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**PURSUANT TO O.R.C. CHAPTER 4117
UNDER THE AUSPICES OF THE
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER BETWEEN)	
)	
YOUNGSTOWN STATE UNIVERSITY)	
CHAPTER OF THE OHIO EDUCATION)	FACTFINDER'S REPORT
ASSOCIATION)	SERB CASE NO.
)	2017-MED-06-0785
and)	
)	
YOUNGSTOWN STATE UNIVERSITY)	

This Factfinding arises pursuant to Ohio Revised Code Chapter 4117. The Parties are the Youngstown State University Chapter of the Ohio Education Association (“OEA”) and Youngstown State University (“YSU”). The Parties selected Susan Grody Ruben and SERB appointed her to serve as sole, impartial Factfinder, whose Recommendations are issued below.

Hearing was held July 10, 2017, August 4, 2017, and August 14, 2017 in Youngstown, Ohio. The Parties were represented by advocates and were afforded the opportunity to present positions and evidence. The Parties agreed this Report would be due on or before September 12, 2017.

APPEARANCES:

for OEA:

**Professor Jamal Tartir, YSU and Professor Albert Sumell, YSU;
and Nathan Williams, OEA and Tara Reynolds, OEA**

for YSU:

Allan Boggs, YSU; and Seth Briskin, Esq., Meyers, Roman, Friedberg & Lewis

FACTFINDER'S RECOMMENDATIONS

Statutory Criteria

In reaching Recommendations on the open issues, the Factfinder has reviewed the parties' submissions, and the evidence and positions presented at the Factfinding Hearing. The Factfinder has analyzed this information in the context of the statutory criteria found in Ohio Revised

Code Section 4117.14(G)(7):

- a) Past collectively bargained agreements ... between the parties;**
- b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;**
- c) The 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;**
- d) The lawful authority of the public employer;**

- e) The stipulations of the parties; and
- f) Such other factors, not confined to those listed ... which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Bargaining Unit

There is one bargaining unit of full-time faculty consisting of approximately 365 individuals.

Incorporated Articles

The Factfinder hereby incorporates into her Recommendations the following contract sections, with the changes, if any, agreed to by the Parties:

Article 2.3	Recognition and Scope of Unit -- Exclusions
Article 2.4	Recognition and Scope of Unit -- Definition
Article 3	Term of Agreement
Article 4.2b	STRS Salary Reduction Pick-Up
Article 4.2c	Alternative Retirement Program
Article 4.8	Overload Pay
Article 4.9	Salaries for Faculty on Grants
Article 4.10	Certification Deficiency
Article 4.12	Intra-University Transfer

Article 4.13	Faculty Supplement for International Field Classes
Article 5.1(B)	Insurance Benefits – Maintenance of Benefits/Open Enrollment
Article 5.1(C)	Insurance Benefits – Working Spouse/Coordination of Benefits
Article 5.1(D)	Insurance Benefits – Coverage Levels and Additional Coverage Features
Article 5.1(E)	Insurance Benefits -- Booklets
Article 5.1(F)	Insurance Benefits -- Health Care Budgets
Article 5.1(G)	Insurance Benefits -- Wellness Program
Article 5.4	Insurance Benefits -- Dental Coverage
Article 5.5	Insurance Benefits – Vision Care
Article 5.9	Insurance Benefits – Right to Alter Carriers
Article 5.10	Insurance Benefits – Health Care Advisory Committee
Article 5.11	Insurance Benefits – Section 125 and Premium Pass-Through Benefits
Article 5.12	Insurance Benefits – Life Insurance – Retirees Conversion Policy
Article 5.13	Insurance Benefits – Life Insurance – Active
Article 5.15	Insurance Benefits – COBRA Rights
Article 5.16	Insurance Benefits – Voluntary Long-Term Care Coverage
Article 5.17	Insurance Benefits – Voluntary Life Insurance Coverage
Article 5.18	Insurance Benefits – Coverage Eligibility for Approved Leaves
Article 6	Sabbaticals and Faculty Improvement Leaves

Article 7.1	Leaves – General
Article 7.2	Leaves – Paid Leaves
Article 7.3	Leaves – Unpaid Leaves
Article 7.3.1(a)	Leaves – Unpaid Leaves – Eligibility
Article 7.3.1(b)	Leaves – Unpaid Leaves – Duration
Article 7.3.2	Leaves – Professional Leave Without Pay
Article 7.3.3	Leaves – Political Leave
Article 7.3.4	Leaves – Exchange Professors Leave
Article 7.3.5	Leaves – Leave to Care for Domestic Partner
Article 7.4	Leaves – Other Leaves Provided by Law
Article 8	Grievance Procedure
Article 9.1	The Academic Environment – Introduction
Article 9.2	The Academic Environment – Dean’s Advisory Council
Article 9.3	The Academic Environment – Academic Department
Article 9.5	The Academic Environment – Administrative Rights and Responsibilities
Article 9.6	The Academic Environment – Extra-Departmental Curriculum Issues
Article 9.7	The Academic Environment – Department Meetings
Article 9.8	The Academic Environment – The Department Chair
Article 9.9	The Academic Environment – Term of Office
Article 9.10	The Academic Environment – Selection of the Department Chair

