

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATER OF FACT FINDING BETWEEN:

Service Employees International  
Union, District 1199

Case No. 2013-MED-06-0780

Union

Date of Hearing: July 2, 2014

Date of Report: July 17, 2014

and

Cincinnati State Technical &  
Community College

Sherrie J. Passmore, Fact Finder

Employer

**FACT FINDER'S REPORT AND RECOMMENDATIONS**

APPEARANCES:

For Service Employees International Union, District 1199:

Michael Hunter, Attorney  
Mary Jo Ivan, SEIU 1199 Special Assistant to the President  
Alex Nelson, SEIU 1199 Industry Research Analyst  
Gail Quinlan, Negotiations Member  
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Deborah Powers, Negotiations Member  
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Wayne Herbers, Negotiations Member

For Cincinnati State Technical & Community College:

Christopher Hogan, Attorney  
Carla Chance, Executive Vice President  
Stephen Brooks, Labor Relations Manager

## **INTRODUCTION**

### **Case Background**

This case is a fact-finding proceeding between Service Employees International Union, District 1199 (SEIU or Union) and Cincinnati State Technical & Community College (CSTCC, College or Employer). The State Employment Relations Board (SERB) appointed Sherrie J. Passmore as the Fact Finder.

By agreement of the parties, a fact-finding hearing was held on July 2, 2014, 10:00 A.M., at the Cincinnati State Technical & Community College located at 3520 Central Parkway, Cincinnati, Ohio 45223. Both parties submitted the required pre-hearing statements in a timely manner. At the hearing, the Employer was represented by Attorney Christopher Hogan of Newhouse, Prophater, Letcher & Moots. Representing the Union was Attorney Michael Hunter of Hunter, Carnahan, Shoub & Byard. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue her report on July 17, 2014.

On the day of the hearing, an effort was made to resolve the remaining issues through mediation but those efforts were unsuccessful. The hearing was commenced and the parties presented evidence and arguments in support of their positions on the open issues. Numerous exhibits and Position Statements were submitted. The parties agreed to submit the open issues identified below to the Fact Finder to be addressed in her report and recommendations:

- Article 1 – Agreement
- Article 6 – Union Representation
- Article 7 – Management Rights
- Article 10 – Hours of Work, Overtime, Work Assignments
- Article 13 – Temporary Employees and Student Workers
- Article 19 – Training and Professional Development

- Article 21 – Filling of Vacancies
- Article 22 – Classification System
- Article 23 – Conflict Resolution/Grievance Procedure
- Article 25 – Layoff, Bumping, Recall
- Article 31 – Wages
- Article 33 – Compensation
- Article 35 – Certification and Adjustments
- Article 42 – Educational Benefits
- Article 44 – Cafeteria Benefits Plan
- Article 50 – Union Leave
- Article 57 – Termination of the Collective Bargaining Agreement
- Article 58 – Duration and Amendment
- Appendix B – Joint Benefit Committee

### **Description of the Employer**

Cincinnati State Technical and Community College is a public, two-year state community college, located in Clifton, Evendale, Harrison, and Middletown, Ohio. CSTCC is a forty-five year old, urban community and technical college, offering technical and transfer educational opportunities for 10,000 students.

### **Description of the Bargaining Unit**

The SEIU Chapter 1199 is comprised of 146 members of the clerical, technical, and support staff at CSTCC.

### **History of Bargaining**

The last agreement negotiated by the parties was effective 2010 through 2013. The parties entered into negotiations for a successor agreement on August 8, 2013 and met over a four-month period in 18 separate meetings. During that period, the parties reached a tentative agreement on the contract's 58 articles and two appendices. Negotiations were completed on December 5, 2013 and the

ratification of the tentative agreement was scheduled for December 18. The tentative agreement failed on a vote of 53 to 51.

In late January, SEIU and CSTCC returned to the bargaining table. The second round of negotiations lasted for a period of two months and included seven days of bargaining, two days of which were facilitated by a mediator.

### **OPEN ISSUES**

At the hearing, the parties agreed to first address Article 32 Wages and Article 44 Cafeteria Benefits and then the remaining issues in numeric order. This report shall follow the same order, with the exception of Articles 1, 57 and 58 which relate to the dates of the agreement. Those articles will be addressed first to establish the appropriate time frame for wage increases. For each unresolved issue, a brief summary of the positions of the parties will be provided, followed by a discussion and the recommendation.

In making these recommendations, consideration was given to all relevant information provided by the parties and the factors set forth in Ohio Revised Code 4117.14(G)(7)(a) to (f):

- Past collectively bargained agreements between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
- Interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- Lawful authority of the public employer;

- Stipulations of the parties; and,
- Such other factors, not limited to those above, which are normally or traditionally taken into consideration.

**Article 1 – Agreement, Article 57 – Termination of the Collective Bargaining Agreement, and Article 58 – Duration and Amendment**

**Position of the Employer**

The College proposes that the contract effective date be the date the Board of Trustees ratifies a final agreement and the end date be the start of fall semester. It argues this would allow the parties to work together for a three-year period prior to the next contract negotiations.

**Position of the Union**

The Union proposes that the effective date of the agreement coincide with the first day of the fall semester, August 26, 2013 and continue until August 25, 2016. It argues this date is what the parties have traditionally used and allows the parties sufficient time to negotiate a successor agreement prior to what is generally the busiest time of year for the College

The Union objects to tying the effective date to the date the Board ratifies the agreement. Pointing out that the College can control when the Agreement is put before the Board for a vote, the Union is concerned that the College could manipulate the effective date.

**Discussion and Recommendation**

Historically the parties have tied the effective date of the agreement to the first day of fall semester and the end date of the agreement to three years later.

Tying the effective date of a successor agreement to the expiration of the prior agreement is the norm.

