, satisfactorily assist in doing so based on two (2) Cost-Savings Days/Furlough Days per semester, excluding, obviously, the Summer Term based on the short duration thereof and the increased number of classes, per Course taught, in a particular Summer segment. Moreover, it is recommended this new language be subject to a Sunset Provision, which would terminate at the end of the Successor Collective Bargaining Agreement. Given the timeframe of when this Report is being issued, such would not become effective until January 1, 2019 since by all accounts, the issuance of this Report and supporting Rationale, will be at a time when the Fall semester is reaching its end. As such, the effective date of this recommendation would be January 1, 2019 and run for the duration of the Successor Collective Bargaining Agreement.

Such takes into account that which has been the theme of these negotiations, the Undersigned's involvement with the Parties in Mediation and the Fact Finding Proceedings wherein the University, for various reasons, some self-imposed and others beyond the control of the University, finds itself in a financial predicament that requires drastic measures to regain its

viability, financial sustainability and hope of avoiding Senate Bill 6 scores that would place it in fiscal watch. Unless drastic measures are taken to demonstrate to prospective Students, the Public in general, and all others throughout the State concerned about the impact of this matter, this University would remain in a downward cycle with respect to hopefully ever climbing out of this financial disaster. This particular issue hopefully provides some ability for the University to address its financial predicament in an immediate fashion and would terminate when the Successor Collective Bargaining Agreement expires.

X. APPENDIX J

RETIREMENT INCENTIVE PROGRAM

UNIVERSITY POSITION

The University proposes a voluntary Retirement Incentive Program to assist its efforts in saving expenditures the University requires. Such, it emphasizes, is purely voluntary and would allow Faculty Members to retire effective January 1, 2018 to December 31, 2020 and become eligible for post-retirement employment under defined parameters. It is proposing to offer to Bargaining Unit Faculty the opportunity to participate in a Retirement Incentive Program based on their choice. No one would be forced to participate in this program, but such would indeed help the University continue to cut costs and balance its budget without impacting any Faculty Members except those who chose to participate.

It references its binder titled “WSU Fact Finding, Other Open Articles, Appendix J Retirement Incentive” wherein such contains the University of Cincinnati's Retirement Incentive Benefit which allows, through Collective Bargaining, additional retirement to offer Bargaining Unit Members additional retirement incentives. It also contains Ohio State University's Re-employment of Faculty and Staff Program providing for the re-employment of Faculty and Staff

who have retired or received a separation incentive. The University of Akron's Transitions After Retirement Program is included, which is similar to Wright State's proposal because it permits Faculty to transition from active employment to retirement. Such, it contends, demonstrates other comparable Universities are offering Employees a voluntary retirement incentive even though they are not facing anywhere near the budget deficit and financial crisis facing Wright State. There is simply no reason this University should not be able to offer AAUP Members the option of a purely voluntary retirement incentive which would allow the University to save money while offering a voluntary benefit to AAUP Members.

AAUP POSITION

The Union indicates it is not opposed, in theory, to an Early Retirement Incentive Program since there is no current language in the Collective Bargaining Agreement providing such. It objects, however, to memorializing such, without certain criteria and/or protections to the Members. The University's proposal has no details and its Bargaining Team was simply unable to answer any basic questions regarding it. In 2016, the Administration approached the Union with a proposed Retirement Incentive Program wherein the Union sought modifications, and such were adopted. Such was then offered to the Faculty Members. Here, however, the Union has no indication of how a new Retirement Incentive Program would be designed. In the event of layoffs would the newly retired Faculty have the right to come back to the University to teach classes formerly taught by laid-off Faculty? Would any alleged violations to the new Retirement Incentive Program be subject to the Grievance and Arbitration Procedure in the Collective Bargaining Agreement, even if the violation affected retired Bargaining Unit Faculty? Would some Faculty members be entitled to significant payouts as an incentive to retire early, while others have lower wages and reduced benefits?

If the new Collective Bargaining Agreement contains language allowing this Retirement Incentive Program without any criteria or protections, it would communicate to all Bargaining Unit Faculty, the Union is "on board" with such a program even if it is ill conceived or financially detrimental to the Members. It emphasizes the Parties have worked in the past to design and implement an early Retirement Program. However, the language, as written, allows the Administration the unfettered ability to implement any type of program and to hide behind the auspices that such was mutually agreed upon because it originates in the Collective Bargaining Agreement.