Article 9.11	The Academic Environment – Requests for New Elections for Chair
Article 9.12	The Academic Environment – Acting Chair
Article 10	Tenure
Article 11	Non-Reappointment of Non-Tenured Faculty
Article 13	Retrenchment of Faculty
Article 14	Faculty Evaluation
Article 15	Promotion in Faculty Rank
Article 17	Personnel Files
Article 18	Academic Freedom
Article 19.1	Retirement – Summer Continuation
Article 19.3	Retirement – Continued Benefits
Article 20	Students
Article 22.1	Association Rights – General
Article 22.2	Association Rights – Access
Article 22.3	Association Rights – Use of University Facilities at No Cost
Article 22.4	Association Rights – Use of Other University Facilities
Article 22.6	Association Rights – Non-Discrimination
Article 22.7	Association Rights – Committee Service and Duties
Article 23	Dues Deduction and Fair Share Fee
Article 24	Administration-Association Relations
Article 25	Separability

Article 26	Academic Workplace Environment
Article 27.2	Faculty Development and Research – Research Professors
Article 27.3	Faculty Development and Research – Intellectual Property
Article 27.3(a)	Faculty Development and Research – Intellectual Property Rights
Article 27.3(b)	Faculty Development and Research – Use of Intellectual Property
Article 27.4	Faculty Development and Research – Travel
Article 27.5	Faculty Development and Research – University Outreach Fee Remission
Article 28	Teaching Rights and Responsibilities
Article 29	Miscellaneous
Article 30	Types and Duration of Contracts
Article 31	Distance Education
Appendix A	Definitions
Appendix B	Retrenchment Matrix
Appendix C	Faculty Tasks, Duties, and Assignments

Unresolved Issues

1. Article 1 – Preamble

OEA Proposal

The Union proposes the second paragraph of the Preamble be modified as follows [new language in *italics*]:

This Agreement shall constitute the sole and entire agreement between the parties with respect to matters set forth herein. *There are no other terms or conditions of employment except those contained herein. Any modifications or additions to the terms and conditions of faculty employment shall take the form of Memoranda of Understanding (MOU) agreed to and signed by both parties.* All policies, practices, or procedures in conflict with the provisions hereof *shall be* discontinued. The provisions of this Agreement shall take precedence over any policies, practices, or procedures that are inconsistent with its terms. Such inconsistent policies, practices, or procedures shall be *rendered* null and void.

YSU Proposal

Status quo.

Factfinder's Recommendation

The current language provides a standard “zipper clause” that establishes the Agreement as the primary, superseding governing document between the Parties. The proposed addition of the two sentences, “*There are no other terms and conditions of employment except...signed by both parties*” is an unrealistic view of labor relations. No written document or documents can possibly cover all terms and conditions of employment. When disagreements arise, the Parties should discuss the matter. If discussion does not lead to a mutually-acceptable resolution, a grievance can be filed. Once a grievance is filed, there would

be further discussion between the Parties that hopefully would lead to a resolution. If, and only if, the Parties cannot resolve the matter themselves, there can be an arbitration, where an arbitrator will determine which Party's view comes closer to representing the apparent intent of the Parties as reflected by the language of the Agreement. This is the time-tested way for entities to function under a collective bargaining agreement.

The other two proposed edits – “*shall be*” and “*rendered*” are recommended as they are effective clarifications of the zipper clause.

2. Article 2.1 – Recognition and Scope of Unit -- Exclusivity

OEA Proposal

OEA proposes modifying Article 2.1 as follows:

The Administration recognizes the Association as the exclusive bargaining agent for the members of the bargaining unit described below. Exclusive recognition means that the Administration will not deal with any other organization or any individual *who is not a member of the bargaining unit. OEA-designated representatives shall be allowed to participate. In matters of possible criminal charges or termination, personal attorneys shall be allowed to participate, in a manner or for a purpose inconsistent with the terms of this Agreement.* Individual contracts of employment with members of the bargaining unit shall in all respects be consistent with this Agreement, which shall be deemed incorporated by reference in such individual contracts. The parties agree to cooperate with each other in the administration and the enforcement of this Agreement.

YSU Proposal

YSU proposes modifying Article 2.1 as follows:

The Administration recognizes the Association as the exclusive bargaining agent for the members of the bargaining unit described below. Exclusive recognition means that the

Administration will not deal with any other organizations or any individual who is not a member of the bargaining unit. The OEA Labor Consultant shall be the sole exception to this limitation. ~~in a manner or for a purpose inconsistent with the terms of this Agreement.~~ Individual contracts of employment with members of the bargaining unit shall in all respects be consistent with this Agreement, which shall be deemed incorporated by reference in such individual contracts. The parties agree to cooperate with each other in the administration and the enforcement of this Agreement.

Factfinder's Recommendation

Exclusivity in labor relations is a two-way street. YSU deals exclusively with OEA, and OEA is the exclusive representative of individuals in the bargaining unit, as well as the bargaining unit as a whole. As a matter of law,¹ bargaining unit members may request an OEA representative at an investigatory interview; i.e., it is not some sort of “exception.” Requiring YSU to allow an employee’s personal attorney, however, to participate in a meeting regarding that employee’s employment relationship with YSU goes outside the concept of exclusivity. The Factfinder recommends that instead of requiring YSU to allow an employee’s personal attorney to attend a meeting, which is outside the bounds of mutual exclusivity, that this decision be made by YSU on a case by case basis. Article 2.1 would provide:

The Administration recognizes the Association as the exclusive bargaining agent for the members of the bargaining unit described below. An employee may request the presence of an OEA representative at an investigatory interview with YSU. An employee who wishes to bring a representative other than an OEA representative to a meeting with YSU can seek permission to do so from YSU. Individual contracts of employment with members of the bargaining unit shall in all

¹ NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975).

respects be consistent with this Agreement, which shall be deemed incorporated by reference in such individual contracts. The parties agree to cooperate with each other in the administration and the enforcement of this Agreement.