Tying the effective date of the agreement to Board ratification creates uncertainty and puts the effective date in the Employer's control, which is not in the interest of the public or parties. Using the duration dates proposed by the Employer (Board ratification through Fall 2017) also presents the possibility that the contract will extend longer than three years, which is prohibited by law

Based on the above considerations, I recommend that the agreement be effective August 26, 2013 through August 25, 2016.

### **Article 31 - Wages**

#### **Employer Position**

The College proposes a 2 percent increase in September 2014, and a 2 percent increase in September 2015, contending the salary increase offer is consistent with the pay adjustments planned for other bargaining groups within the College. The AAUP and FOP took a zero increase in fiscal year 2012. IUOE received only a modest one-time pay adjustment in fiscal year 2014 and will receive a 2 percent base adjustment in fiscal years 2015 and 2016. Non-bargaining employees also received a zero increase in fiscal year 2012, a 2.75 percent increase in fiscal year 2013, and a zero increase in fiscal year 2014. Other bargaining units at the College have agreed to a zero increase year in the past. Currently no increase is planned for non-bargaining employees in fiscal year 2015. In further support of

its proposal, the College notes that 2013, 2014, and 2015 budgets have been overall revenue reduction years.

The College is offering no pay increase in September 2016, which under its proposal would be the beginning of the third year of the contract. This proposal reflects the College's concern that state appropriations will now be completion rather than enrollment based and it is difficult to predict how that change will affect revenues in the future.

### **Union Position**

The Union proposes a 2 percent increase effective February 1, 2014, a 2 percent increase September 1, 2014, and a 3 percent increase September 1, 2015. It sees this proposal as affordable given the relatively small percentage these increases represent in the College's overall budget. In contrast, the difference between the pay increases proposed by the Union in comparison to the increases being offered by the Employer represent a significant amount of an individual employee's budget.

### **Discussion and Recommendation**

The College relies on primarily two funding sources for its operating budget: 1) tuition and fees and 2) state appropriations known as SSI (State Share of Instruction). As illustrated in Appendix F of the Employer's Position Statement, revenue has trended downward from FY 2011 to FY 2014. The College predicts that trend will continue through FY 2015, then hopefully will flatten out. It has budgeted accordingly and anticipates the Board of Trustees will approve a final budget for this fiscal year that includes a reduction in expenditures of \$3.2 million.

The Union projects that revenues will increase based on its belief that enrollment will be increasing going forward. In support of its position, the Union notes that Cincinnati State had the highest increase in enrollment of all community colleges in Ohio between Fall 2012 and Fall 2013. (Union Ex. 3). As further support, it points to the College's FY 13 financial audit report: at page 9, the report notes that state appropriations for community colleges will increase by 1.9% in FY 14 and another 1.9% in FY 15; at page 12, the report indicates that for Fall 2013 semester credit hours rebounded and were 4% above fall 2012; and at page 15, it is reported that enrollment at the Middletown campus in August 2012 was significantly higher than originally projected. (Union Ex. 4).

Unfortunately, the slight rebound in credit hours in the fall of 2012, an increase in enrollment in Fall 2013 and a better than anticipated first year enrollment at the Middletown campus has not translated into increased enrollment going forward. In 2014, enrollment was down in the spring and is down 14% this summer. In short, additional revenues are not being generated through tuition as a result of increased enrollment. Although the College may benefit from increases in SSI appropriated by the State for FY 15, the move from an enrollment based to a completion based system makes it difficult to predict whether Cincinnati State will receive more or less funding overall.

The evidence presented at fact-finding shows that Cincinnati State continues to face a financially challenging environment. Revenues have been declining, student enrollment has decreased and the level of funding the College will receive from the State in the future is uncertain because it is no longer tied to enrollment.



In such challenging financial times, the need to proceed judiciously with pay increases is understandable but must be balanced against the need for treating employees equitably and fairly.

Under the effective dates recommended herein, the first year of the contract would begin Fall 2013, the second year Fall 2014, and the third year Fall 2015. Both parties propose a 2% pay increase in Fall 2014 and Fall 2015. During the first year of the contract, the Union proposes a 2% increase effective 2/1/14. Because the Employer proposed that the contract not become effective until ratified by the Board and then continue for three years thereafter, it did not make any proposal for an increase prior to Fall 2014 and proposed no increase in Fall 2016 due to funding uncertainties.

In FY 2014, other bargaining units have received wage increases ranging between 2% and 2.75%. The FOP will receive a 2.5% increase at the midpoint of FY 2015 and IUOE is receiving a 2% increase the beginning of FY 2015. Balancing declining revenues over the past year and uncertainty about revenue streams in the immediate future against wage increases afforded other bargaining unit employees and the employees of this bargaining unit taking on a greater share of healthcare costs as recommended below, modest increases in wages are in order. Accordingly, I recommend a 2% increase in each year of the contract: a 2% increase effective February 1, 2014, a 2% increase effective September 1, 2014 and a 2% increase effective September 1, 2015.

## **Article 44 – Cafeteria Benefits Plan**

### **Employer Position**

The College proposes a number of changes to this article. As a result of an unfair labor practice settlement, it proposes inserting language in Section 1.A to provide for SEIU member participation in vendor negotiations.

In Section I.A.1., the College proposes that its share of health insurance premiums be 92 percent, the same as its contribution rate for all other College employees. It further notes that for Ohio community colleges the average employer contribution for health care is only 80 percent.

The College proposes deleting references to vendor names and stating that it retains the right to choose or change the insurance carrier, but commits to maintaining roughly comparable coverage. It contends this change will support the procurement processes required within the State of Ohio.

A housekeeping change is proposed by the College to Section I.B. to reflect its on going commitment to maintaining same sex domestic partner benefits.

Another College proposal is that language from Article 17 related to wellness programs be moved to Article 44.

In Section I.F., the College proposes that effective January 1, 2015, the cash payment for waiving health care be eliminated for new hires and for existing employees who currently elect insurance coverage but waive coverage in the future.