RECOMMENDATION AND RATIONALE

Generally, when any business entity encounters financial difficulties, there are oftentimes the ability of Employees to receive an incentive to retire to reduce certain outlays to them; usually, those Employees with enough "tenure" with the Employer to even be considered in such discussions. Such eliminates the need, if so taken by Employees able to do so, of having to lay off other Employees that may not be in a position to accept an incentive to retire. Again, clearly the financial circumstances of this University are seemingly driving this proposal concerning incentives for early retirement as an additional means to address expenditures.

While such may indeed be beneficial to many Employees who chose to accept such, it may not be as beneficial to others because of perception reasons. It would seem that if indeed the University is seeking to implement, or have available such a Program, it could certainly achieve that objective in a University Policy. If it so chooses to place such in the Collective Bargaining Agreement, then each Party would have the ability to discuss and, hopefully, come to an agreement as to how such would look, be implemented and be managed. The evidence of record demonstrates that even members of the University's Bargaining Team could not answer

seemingly basic questions about the scope, breadth, application, and impact the University's proposal concerning this Retirement Incentive Program. Given the lack of these considerations, the Union has indicated its “agreement in theory” to explore a Retirement Incentive Program, subject to, however, input by the Union with respect to its scope, breadth, and application.

As such, it is hereby recommended the Parties “agree in principal” to the concept of offering early retirement to those who may be interested; however, subject to the Parties reaching some kind of agreement with respect to the framework of such a program. The positive aspects of this program recognizes the voluntary nature in which it obviously exists. Generally, there is no ability of any Employer to force anyone into retirement, but to provide enough incentives to make such attractive may be the framework upon which such can ultimately be discussed, memorialized and implemented as a benefit to Bargaining Unit Members.

ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Those Issues/Articles, if any, not subject to the presentation of evidence, not identified/addressed during the course of either the Mediation Sessions or the Fact-Finding Hearings, or those not referenced by either Party, shall be subject to a *status quo* recommendation relative to whatever policy, practice, provision or procedure that may have existed relative to the predecessor Collective Bargaining Agreement. Such shall be maintained for consideration/inclusion in the Successor Collective Bargaining Agreement ratified and/or approved and implemented by these Parties, as the *status quo* provides.

The Fact Finder has extensively reviewed the Parties’ Pre-Hearing Position Statements, prior to and following the Mediation Sessions and the Fact Finding Hearings; the voluminous evidence in support of the positions taken by each Party; the internal parity and external comparables relied upon by each Party; the statutory criteria mandated under ORC Chapter 4117; the stipulations reached by them as gleaned from their respective Principal

Representatives; and, the Tentative Agreements reached during this very time-consuming process. The afore-referenced serves as the basis for the issuance of this Report.

CONCLUSION

Indeed, unprecedented circumstances require unprecedented measures to address the untenable financial status of this University. Those recommended measures, except where otherwise indicated, are for the duration of the Successor Collective Bargaining Agreement and, where applicable “sunset” upon its expiration. The recommendations contained herein, and those stipulated to by the Parties, as set forth in the Fact Finding Position Statements and supporting documentation, are indeed deemed reasonable in light of the economic and contractual data presented and reviewed by the Fact Finder; the presentations made by the Parties based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in the many Tentative Agreements reached; are supported by the internal parity and external comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; and, the stipulations of the Parties as set forth in the positions taken. Those recommendations contained herein hopefully enable the Parties to reach a sensible center, which as previously identified, is the ultimate goal of the statutory process.

David W. Stanton

David W. Stanton, Esq.
NAA Arbitrator & Mediator
Fact Finder

October 29, 2018
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies a true copy of the foregoing Fact Finding Report, based on the Fact Finding Positions of the Parties and the extensive supporting documentation introduced, has been forwarded by electronic transmission to Susannah Muskovitz, Attorney and Principal Representative for the American Association of University Professors – Wright State University Chapter (muskovitz@mlabor.com); Daniel J. Guttman, Attorney and Chief Negotiator for Wright State University (dguttman@bakerlaw.com); and, to the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215 (Med@serb.state.oh.us) on this 29th day of October 2018.

David W. Stanton

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