3. **Article 2.2 – Recognition and Scope of Unit – Scope of the Unit**

OEA Proposal

OEA proposes the following modifications to the first “bullet point” of Article 2.2:

Individuals with earned faculty rank on contract and attached to academic departments, whose primary duty is teaching and/or scholarship, which includes *all full-time faculty under the types of contracts listed in Article 30.2, on Term, Degree Completion, or Post Doctoral appointments* and faculty on prorated contracts because the effective date of appointment falls within the academic year.

YSU Proposal

YSU proposes similar modifications to the first “bullet point” of Article 2.2:

Individuals with earned faculty rank on contract and attached to academic departments, whose primary duty is teaching and/or scholarship, which includes *all full-time faculty under the types of contracts listed in Article 30, on Term, Degree Completion, or Post Doctoral appointments* and faculty on prorated contracts because the effective date of appointment falls within the academic year.

Factfinder’s Recommendation

The proposals are the same, with the exception of specifying Article 30 or Article 30.2. The Factfinder recommends OEA’s proposal, as specifying Article 30.2 rather than just Article 30 adds clarity.

4. **Article 2.5 – Recognition and Scope of Unit – Administration Participation in Department Matters**

OEA Proposal

OEA proposes deletion of Article 2.5, which permits administrators who are tenured in a Department, other than Department Chairs, to participate in recommendations on personnel matters unless by virtue of their administrative responsibilities, “they can shape, affect, or alter the outcome of such recommendations beyond the department.”

YSU Proposal

Status quo.

Factfinder’s Recommendation

The Factfinder recommends maintenance of Article 2.5. The language strikes a balance between administrators in their teaching roles and administrators in their administrative roles. The current language appropriately requires an administrator who plays a role beyond the Department on a personnel matter to recuse himself/herself from Department discussions of that personnel matter.

5. Article 4.1 – Salary Minima for Ranks

OEA Proposal

OEA proposes:

There shall be *five (5)* ranks among the full-time teaching faculty. For the life of the *2017-2020* Agreement, each rank shall have a salary minimum for nine-month contracts as follows:

Professor	78,474	75,674
Associate Professor	67,015	64,215
Assistant Professor	54,038	51,238
Instructor		38,689
Senior Lecturer	46,300	
Lecturer	41,489	

The salary minima for faculty who have been awarded at least one Distinguished Professorship Award shall be the sum of the salary minima indicated above and those increases to salary associated with the awards.

YSU Proposal

YSU proposes status quo for salary minima for the ranks of Professor, Associate Professor, and Assistant Professor. YSU further proposes:

Senior Lecturer	47,500
Instructor	
Lecturer	38,689

Factfinder's Recommendation

The Parties agree on eliminating the rank of Instructor, and adding the ranks of Senior Lecturer and Lecturer.

The OEA proposes a \$2800 increase to the ranks of Professor, Associate Professor, and Assistant Professor. This works out to a 3.7%

increase to Professor, 4.4% increase to Associate Professor, and 5.5% increase to Assistant Professor.

YSU proposes slotting in Lecturer at the former Instructor rate, and giving Senior Lecturers salary minima of \$47,500.

YSU professor salaries are at the very low end for both Ohio public universities and for comparable institutions. Accordingly, raising the rank minima is a good place to start to remaining competitive. The Factfinder recommends OEA's salary minima proposal for Professor, Associate Professor, Assistant Professor, and Lecturer; and YSU's salary minima proposal for Senior Lecturer. Thus, the salary minima for the 5 ranks would be:

Professor	\$ 78,474
Associate Professor	\$ 67,015
Assistant Professor	\$ 54,038
Senior Lecturer	\$ 47,500
Lecturer	\$ 41,489

The Factfinder recommends against adding Distinguished Professor cash awards to salary minima.

6. Article 4.2(a) – Salary Increases

OEA Proposal

OEA proposes the following increases to base salary:

2017-2018: 2% + rate of inflation

2018-2019: 2.5% + rate of inflation

2019-2020: 2.5% + rate of inflation

YSU Proposal

YSU proposes the following increases to base salary:

2017-2018: 1%

2018-2019: 1%

2019-2020: 1%

Factfinder's Recommendation

As referenced above, YSU professor salaries are at the very low end for both Ohio public universities and for comparable institutions. YSU professor salaries have not even kept up with the rate of inflation. Base salary increases are an effective way to respond to these issues. Rate of inflation increases are difficult for an employer to incorporate, as these rates cannot be accurately predicted for budgeting purposes.

Accordingly, in an effort to getting on the path to making YSU faculty professor salaries more competitive, as well as balancing YSU's budgetary needs, the Factfinder recommends:

2017-2018: 2%

2018-2019: 2%

2019-2020: 2%

7. Article 4.3 – Promotion

OEA Proposal

OEA proposes increasing promotion increments by \$300 for all ranks:

For promotion from Lecturer to Senior Lecturer: \$2,400

For promotion from Assistant Professor to Associate Professor: \$3,900

For promotion from Associate Professor to Professor: \$5,400

YSU Proposal

YSU proposes:

For promotion from Lecturer to Senior Lecturer: \$2,100

For promotion from Assistant Professor to Associate Professor: \$3,600

For promotion from Associate Professor to Professor: \$5,100

Factfinder's Recommendation

YSU faculty promotion increments also are at the low end for other Ohio public universities. There are approximately 20-30 promotions per academic year, making OEA's proposal for increases a \$6,000-\$9,000 new cost. The Factfinder recommends a \$300 increase in promotion increments for all ranks.