The College proposes striking Section VI, Credit Union, which references only the Greater Cincinnati Public School Employees Credit Union, on the basis that multiple credit unions are available to employees.

Changes proposed by the College in Section III are aimed at clarifying the sources of financial planning available to employees.

### **Union Position**

The Union objects to the College's proposal regarding health insurance premiums as it would increase a member's contribution rate from 6% to 8% and eliminate the maximum cap on the cost of coverage to employees.

The Union also opposes language recognizing the right of the College to select or change carriers and maintain "roughly comparable health insurance coverage". It also opposes deleting references to specific vendors, but is willing to recognize the switch from Humana to Anthem. The Union's concern is that the College made that switch unilaterally without bargaining over the change. The change was the subject of an unfair labor practice charge for which probable cause was found, but was settled by the parties

The Union objects to the College's proposal to eliminate the health care coverage waiver benefit. It is particularly troubled that the College proposes eliminating this benefit not only for new hires, but also for existing employees who are now enrolled but waive coverage in the future. Those employees were hired with this as part of their benefit package and will lose that benefit if they opt in and then out of coverage. In most, if not all circumstances, elections to opt in or out are due to qualifying life changes beyond the employee's control. The Union feels there has been

no showing of a need for cost savings and that even with the existing benefit the College saves money by incenting waivers.

The College's proposal to eliminate provisions regarding the Joint Benefits Committee is unacceptable to the Union. The Union views this committee as providing a fair process by which the College and the respective unions can negotiate for healthcare benefits, a mandatory subject of bargaining.

### **Discussion and Recommendation**

Healthcare remains one of the most challenging issues in collective bargaining. Neither party has much control over rising health insurance costs. Substantial increases in those costs have presented serious budget challenges for public sector employers since personnel costs represent the largest expenditure in public sector budgets. Employees often feel like they have received a raise only to lose much of it to increased insurance premiums.

While sympathetic to the impact increases in insurance premiums have on employees, I am required to make my recommendations based on statutory criteria. Neither internal nor external comparables support retaining the 6% share on insurance premiums. All other employees at Cincinnati State contribute 8% toward their insurance premiums with no cap and the average employee share at Ohio community colleges is 20%. Under the current agreement, SEIU already agreed to eliminate the cap on the employee's share effective January 1, 2008.

The ability to aggressively manage health insurance is key to keeping costs down. Identifying a particular health insurance provider in the language of a three-year collective bargaining agreement can prevent the College from finding a more

competitive vendor and, therefore, is not in the interest of either party. None of the other collective bargaining agreements with Cincinnati State impose such a limitation. Most of those agreements, however, provide that the College maintain “roughly comparable” health insurance coverage, an assurance that benefit levels will be continued through the life of the contract. Eliminating references to a specific health insurance provider and including the “roughly comparable” language is consistent with statutory criteria requiring the Fact Finder to consider both internal comparables and the Employer’s ability to effectively administer collective bargaining provisions.

A joint benefits committee can also be a useful tool in managing health insurance. Under the current contract, the parties agreed to participate in a joint benefits committee. For reasons unclear to this Fact Finder, the committee was unsuccessful and ceased to exist as provided for under the terms of the agreement, which allow either party to withdraw from the committee. Since the committee no longer exists, inclusion of the joint benefits committee language in the contract no longer serves any purpose. To be successful, such committees need the buy-in of all the stakeholders which did not happen here. Including language proposed by the College to involve a bargaining unit member in benefit provider negotiations, is appropriate given the ULP settlement agreement of the parties and that committee was unsuccessful.

The proposal that dates be eliminated in Section I.B. is merely housekeeping in nature and is, therefore recommended. Insufficient information was provided for this Fact Finder to evaluate the remaining proposals under this article.

Based on the above and taking statutory criteria into consideration, I recommend the following changes: 1) increase the Union's share of the health insurance premium by 2% of the current health insurance plan or a roughly comparable plan effective September 1, 2014; 2) in Section I.A., eliminate references to particular vendors and add an agreement to involve the Union in benefit provider negotiations; 3) make housekeeping changes in Section I.B., in recognition that same-sex domestic partner benefits have been provided and are now being maintained; and 4) delete Section VIII and Appendix B, regarding the Joint Benefit Committee. Maintaining all other current contract language is recommended. I recommend that those changes in Article 44 read as follows:

#### **Article 44- Cafeteria Benefits Plan**

##### **Section I**

- A. The College shall provide a "Cafeteria" style benefit plan, with the College providing a predetermined amount of benefit dollars sufficient for each eligible full time employee to "purchase" the following benefits during the duration of the Contract. **The College agrees to involve a bargaining unit designee in benefit provider negotiations and information sessions and it is acknowledged that these negotiations are confidential in nature.**
1. The College shall provide an amount of benefit dollars sufficient to cover ~~95%~~ **92%** of the cost of ~~Anthem-~~ **the current health insurance coverage or a roughly comparable plan**. ~~(Anthem Blue Preferred HMO), except that the employee's contribution (5%) shall not exceed \$19.02 per month for single coverage and \$51.36 per month for family coverage. Effective January 1, 2008, the College shall provide an amount of benefit dollars sufficient to cover 95% of this coverage, with no maximum cap on the employee's 5% contribution. Effective January 1, 2009, the College shall provide an amount of dollars sufficient to cover 94% of the cost of the Anthem Health Insurance Coverage (Anthem Blue Preferred HMO).~~

3. The total cost of **the current** vision plan (~~Plan B~~) coverage ~~as provided by Vision Service Plan (VSP)~~.

B. ~~Effective August 1, 2008,~~ **T**he College shall ~~provide~~ **maintain** health insurance benefits to same- sex domestic partners of employees, as defined in the definition of same-sex domestic partners included in this Agreement as Appendix A. It is agreed that the addition of domestic partner benefits shall be for the sole purpose of providing insurance coverage for the domestic partner and will in no way affect the status of the employee as it relates to single vs. family status for the purpose of qualifying for a higher payout of dollars when the employee elects to waive any insurance coverage.