8. Article 4.4(A) – Distinguished Professorship Awards

OEA Proposal

OEA proposes amending the 2nd paragraph of current 4.4 as follows:

Overall contributions to the University in teaching, scholarship, and service will be considered as defined in Appendix C. However, for the purposes of this Article only, service will also include public service, ~~which means~~ discipline-related ~~public-service~~ or community-associated professional activities consistent with the University's mission and goals statement.

OEA also proposes amending the 3rd sentence of the 5th paragraph of current 4.4 as follows:

Individuals are restricted from consideration for a DP award in the same category no sooner than the *third (3rd)* ~~fifth (5th)~~-year since previously receiving an award in that category....

OEA also proposes amending the 1st sentence of the 9th paragraph of current 4.4 as follows:

Each Distinguished Professor award recipient shall receive a ~~\$3,000.00~~ ~~\$2,000.00~~ monetary award....

YSU Proposal

YSU proposes eliminating the cash component of Distinguished Professor in Years 2 and 3 of the Agreement, and using that money to fund a new Merit Pool.

YSU also proposes various procedural changes to the Distinguished Professor award.

Factfinder's Recommendation

The Distinguished Professor award appears to be accomplishing its purposes sufficiently well to maintain it for the 3 years of the Agreement.

OEA's proposal regarding the 2nd paragraph adds non-discipline-related public service to the award criteria. Given that this is a Distinguished Professor award, and not a "Distinguished Person" award, the Factfinder recommends status quo on this issue.

OEA's proposal regarding the 5th paragraph changes the waiting period for receiving another Distinguished Professor from 5 years to 3 years. To the extent Distinguished Professor awards incentivize distinguished work, 5 years seems like an unnecessarily lengthy waiting period. The Factfinder recommends reducing the waiting period from 5 years to 3 years.

Currently, YSU awards up to 24 Distinguished Professor awards per year, making OEA's increased monetary proposal cost up to \$24,000 initially. A Distinguished Professor award recipient's base salary gets credited with half of the award amount, leading to additional costs (e.g., pension calculations, compounding base salaries). Given the incremental costs associated with a Distinguished Professor award, but also keeping the financial reward meaningful, the Factfinder recommends increasing the Distinguished Professor award to \$2,500.00.

9. Article 4.4(B) – Distinguished Professor

OEA Proposal

OEA proposes adding the following language:

Faculty members who have received the Distinguished Professor Award in all three areas will be eligible to apply for the special title of Distinguished Professor. Application shall

be made by letter to the Provost along with verification of the required number of Distinguished Professor Awards. *A faculty member receiving the title of Distinguished Professor shall also receive a cash award of \$3,000 before June 1. As with the DP Award, this cash award can be split equally between a one-time lump sum payment and an increase to the base pay of the faculty member's base salary during the following fiscal year, provided that the faculty member is still actively employed by the University. Any retiring or resigning faculty member shall be paid the full amount.*

YSU Proposal

YSU proposes keeping the Distinguished Professor title an honorific only title; i.e., no cash component. YSU also proposes looking to the new Merit Pool to reward recipients of the Distinguished Professor title. YSU also proposes various procedural changes to the selection procedure for the Distinguished Professor title.

Factfinder's Recommendation

Tthe Distinguished Professor title appears to be in working order. The Factfinder does not recommend replacing it with a Merit Pool. The Factfinder recommends the Union's proposal, in light of the significant achievement of having earned all 3 Distinguished Professor awards.

10. Article 4.5 [new] – Merit Pool

OEA Proposal

OEA is opposed to a Merit Pool replacing the Distinguished Professor award.

YSU Proposal

YSU proposes a 0.5% Merit Pool, allocated in \$2,000 individual awards.

Factfinder's Recommendation

The Factfinder recommends against a Merit Pool. Such a significant change to a compensation system should be reached through negotiation, not through factfinding.

11. Article 4.6 – Summer Assignments

OEA Proposal

OEA proposes compensating summer courses at a flat \$2,500 per credit hour for summer classes with minimum enrollment levels, and a flat \$2,000 per credit hour if below minimum enrollment levels.

YSU Proposal

YSU proposes largely status quo, with the addition of a specification for when enrollment is counted for on-line courses and courses without set meeting times:

[e.g.,] a. Faculty teaching undergraduate courses with enrollment of 15 or more as of 6:00 a.m. on the first day of the class or as of 6:00 a.m. on the first Tuesday of the term for web-based courses or those courses without set days or times shall receive .0325(S)(TH).

YSU also proposes deletion of 4.6.4(g):

~~Summer courses that are offered as conference courses are to be scheduled at times and dates that are mutually convenient to the instructor and students.~~

Factfinder’s Recommendation

The Parties agree to delete the last sentence of the 1st paragraph of Article 4.6.1:

~~The chair’s total teaching assignment in the summer shall not exceed the highest number of teaching hours (TH) assigned to a full-time faculty in the department.~~

The Factfinder finds OEA’s proposal² to be more streamlined and comprehensible, and therefore recommends it. The Factfinder notes that the dollar amounts associated with OEA’s proposal will still generate “profit.”

12. Article 4.7 – Initial Appointment

OEA Proposal

OEA proposes adding “years of service” to the factors considered in determining salary and rank for an initial appointment:

An individual may be appointed at a salary and academic rank appropriate to his/her experience and qualifications as determined by the Administration with due consideration of the rank, salary, *years of service*, and qualifications of other faculty members in the department.

YSU Proposal

YSU proposes status quo.

Factfinder’s Recommendation

The Factfinder recommends OEA’s proposal. Considering years of service of other faculty in the department in setting an initial salary and academic rank goes toward successful integration into the department.

² See Association V3 for the complete language of OEA’s Summer Assignments proposal.

13. **New Article [eventually to be numbered Article 4.9] –
Competing Employment Offers and Faculty Retention**

OEA Proposal

OEA prefers to handle competing employment offers and faculty retention issues by Memoranda of Understanding, as has been done in the past. OEA prefers that this 0.25% pool of money go to the base of all full-time faculty.

YSU Proposal

YSU proposes a new article:

The Administration may raise the base salary of bargaining unit members beyond the negotiated amounts to retain a faculty member or to counter a bona fide offer of employment. A pool of funds shall be established for such purposes. The pool shall be calculated as one quarter per cent (0.25%) of the previous year's annual base salary of the bargaining unit members.

A proposal to increase a bargaining unit member's base salary shall be initiated by a Dean (excluding the Graduate College Dean). The Dean's proposal must include, along with the proposed amount of increase, a supporting rationale for the proposal, including evidence of a bona fide offer of other employment, if such offer exists. The proposal shall be submitted to the Provost, who will make the final determination on the proposal for a salary increase, subsequent to consultation with the YSU-OEA Executive Committee and its recommendation. The YSU-OEA shall forward its recommendation to the Provost within ten (10) calendar days of the receipt of the proposal for a salary increase. This consultation with the YSU-OEA Executive Committee shall not be required in cases of bona fide competing offers. Proposals for salary increase decisions approved by the Provost shall not be subject to the grievance procedure. Any proposal not approved by the Provost is null and void.

A faculty member who receives such an individual salary adjustment shall be ineligible for a merit raise in the same year

and ineligible for another competing employment offer [proposal] for the term of this Agreement.

Factfinder's Recommendation

Given that competing employment offers and faculty retention issues have been handled successfully in the past by MOU, the Factfinder recommends status quo.

14. Article 4.11 – Externally Funded Chairs

OEA Proposal

OEA proposes changing the nomenclature “Externally Funded Chairs” to “Endowed Professorships,” on the basis that “Endowed Professorships” is the more common description of this type of position in academe.

YSU Proposal

YSU proposes status quo on the basis that the two terms are different with regard to funding sources, termination requirements, and the type of employment agreement that needs to be written.

Factfinder's Recommendation

The Factfinder admits to being momentarily stumped by this one. A little bit of Googling, however, produced an excerpt from the College of Charleston's Strategic Plan, “Increase the number of funding for endowed and other externally funded chairs.”³

³ <http://irp.cofc.edu/strategic-planning/strategy-three.php?>

Given YSU's belief that the two terms are different has some support, the Factfinder recommends status quo.

15. Article 4.14 [new] – Special Salary Pools for Inversion/Compression
OEA Proposal

OEA is not opposed to increasing the salaries of full-time faculty. However, it is OEA's position that all full-time faculty deserve this salary increase.

YSU Proposal

YSU proposes the creation of an inversion/compression pool equal to 0.25% of full-time faculty salaries:

A special salary pool shall be established to address inversion/compression issues. This pool will be initiated for the 2018-2019 contract year. The available funding for each year will be equivalent to one-quarter percent (0.25%) of the actual expenditures for the nine-month base salaries for the prior fiscal year of all bargaining unit members as determined by the Vice President for Finance and Business Operations. This special salary pool will be utilized at the discretion of the Provost to address bona-fide inversion/compression issues as they may be identified and recommended by a Dean. The granting of a salary adjustment from this pool shall not be grievable.

Factfinder's Recommendation

The Factfinder does not recommend a discretionary inversion/compression pool. Instead, if the issue arises, it can be handled by an MOU.

16. Article 5.1(A) – Insurance Benefits – Summary of Coverage -- Eligibility

OEA Proposal

OEA proposes extending “same sex domestic partners” to domestic partners of any gender to the pool of individuals eligible for group insurance. OEA contends this would be an effective recruiting and retention tool.

YSU Proposal

YSU proposes removing domestic partners from the pool of individuals eligible for group insurance, given that states are now required to permit same sex domestic partners to marry if they wish.

Factfinder’s Recommendation

By law,⁴ as of June 26, 2015, same-sex partners are now eligible to marry. Accordingly, there is no longer a need to provide insurance coverage to domestic partners, given that all domestic partners have the option to marry. Accordingly, the Factfinder recommends the YSU proposal.

The Parties agree to no longer limit the pool of faculty children up to age 26 to “unmarried, financially dependent” children. Rather, all faculty children up to age 26 will be eligible for insurance coverage.

⁴ Obergefell v. Hodges, 576 U.S. ____ (2015).

17. **Article 5.1(H) [new] – Insurance Benefits – Transgender Care**

OEA Proposal

OEA proposes adding transgender care to the list of covered medical expenses under the health insurance plan:

The University shall provide for transgender-related medical care, including Gender Dysphoria, subject to accepted medical clinical guidelines. Such care shall be covered at the same percentage/basis as for any other diagnosis (compatible with Medical Mutual of Ohio Medical Policy 201609).

YSU Proposal

YSU proposes status quo.

Factfinder's Recommendation

The Factfinder is reluctant to recommend mandatory health insurance coverage of certain medical expenses that may not be mandatory by law. The Factfinder's understanding is that mandatory coverage of transgender-related care currently is in flux legally. The Factfinder's understanding also is that various transgender-related care is covered under the YSU health insurance plan. When the legal status regarding mandatory coverage of all transgender-related care is determined, YSU will of course comply with that. If OEA finds that compliance lacking, OEA can bring that to YSU's attention, and ultimately, if necessary, file a grievance. Accordingly, the Factfinder recommends status quo.