## **Article 6 - Union Representation**

### **Position of the Employer**

The College proposes changes to resolve ambiguity about the use of College time to conduct Union business. It proposes that the “norm” be that no more 10 percent of each officer’s or steward’s work time on an annual basis be used for contract administration and handling grievances.

Noting that parking and office space is at a premium, the College proposes striking Paragraph I which provides for validating the parking of the Union Staff Representative when conducting business with Human Resources and striking Paragraph L which commits to attempting to locate office space for the Union. Because all students pay to park, the College’s practice is to require all vendors, guests, etc. to pay for parking. The College also points out that the College provides the Union with storage space and that the Union has access to conference rooms for meetings.

## **Position of the Union**

The Union notes that the parties tentatively agreed to most of the proposed changes in this article. Although agreeing to add the ten percent norm language proposed by the College, the Union proposes additional language specifying that this ten percent does not include time spent at mediations, arbitrations and labor management committee meetings

The Union does not agree to eliminating parking validation for the Union Staff Representative, pointing out that this practice has been maintained in many contracts, would result in minimal cost savings to the College, and is a benefit enjoyed by the staff representatives and business agents of other unions at the College. The Union also disagrees with eliminating language about attempting to find office space for the Union. Instead, the Union proposes that the College shall provide office space for the Union on the Clifton Campus, noting that both AAUP and FOP have office space at the Clifton Campus.

## **Discussion and Recommendation**

The parties agree on a number of the proposed changes in this article: the College posting the Board of Trustees agenda prior to the meeting, prior notification before accessing work areas for Union business, and the Union providing Human Resources a yearly listing of union officers/stewards.

As to the ten percent norm standard proposed by the Employer, the Union is willing to agree to it but does not think it should apply in situations where both parties are together. While I agree with the Employer's observation that over 200 hours per year for any given officer/steward seems like it should be more than



enough to cover the activities involved, the exclusion proposed by the Union makes sense. Time spent with the Employer is easily accountable.

Continuing parking validation is appropriate as it is long standing practice and does not represent a significant cost. Given that other unions at the College have office space and the College's previous commitment to attempt to find such space for SEIU, that effort should not be simply abandoned. Conversely, given that office space is at a premium, the office space should not be guaranteed, particularly since the Union does have the ability to use conference rooms if private meeting space is needed.

Based on the above, I recommend the agreed upon language regarding providing an annual listing of union officers/stewards, providing notice prior to accessing work areas, and posting Board agendas. I also recommend the Employer's proposal to establish a 10% norm standard with the modification proposed by the Union. All other proposed language changes are rejected and current contract language recommended.

I recommend that Article 6, where changes are recommended, read as follows:

- A. The College shall recognize the Union officers/stewards for the purpose of administering the Collective Bargaining agreement and adjudicating grievances. The Union representative shall be permitted reasonable access to work areas in order to conduct legitimate Union business, **with prior notification to the** ~~but only with prior approval of the department supervisor~~ **and Human Resource Director.** Time spent by the steward in grievance handling will be paid by the College provided such time is not abused. **The norm shall be that annually no more than ten (10) percent of an individual officers/stewards work time shall be spent on contract administration and grievance handling, excluding time spent at mediations, arbitrations and labor management committee**

**meetings.** Such release time for the handling of grievances shall be limited to no more than two (2) stewards for any given grievance. The Union steward may use the photocopying machine located in the main Human Resource office at the same cost and under the same conditions as provided to students and non-bargaining unit employees. All non-union related material must have prior approval by Human Resource office. **The Union will provide a yearly listing of Union officers/stewards to the Human Resources Director on or around October 1 of each calendar year.**

- H. The College shall ~~provide to the SEIU copies of the agenda and the proceedings of the Board of Trustees meetings, excluding such information as is specifically exempted by law.~~ **post the Board of Trustees agenda prior to the meeting and the meeting minutes on the College intranet excluding such information as is specifically exempted by law.**

## **Articles 7 - Management Rights**

### **Position of the Employer**

The College proposes deleting language regarding the right to file grievances because the grievance process is contained in Article 23 and this language does not belong in Management Rights.

### **Position of the Union**

While agreeing that the language in this article relating to grievances does not belong in this article, the Union proposes moving it to the grievance article. The Union also proposes to add language specifying the College shall not exercise its rights in an arbitrary and capricious manner. The Union notes that this is a standard routinely used by arbitrators when reviewing cases involving management rights. It feels this is an acceptable and reasonable standard that would not impose any undue hardship, but would insure management recognizes it cannot act in an arbitrary and capricious manner.

## **Discussion and Recommendation**

The parties agree and I concur that language about grievances does not belong in the management rights article. If anywhere, it belongs in the grievance article, Article 6, as proposed by the Union. The Union's proposal to move the language to Article 6 will be included under the discussion of that article.

While I agree that most arbitrators are reluctant to uphold arbitrary or capricious management action, no need was demonstrated to place an express limitation in the agreement.

Based on the above, I recommend deleting the last sentence of Article 7, Section B but otherwise recommend retaining current contract language.

## **Article 10- Hours of Work, Overtime, Work Assignments**

### **Position of the Employer**

**Section I B:** The College is agreeable to a plan to combine the lunch break with two fifteen minute breaks in the day, but only for the purpose of taking classes and only pursuant to a written agreement with an employee's supervisor.

**Section I C:** The College proposes modifying this section to remove the requirement to bargain time recording. All College employees, except SEIU, have moved to web time entry, a system that has been in place for nearly a year. When the College approached SEIU about the web time entry system, it was told to wait for contract negotiations. Language is also added to require that employees report their "actual" time in and time out.

**Section II – Overtime:** The College proposes language to clarify and make consistent the College practice on overtime across all employee groups.

**Section III – Compensatory Time:** Additional language is proposed in response to SEIU’s concern that it be made clear that comp time is calculated at time and one-half.