18. Article 5.2 – Insurance Benefits – Premium Sharing

OEA Proposal

OEA proposes decreasing employee contributions funding level from 15% to 12%. YSU employees have contributed over 18% of premium costs over the past 4 years, which is 3 percentage points, or approximately \$1.7 million, above the estimated share employees are supposed to contribute. Decreasing the employee contribution by 3 percentage points would allow the actual contribution to be closer to the agreed-upon share of 15%.

YSU Proposal

YSU proposes moving to a flat 15% premium contribution from employees starting the 2nd year of the contract. Moving to a flat rate from an income-based payment would cause approximately 70% of full-time faculty to spend less on health insurance.

Factfinder’s Recommendation

The Factfinder found the YSU insurance consultant’s testimony to be credible and convincing. YSU has a self-insured health plan that is sound, reasonable cost to employees, and provides good benefits. The Factfinder recommends the YSU proposal.⁵

⁵ The complete language of the YSU proposal for Article 5.2 is found in Administration Proposal #1 April 13, 2017.

19. Article 5.2(B) [new] – Insurance Benefits – Lump Sum Payments

OEA Proposal

OEA proposes a rebate for faculty members who would pay more under a new flat rate.

YSU Proposal

YSU is opposed to a rebate.

Factfinder’s Recommendation

Any time a change is made to health insurance, there will be a combination of savings on some items and increases on other items. While the desire for a rebate system is understandable, the Factfinder recommends a clean transition to health insurance changes; i.e., no look-backs and rebates.

20. Article 5.3 – Insurance Benefits – Office Visit Co-pay

OEA Proposal

OEA proposes status quo.

YSU Proposal

YSU proposes taking details such as the cost of an office visit co-pay out of the main part of the Agreement, and having them be in only in the plan documents in Appendix D – Insurance Benefits.

Factfinder's Recommendation

The Factfinder recommends having insurance benefits cost details only in Appendix D.⁶

21. Article 5.6 – Insurance Benefits – Annual Physical

OEA Proposal

OEA proposes status quo.

YSU Proposal

YSU proposes deleting full coverage of annual physicals billed as medical diagnoses because YSU does not control whether a physician codes a physical as preventative or medical.

Factfinder's Recommendation

The Factfinder recommends status quo. Coverage of annual physicals should be maintained. If there are individual problems with medical coding, those can be dealt with individually.

22. Article 5.7 – Insurance Benefits – Prescription Coverage

OEA Proposal

OEA proposes status quo.

⁶ If OEA or an individual in the bargaining unit believes benefits have been reduced, it can discuss this with YSU, or ultimately, file a grievance under 5.1(B) – Maintenance of Benefits.

YSU Proposal

YSU proposes taking details such as prescription coverage out of the main part of the Agreement, and having them be only in the plan documents in Appendix D – Insurance Benefits.

Factfinder’s Recommendation

Given that prescription drug coverage can change in a health insurance plan due to new drugs and other factors, it makes more sense to have prescription drug coverage described in Appendix D – Insurance Benefits, which has an on-line format.⁷

23. Article 5.8 – Insurance Benefits – Second and/or Third Medical Opinions

OEA Proposal

OEA proposes second and/or third medical opinions for any surgery.

YSU Proposal

YSU proposes addressing this issue in the Summary of Benefit and Coverage and Certificate Book on the Medical Mutual or Human Resources web site.

Factfinder’s Recommendation

The Factfinder recommends the OEA proposal. Whether second and/or third opinions are covered is not a detail subject to change during the duration of the Agreement.

⁷ See footnote 6, *supra*.

24. Article 5.14 – Insurance Benefits – Long-Term Disability Benefit Policy

OEA Proposal

OEA proposes new language permitting faculty in an Alternative Retirement Plan (“ARP”) to receive equivalent disability coverage as faculty in STRS.

YSU Proposal

YSU proposes status quo.

Factfinder’s Recommendation

The Factfinder recommends status quo. Faculty who wish to have disability coverage can choose STRS as their retirement option if they are eligible.

25. Article 7.3.1(c) – Leaves – Health Care Insurance

OEA Proposal

OEA proposes YSU pay the employer share of health insurance while a faculty member is on extended medical leave.

YSU Proposal

YSU proposes status quo.

Factfinder’s Recommendation

The Factfinder recommends status quo. Once a leave becomes unpaid, the employee can continue health insurance pursuant to COBRA.

26. Article 9.4 – The Academic Environment – Department Governance

OEA Proposal

OEA proposes a new review panel be formed when a dean and a department disagree about a governance document. The review panel would consist of faculty and administration members.

YSU Proposal

YSU proposes status quo, with the Provost making a final determination when necessary.

Factfinder’s Recommendation

The OEA proposal goes to the heart of shared governance, which is a stated YSU goal. While an advisory panel will add time to the formation or revision of a department governance document, it is important, for the sake of shared governance, to not let such a document default to the Provost. Accordingly, the Factfinder recommends the OEA proposal.⁸

27. Article 12 – Corrective Action and Termination for Cause

OEA Proposal

OEA recommends status quo.

YSU Proposal

YSU proposes numerous changes to Article 12.

Factfinder’s Recommendation

Though YSU presented evidence that the current language of Article 12 is cumbersome, that does not necessarily mean it needs to be changed.

⁸ Complete OEA proposal found at Association V3, August 3, 2017.