**Section IV - Flex Time:** The Employer proposes adding this section, moving language from Section III B and C and renaming the time off provided in those sections as flex time. The College also proposes eliminating the last sentence of Section C, which recites an agreement to negotiate before implementing a flexible hours schedule.

#### **Position of the Union**

**Section I B:** The Union proposes language that allows an employee and his/her supervisor to enter into a written agreement to alter the employee’s starting or ending times. According to the Union, previous contracts have provided for such agreements.

**Section I C:** The Union requests current contract language, noting it has been in place for a number of contracts. It objects to eliminating language requiring the College to bargain if it identifies a new time recording system. The Union acknowledges that the language does not prevent the College from implementing a new system of time recording, but does affirm the College’s obligation to bargain over the effects or impact if a new system is implemented.

The Union objects to the requirement that the employees record their “actual” time in and out on their payroll forms. Some members start their workdays

prior to arriving at the College. The time for which they should be paid would not be accurately captured if the “actual” time they arrived at the College were entered on the payroll form.

**Section II - Overtime:** The Union disagrees that overtime should have to be preauthorized. It argues that requiring preauthorization may put an employee in the position of not being able to complete time sensitive work due to the unavailability of a supervisor or ignoring the requirement, both which could subject the employee to discipline.

**Section III – Compensatory Time:** Additional language is proposed to make clear that comp time is calculated at time and one-half.

**Section IV - Flex Time:** The Union is in agreement to add this section, but desires to maintain language to reflect that the parties are obligated to bargain over the implementation of a flexible hours schedule change.

### **Discussion and Recommendation**

The parties agree on a number of non-substantive changes to this article that are cosmetic or housekeeping in nature. I, therefore, recommend those changes. Following is a discussion of the proposals in this article that are substantive in nature.

**Section I B:** Current contract language allows employees to combine lunch periods and breaks to take a class or to extend the lunch hour with the agreement of a supervisor. The Employer wants to restrict that language and the Union wants to expand it. No compelling reason was presented for doing either and therefore, those proposals are rejected.

**Section I C:** The Union concedes that the language at issue does not restrict the Employer from implementing a new time recording system but affirms that the Employer is obligated to bargain over the effects. No compelling reason was presented for eliminating that affirmation from the contract and therefore, I do not recommend it.

The value of requiring that “actual” time in and out be recorded is questionable. During fact-finding, it became apparent that both parties agree that time in should reflect when an employee begins performing work as opposed to when the employee arrives at an assigned work location. What is needed is an understanding of what time in and time out represent. Adding “actual” to those terms only seems to create misunderstanding. Accordingly, that change is not recommended.

**Section II - Overtime:** Controlling overtime costs and complying with the FLSA are legitimate management concerns. Requiring preauthorization is an important tool for addressing such concerns. Members should not be faced with choosing between not doing time sensitive work when a supervisor is unavailable to preauthorize overtime or doing the work without preauthorization. There are, however, ways to handle those concerns. As the College pointed out, a blanket authorization could be used for those types of situations. The College also suggested that where the employee’s immediate supervisor is not available, permission could be obtained from another supervisor. Based on the foregoing considerations, the Employer’s proposal to require that overtime be preauthorized is recommended but with a modification to reflect that authorization may come from a supervisor other

than an “immediate” supervisor. With this modification, it should be recognized that the College may choose to limit the situations that a supervisor other than the immediate one may authorize overtime.

**Section IV C- Flex Time:** No compelling reason was presented for deleting language from this provision agreeing to negotiate and therefore, I do not recommend the proposed change.

To the extent that the parties proposed the same language and/or deletions in their fact-finding proposals, I recommend that those changes be incorporated into Article 10. Based on the above, I also recommend that a requirement that overtime be preauthorized by a supervisor be added to Section II and read as follows:

#### **Section II - Overtime**

- A. Overtime shall be paid for non-exempt employees who work more than forty (40) hours per week. **Overtime eligible E**-employees may choose compensation or compensatory time for overtime worked **but overtime must be preauthorized by the supervisor.**

### **Article 13 – Temporary Employees and Student Workers**

#### **Employer Position**

The College proposes revisions to this article in response to numerous grievances being filed related to the timing of temporary employees and belief that student employees are encroaching on SEIU jobs.

To address concerns about student work, language is proposed in Section II to define and limit the use of student workers, including limiting student work to 20 hours per week to reflect the primary status of the individual as a student.

Because this is a time of significant financial constraints, it sometimes becomes necessary to delay filling vacancies until funding can be secured and where a search is unsuccessful the time of vacancy is further extended. The College's proposal reflects its need to be able to use temporary employees for longer periods of time in those types of circumstances.

### **Union Position**

The proposed language by the Union seeks to protect the erosion of the bargaining unit by establishing parameters by which management may utilize temporary employees. The Union objects to the College's proposal to expand when it may use temporary employees from the current list of reasons to for any "legitimate business reason" which the Union views as giving the Employer overly wide latitude. Instead, the Union is willing to substitute the term "operational need" which is less expansive.

### **Discussion and Recommendation**

The only points of disagreement of the parties in this article are the circumstances under which the Employer may use temporary employees. The Employer seeks to expand when it may use temporary employees to whenever it has "legitimate business reasons." The Union objects based on a concern that the language proposed by the Employer is too broad. As a compromise, the Union proposes using the term "operational needs" instead. I concur that the language proposed by the Employer is very broad and find that substituting "operational needs" for "legitimate business reasons" is a reasonable compromise.



To the extent that the parties proposed the same language and/or deletions in their fact-finding proposals, I recommend that those changes be incorporated into Article 13. Based on the above, I also recommend that Section I of Article 13, in relevant part read as follows:

- A. Temporary employees shall not be hired to perform work of bargaining unit members except for ~~the following reasons~~ **operational needs** including

### **Article 19 - Training and Professional Development**

#### **Union Position**

The Union proposes that 25% of the College' s fund for training and development, but not less than \$40,000 be set aside for its members. The proposal is based on its concern that the College has unilateral authority under their proposal to completely defund this program at any time and SEIU members would be left with no benefit.

#### **Employer Position**

The College is not financially able to make a \$40,000 commitment to staff travel. The 2012 travel and subsistence fund of \$700,000 has been reduced to \$300,000. Much of that funding is spent on College events such as convocation and awards recognition, which supports all College employees. Professional travel has been significantly curtailed with more focus on College-hosted webinars and other electronic development efforts. In order to travel, College officers are expected to partially fund their own travel.

## **Discussion and Recommendation**

The changes proposed by the Union are aimed at guaranteeing a certain funding level for training and development. Current contract language does not guarantee any funding level. The College has presented legitimate reasons why it cannot now commit to a guaranteed funding level. Because of economic times, funding for training and professional development has been significantly reduced, which is not uncommon among Ohio public employers. No evidence was presented showing members have been unreasonably impacted by this reduced funding nor was any rationale provided for establishing the funding level requested.

Given the record before me, I cannot recommend the funding level language requested by the Union. To the extent that the parties proposed the same language and/or deletions in their fact-finding proposals, I recommend that those changes be incorporated into Article 19 and that current contract language otherwise be retained.

## **Article 21 - Filling of Vacancies**

### **Employer Position**

The current contract provides for internal posting of vacancies and only allows for external posting if there are not three or more qualified 1199 members in the candidate pool. The College proposes language that would permit it to go outside when there are no “acceptable” internal candidates on the basis that meeting minimum qualifications does not assure the applicant is the best candidate for the position.

The College does not agree with the Union’s proposal to replace the current evaluative process for filling vacancies with a seniority-based system. The College proposes continuing to use the current system, noting it has resulted in vacancies being filled by internal SEIU applicants in approximately 90 percent of all searches.

The College supports the language providing preferred consideration for internal acceptable candidates along with a guaranteed interview and provides the non-selected applicant the opportunity to meet with Human Resources. The requirement that the College report back to the SEIU on unit member applications shifts Union work to the Human Resources Department and is unduly burdensome.

### **Union Position**

The Union advocates continuing to recognize that qualified internal candidates should be given preference over the hiring of someone from the outside and that seniority should also be a consideration. It proposes that the College not be able to go outside the bargaining unit to fill a vacancy if any qualified member of the bargaining unit has applied. In addition, it proposes that where two or more members have applied, the position be awarded to the most senior qualified candidate as a matter of fundamental fairness.

The Union opposes permitting hiring from outside based on a determination that there are no “acceptable” internal candidates. The subjective nature of that determination could open it to abuse—unchecked nepotism, cronyism and other types of malfeasance. The term “acceptable’ is subject to too broad of an

interpretation to allow it to be the governing language determining someone's career and ability to secure a position with one's current employer for which one is qualified.

### **Discussion and Recommendation**

Both sides propose significant changes in the way vacancies are filled. Permitting the College to seek outside candidates when it deems none of the internal candidates "acceptable" is highly subjective and gives the employer much greater latitude to seek outside candidates. Deeming an internal candidate unacceptable at the outset of the process would arguably also mean the candidate would never be given the preferred consideration provided in Section I.E. Similarly, changing to a system that requires selection among internal candidates based on seniority is a significant shift from current contract language.

While I can appreciate the reasons why the Union may favor a seniority based system and why the College may favor being able to fill vacancies from a broader based pool of candidates, neither side has presented a compelling reason why the system in place is not working. I, therefore, recommend current contract language.

### **Article 22 - Classification**

#### **Employer Position**

The College proposes changes to this article to document the current process and to improve the process by putting a 45-day limit on the reclassification review. Revisions to reclassification outcome compensation are

proposed to cap the pay increase to employees who are already over the job pay maximum by providing an \$850 one-time payment as opposed to an on-going percentage increase.

The College is not agreeable to a non-traditional arbitration of reclassification decisions. This is costly to the College and takes away its management right under Article 7 to classify and organize the work. The College proposes to discuss reclassification reviews with the SEIU during labor/management meetings.

### **Union Position**

The Union's proposal is aimed at providing a process that allows for a member of the bargaining unit to have a fair system by which a determination can be made on whether they should be re-classified, and if so, how much they should be compensated. If a reclassification results in advancement above the existing pay grade, the Union proposes a 2% increase that is ongoing, or rolled into the person's base salary. It argues that the College will surely reap the rewards of the employee's talents and abilities in the classification long after the proposed \$850 has been depreciated by the value of the skills and expertise that warranted the reclassification in the first place.

The Union also proposes permitting an employee to file a grievance if the employee disagrees with the reclassification determination and to use non-traditional arbitration for such cases. Non-traditional arbitration allows each side

limited testimony and witnesses and a bench decision from the arbitrator that day.

### **Discussion and Recommendation**

The fact-finding proposals submitted by the parties are largely in agreement on revisions to this article. Those changes were also part of the parties' tentative agreement.

How to compensate an employee who gets reclassified to a higher pay grade, but is already above the maximum of the range of that pay grade, is an area of disagreement. The College proposes the employee be given a one-time lump sum of payment of \$850 and that is what the parties tentatively agreed to. The Union now proposes giving the employee a 2% increase in base salary. Classification systems are designed to provide compensation commensurate with the skills and ability of the position. While a one-time payment recognizes that such an employee must adjust to a new level of compensation, continuing to compensate the employee at a level two percent above the maximum determined to be appropriate for the work being performed would not be fair to other employees in that classification. I, therefore, recommend the lump sum payment.

The second area of disagreement is the Union's proposal to allow reclassification determinations to be grieved and to use non-traditional arbitration to resolve such grievances. Arbitral review, even under an expedited process, can be time consuming and costly. The College's proposal provides an alternative, review of reclassification requests, approvals, and denials by the Labor Management Committee. No compelling reason was presented as to why this mechanism would

not afford an appropriate review and I find that review by the Labor Management Committee is the more reasonable alternative.