Due process can be cumbersome, but it is important and necessary. Additionally, to veer from status quo on this important subject is better done by negotiation than by a neutral's finding. The Parties need to engage in actual negotiation, which involves compromise and horse-trading.

28. Article 16 – Workload Activities

OEA Proposal

OEA proposed 24 workload hours, consisting of teaching, service, and research. OEA is willing to accept status quo as a compromise.

YSU Proposal

YSU proposes recognizing workload is a prohibited subject of bargaining.

Factfinder's Recommendation

Despite there being language in the current Agreement about workload, and despite there being workload language in some other state university contracts in Ohio, the fact remains that workload is a prohibited subject of bargaining under ORC § 3345.45. Accordingly, the Factfinder cannot lend a hand regarding bargaining over workload. YSU proposed language that should take the place of current Article 16 language:

Faculty workload activities shall continue to be handled consistent with the 2014-2017 CBA for the 2017-2018 school year.

In accordance with the requirements of Ohio Revised Code §3345.45, the Board of Trustees has established a “Faculty Workload” policy (3356-10-20) consistent with standards developed by the Ohio Department of Higher Education.

Beginning in the fall semester of 2018, workload distribution, allocation and administration will be handled exclusively through Board policy and Departmental governance documents. Any modification to these policies shall be at the sole discretion of the University in consultation with appropriate constituencies, including the Association, Administration, Chairs and Deans.

29. Article 19.2 – Retirement – Sick Leave Conversion

OEA Proposal

OEA proposes inserting a clarifying phrase to the penultimate sentence of 19.2:

Sick leave conversion *described in this article* does not apply to any termination or separation other than retirement.

YSU Proposal

YSU proposes status quo, but is not opposed to additional language.

Factfinder's Recommendation

The Factfinder recommends the additional language proposed by OEA.

30. Article 19.4 – Retirement – Separation Incentive Committee

OEA Proposal

OEA proposes adding a retirement incentive program.

YSU Proposal

YSU proposes status quo.

Factfinder's Recommendation

The Parties bargained to delete a retirement incentive program in the current Agreement. YSU states that based on its current faculty staffing, it

is not interested in returning to incentivizing retirement. Accordingly, the Factfinder recommends status quo.

31. Article 21 – Retained Rights

OEA Proposal

OEA proposes the following language change:

These rights include, but are not necessarily limited to, the right to determine the number of personnel needed in any category, to hire, transfer, and assign personnel; to suspend or terminate personnel (*exclusively through the procedures consistent with* of due process set forth herein);

YSU Proposal

YSU proposes status quo on the basis “exclusively through the procedures” pertains to termination.

Factfinder’s Recommendation

The OEA proposal clarifies that suspensions and terminations must be done in the way the contract specifies. That is correct. The proposed language does not unlawfully infringe on management rights. Accordingly, the Factfinder recommends the OEA proposal.

32. Article 22.5 – Association Rights – Printing of Agreement

OEA Proposal

OEA proposes reducing the number of printed copies to 500 from 550.

YSU Proposal

YSU proposes reducing the number of printed copies to 125, given that the contract will be on the YSU Human Resources web page.

Factfinder's Recommendation

There are approximately 365 faculty members in the bargaining unit. By reducing the number of printed copies to 125, it is quite possible many faculty members who do not receive a copy will print out the contract from the web on YSU photocopiers. This does not seem to be a good use of resources. Accordingly, the Factfinder recommends the OEA proposal.

33. Article 22.8 – Association Rights – Association Reassigned Time

OEA Proposal

OEA proposes increasing the pool of 12 Teaching Hours to 18 Teaching Hours per each academic year in non-negotiating years, and from 45 TH to 60 TH in negotiating years.

YSU Proposal

YSU proposes status quo.

Factfinder's Recommendation

The Factfinder recommends the OEA proposal. The increased cost to YSU is not substantial. The time spent by faculty members is substantial.

34. Article 22.9 [new] – Association Rights -- Summer Contracts for Negotiations

OEA Proposal

OEA proposes summer compensation for the faculty negotiating team should negotiations go beyond the 9-month academic year:

In accordance with Article 16.14, should negotiations of a successor Agreement extend beyond the end-point of the

members of the negotiations team's nine-month employment contract, then each member of the negotiations team shall be provided with a supplemental contract equivalent to the compensation for a three-credit hour summer course.

YSU Proposal

YSU proposes status quo.

Factfinder's Recommendation

The Factfinder recommends summer compensation for up to 2 faculty negotiating team members. Additional members can be compensated by OEA. Article 22.9 would read:

In accordance with Article 16.14, should negotiations of a successor Agreement extend beyond the end-point of the members of the negotiations team's nine-month employment contract, then *up to two members* ~~each member~~ of the negotiations team shall be provided with a supplemental contract equivalent to the compensation for a three-credit hour summer course.

35. Article 27.1 – Faculty Development and Research – External Funding

OEA Proposal

OEA proposes status quo.

YSU Proposal

YSU proposes deleting Article 27.1, given that it is a workload provision, which is a prohibited subject of bargaining under Ohio law.

Factfinder's Recommendation

As set out above, ORC § 3345.45 makes workload a prohibited subject of bargaining. Accordingly, the Factfinder recommends deleting Article 27.1.

36. Article 27.3(c) – Faculty Development and Research – Distribution of any Funds Generated

OEA Proposal

OEA proposes status quo.