Based on the above considerations, I recommend the language of the Employer's Article 22 proposal submitted in fact-finding.

### **Article 23 – Conflict Resolution/Grievance Procedure**

#### **Employer Position**

The College proposes revisions to this article to streamline the grievance process and put the article into clearer language and a more linear process. The revisions bring the grievance procedure in line with what is used for other units and would thus result in a uniform process within the College. The goal of the revisions is to improve the process.

Under Section 2, Step 3, D., the College proposes to go to loser pays. In support of this proposal, the College notes that the Union filed over 50 grievances in the last 18 months, the majority of which resulted in no finding against the College or were subsequently withdrawn.

The Union has requested, and the College concurs with the 45 day period following mediation to allow the SEIU to determine if they will move to arbitration.

#### **Union Position**

The Union does not favor a substantial revision of this article as proposed by the College, noting that the grievance procedure in place has served the parties

well with the exception of a brief time during which the employer refused to mediate grievances in 2011-2012. It also argues that some of the changes are not only a matter of form but also substance and varying interpretation: the word “mandatory” is deleted from the title of the mediation step which could be a basis for arguing mediation is not mandatory; the language in the section on information requests is more restrictive than current contract language; and the language concerning the use of expedited arbitration is ambiguous.

The Union proposes moving language in Article 7 concerning the right to “raise a legitimate complaint or file a grievance based on the collective bargaining agreement,” to this article in recognition that such language more appropriately belongs there. Language is also proposed to secure the right of a Union staff representative to attend any step of the procedure.

The Union objects to the College’s loser pays proposal, noting that the parties have split the cost of arbitration for many years now.

### **Discussion and Recommendation**

The College’s goal of rewriting this article to make it easier to understand is commendable, but the Union indicated a comfort level with the way the article is currently written. A rewrite of an article for the sake of clarity and accurately reflecting the parties’ understanding is something that should be undertaken mutually by the parties.

Some of the changes proposed by the College were of substance, not just form, and no compelling need was demonstrated for making such changes. Although



the College presented evidence that a significant number of grievances were filed in the past year, there was no showing of how the proposed changes would reduce the number of grievances being filed or cases going to arbitration. Similarly, the Union did not show a compelling reason to add to current contract language, which it acknowledges has worked well for the parties.

I reject the Union's proposal to move language from Article 7 to this Article referencing the right to "raise a legitimate complaint or file a grievance based on the collective bargaining agreement." The language can be read to make the right contingent on a nexus to the CBA regardless of whether a complaint is made or a grievance filed. If so read, there is no need to include the language because comparable language is already in Article 23. If the language is read to include matters not connected to the CBA, then I find it unreasonable to include in the grievance article. Complaints not tied to any rule, policy, or agreement would not be amenable to resolution through a grievance process.

The parties did agree to changes in Step 4, Arbitration: increasing the time the Union has to advance a grievance to arbitration to 45 days and to use FMCS rather than AAA for requesting arbitration panels. I, therefore, recommend those changes but for the reasons stated above, I otherwise recommend current contract language.

## **Article 25 – Layoff, Bumping, Recall**

### **Employer Position**

The College proposes revisions to clarify in Section I.B. that it is a management decision to enter into a layoff process and in Section II that reasons for layoff may include lack of funds, lack of work, and reasons of efficiency in a department. This language is consistent with Ohio law, ORC Chapter 124.

Other revisions in Section II are included to reflect changes proposed by the Union.

### **Union Position**

The Union objects to the following changes proposed by the College:

1. Elimination of the meeting requirement in Section I B that allows the parties to explore additional options and alternatives to the layoff. The Union feels this process has worked well in the past and has allowed the parties to identify alternatives that have in fact avoided layoffs and maintained the employment of impacted individuals.

2. Elimination of the requirement that the Union be provided with a copy of the departmental budget. The Union views this information as necessary for it to have in order to have a meaningful opportunity to discuss and present the alternatives mentioned above.

3. Expanding the criteria under which a layoff can take place. In previous CBA's, the College has been limited to only effectuating a layoff for lack of funds; the College proposes expanding its right layoff for lack of work or reasons of

efficiency. The Union believes that this language is too broad would allow the College carte blanche to layoff whomever they choose.

The Union also opposes eliminating the right for the employee to grieve the layoff as provided in Section VIII. In the past, employees have been improperly identified for layoff and only due to the ability to grieve the decision has justice been served.

### **Discussion and Recommendation**

The fact-finding proposals submitted by parties for revamping the layoff process are for the most part in agreement. Those changes to a large extent reflect the procedures the parties been have following over the past few years.

One area of disagreement is the Employer's proposal to eliminate the meet and confer requirement. The meet and confer language has served the parties well, helping them to identify alternatives and avoid lay-offs. Another area of disagreement is the Employer's proposal that it no longer provide the Union departmental budget information. The Union's desire to have access to budget information related to a proposed layoff is not unreasonable and no explanation was offered as to why providing the budget information is a problem. The last area of disagreement is the Employer's proposal to expand the circumstances under which employees may be laid off. The language proposed would significantly expand those circumstances and no need was demonstrated for making that change.

Based the record before me, I cannot recommend any of the Employer's three proposals discussed above. However, to the extent that the parties proposed the

same language and/or deletions in their fact-finding proposals, I recommend that those changes be incorporated into Article 25.

### **Article 33 - Compensation**

#### **Employer Position**

The College proposes establishing minimum, mid-point, and maximum pay rates for each grade, contending that this is an important part of any compensation system. It objects to the Union's proposed rate adjustments for incumbent employees when new hires are employed at a rate higher than the minimum under circumstances specifically permitted under current contract language.