YSU Proposal

YSU proposes changes to Article 27.3(c) as follows, beginning with the third paragraph:

Unless otherwise negotiated by the faculty member(s) and the University, funds received by the faculty member(s) and the University from the sale or licensing of intellectual property owned jointly by the faculty member(s) and the University

Factfinder’s Recommendation

ORC § 3345.14 provides in pertinent part:

(B) All rights to and interests in discoveries, inventions, or patents which result from research or investigation conducted in any experiment station, bureau, laboratory, research facility, or other facility of any state college or university, or by employees of any state college or university acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through any state college or university, shall be the sole property of that college or university. No person, firm, association, corporation, or governmental agency which uses the facilities of such college or university in connection with such research or investigation and no faculty member, employee, or student of such college or university participating in or making such discoveries or inventions, shall have any rights to or interests in such discoveries or inventions, including income therefrom, except as may, by determination of the board of trustees of such college or university, be assigned, licensed, transferred, or paid to such persons or entities in accordance with division (C) of this section or in accordance with rules adopted under division (D) of this section.

(C) As may be determined from time to time by the board of trustees of any state college or university, the college or university may retain, assign, license, transfer, sell, or otherwise dispose of, in whole or in part and upon such terms

as the board of trustees may direct, any and all rights to, interests in, or income from any such discoveries, inventions, or patents which the college or university owns or may acquire. Such dispositions may be to any individual, firm, association, corporation, or governmental agency, or to any faculty member, employee, or student of the college or university as the board of trustees may direct. Any and all income or proceeds derived or retained from such dispositions shall be applied to the general or special use of the college or university as determined by the board of trustees of such college or university.

In those cases where intellectual property is jointly owned by a faculty member and YSU, the status quo language strikes a reasonable balance. Accordingly, the Factfinder recommends status quo.

37. Article 27.4(a) – Faculty Development and Research – Departmental Faculty Development and Travel

OEA Proposal

OEA proposes increases to departmental travel funds from \$800 times the number of faculty members in the department to \$1,000 times the number of full-time faculty members in the department.

YSU Proposal

YSU proposes status quo.

Factfinder's Recommendation

The Factfinder recommends a compromise of \$900 times the number of full-time faculty members in a department.

38. **Article 27.4(b) – Faculty Development and Research – College Faculty Development and Travel**

OEA Proposal

OEA proposes to increase college travel funds from \$450 times the number of full-time faculty in a college to \$600 times the number of full-time faculty in a college.

YSU Proposal

YSU proposes status quo.

Factfinder’s Recommendation

The Factfinder recommends a compromise of \$525 times the number of full-time faculty members in a college.

39. **Article 27.6 – Faculty Development and Research – Publication Costs**

OEA Proposal

OEA proposes modifications as follows:

The Administration agrees to pay the reasonable page costs for publication of a bargaining unit member’s scholarly research ~~in a professional journal or periodical~~ provided that the publication carries the University’s identification. For ~~these peer reviewed professional publications journals or periodicals~~ where a submission fee is required, the University shall ensure that the cost of submission is supported by the University. Approval shall be secured in writing by the individual from his/her chair, dean and the dean of Graduate Studies using the appropriate form before making financial commitment to page costs.

YSU Proposal

YSU proposes modifications as follows:

The Administration agrees to pay the reasonable page-costs up to \$500 per year for publication of a bargaining unit member's scholarly *peer-reviewed* research in a professional journal or periodical provided that the publication carries the University's identification *and that the faculty member is not receiving financial remuneration associated with the publication.* For these peer reviewed professional journals or periodicals where a submission fee is required, the University shall ensure that the cost of submission is supported by the University. Approval shall be secured in writing by the individual from his/her chair, dean and the *Associate Vice President for Research* ~~dean of Graduate Studies~~ using the appropriate form before making financial commitment to page costs. *Costs that exceed \$500 are subject to Provost approval.*

Factfinder's Recommendation

The Factfinder recommends the following compromise:

The Administration agrees to pay the reasonable page costs for publication of a bargaining unit member's *peer-reviewed* research in a professional journal or periodical *publication* provided that the publication carries the University's identification. For those peer reviewed professional *publications* ~~journals or periodicals~~ where a submission fee is required, the University shall ensure that the cost of submission is supported by the University. Approval shall be secured in writing by the individual from his/her chair, dean and the ~~dean of Graduate Studies~~ *Associate Vice President for Research* using the appropriate form before making financial commitment to page costs.

40. Appendix D – Insurance Benefits

OEA Proposal

OEA proposes language to require that interest earned on the healthcare reserve account be used exclusively for purposes of funding healthcare.

YSU Proposal

YSU proposes deleting the definitions of Funding Level and Funding Rates, Reserve Policy, and Employee Contributions.

Factfinder's Recommendation

The Factfinder recommends against the OEA proposal to require healthcare reserve account interest earned be used exclusively for funding healthcare.

The Factfinder also recommends against the YSU proposal to delete definitions from Appendix D.

Accordingly, the Factfinder recommends status quo. The record shows this is a solid health plan. The Health Care Advisory Committee and OEA can protect bargaining unit members from unilateral changes to funding levels, rates, or policies during the period of the Agreement.

DATED: September 12, 2017

***Susan Grody Ruben*
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Factfinder**

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September 12, 2017

TO: YSU-OEA
YSU

RE: Factfinding for YSU-OEA and YSU
SERB Case No. 2017-MED-06-0785

INVOICE

1 Day of Mediation	...	\$ 950.00
2 Days of Factfinding	...	\$ 1900.00
6 Days of Study and Writing (40 open issues)	...	\$ 5700.00
TOTAL	...	<u>\$ 8550.00</u>
½ to be paid by YSU-OEA	...	<u>\$ 4275.00</u>
½ to be paid by YSU	...	<u>\$ 4275.00</u>

Thank you.