#### **Union Position**

The Union proposes current contract language with the addition of language to insure that the College not hire new employees at a rate higher than that of existing members. It contends the College is seeking the ability to discriminate against existing employees and that the College's proposal will create financial inequity between employees.

The Union also questions the necessity of the College's proposed modification of the shift premium language in Section II of this article. It is confused as to what the College seeks to gain as it cannot identify a situation wherein management's proposal would result in any different payment than under existing language.

#### **Discussion and Recommendation**

The proposals of both parties are directed at equity and fairness, important components of any good compensation system. The College's proposal to have a pay scale that includes a minimum, mid-point and maximum is aimed at having an established basis for evaluating the rate at which to pay a new hire where circumstances justify payment beyond the minimum as permitted under current contract language. While reasonable on its face, this fact-finder, would need more information than was presented in fact-finding to fully evaluate this proposal and be able to recommend it.

The Union proposes paying all current employees more anytime a new hire is employed at more than the minimum rate. Under current contract language, a new hire may be paid more than the minimum rate based on special qualifications and/or experience. Requiring the College to give all employees a pay increase where a new hire is paid more under those circumstances would effectively nullify the considerations the parties had agreed were appropriate in determining a new hire's wages. Absent a showing that the application of this provision has resulted in inequities, I cannot recommend the Union's proposal.

Based on the above, I recommend current contract language.

### **Article 35 - Certification and Adjustments**

#### **Union Position**

The Union recommends that language be added to automatically renew certification adjustments from year to year upon proof that the requirements to maintain the certification have been met. As justification for automatic renewal, it argues that

these skills for certifications do not disappear nor diminish to the point of worthlessness after a mere year.

The Union opposes the College's proposal to eliminate this benefit asserting that the certification adjustments have long provided a mechanism by which the employees have been able to acquire job skills of significant value to the college and be financially rewarded for having done so.

### **Employer Position**

The College proposes eliminating this article as a better course of action than effectively making permanent adjustments to an employee's base. Only two of the 146 bargaining unit members are currently impacted by this article. The College argues that participation of a few SEIU members in the special compensation is a penalty to other members of the unit who perform the same work.

The College also cites problems in administering this benefit. SEIU members have attempted to claim employer-paid training, vendor-paid training, on-line training for which there is little to no measurement of validity, etc. Currently, there is no agreement over the form of "additional training" necessary to achieve certification adjustment.

### **Discussion and Recommendation**

Although the benefit of this article appears to be minimal to Union members, the cost of it also appears to be minimal to the College. Some administrative difficulties were suggested but were not shown to be insurmountable or to rise to a level to justify doing away with this benefit at this time. I am also not persuaded that the additional language proposed by the Union is needed. The current contract

already provides a procedure and criteria for renewing a certification adjustment. If anything, the language proposed appears to be in conflict with the existing language.

The parties did agree that “payment” should replace “stipend” where used in the article. Based on the above, I recommend current contract language with that change.

## **Article 42 – Education Benefits**

### **Employer Position**

The College proposes revisions limiting tuition waiver and tuition reimbursement for College employees in recognition that while a part-time course load would be feasible for full-time employees, a full-time course load would be excessive. It proposes to cap tuition reimbursements at 18 credit hours per year. A six-month waiting period is proposed before new employees may enroll in courses to allow for completion of probation and adjustment into the job. Other proposals are 1) a requirement of a 2.0 cumulative grade point average to participate in the waiver program, 2) a requirement that courses taken by members be job related and/or beneficial to the College 3) a cap of 75 credit hours, not including any academic foundation courses, on spouse/dependent waivers, and 4) a cap of \$627 reimbursement per credit hour.

All of these limitations are proposed in response to the financial burden of unlimited tuition waiver. The College notes that none of these limitations take away the opportunity for SEIU members/families to pursue the associate degree

at CSTCC or degrees at other accredited institutions. Based on historical usage of tuition reimbursement, no members would be negatively impacted by the 18 credit hour cap.

### **Union Position**

The Union objects to the limitations proposed by the College, viewing them as an attempt to reduce the benefits guaranteed under previous collective bargaining agreements. It points out that unlimited tuition waiver for classes taken at the college is a benefit that has long been enjoyed by the members and their families and is a benefit commonplace at most colleges. A requirement that courses taken be job related or beneficial to the College has never appeared in any prior contract. No concerns about the program have ever been raised by the College.

The College's proposal to limit tuition reimbursement to \$627 per credit hour is of concern to the Union. The Union acknowledges that is the current per hour tuition cost and the benefit has always been limited to that cost. Its concern is locking in this rate for the life of the agreement. The Union recognizes that the College may be trying to address this concern in subsection E of its proposal, but feels the language is ambiguous.

### **Discussion and Recommendation**

The College has proposed numerous restrictions and limitations on this benefit, asserting that unlimited tuition poses a financial burden. There was insufficient information presented at fact finding to evaluate the financial impact on the College or the impact on members. Nor was the need demonstrated for restricting new employees from taking courses for six months or to limiting



employees to 18 credit hours. Given that this has been a long-standing benefit for members and the record before me, I recommend current contract language.

## **Article 50 - Union Leave**

### **Employer Position**

The College proposes to delete this Article arguing it is not the responsibility of the College to allow time for union work beyond the responsibilities of the union officers and stewards to engage in contract administration and grievance management as provided for in Article 6. It is the position of the College that leave to participate in union activities or meetings and time spent in internship are the responsibility of the member and the union and should not result in a cost to the College. The Union's recommendation that the College incur the cost of internships with the SEIU is unacceptable to the College.

### **Union Position**

The Union views the College's proposal to completely eliminate this article as improper and in violation of rights guaranteed under ORC 4117. The Union's proposal is aimed at providing a mechanism by which its elected officials can carry out their necessary duties and functions to enforce the terms of the negotiated contract between the parties.

## **Discussion and Recommendation**

Article 50 as currently written only addresses union leave for purposes of “affording unit members an opportunity to participate in District 1199 meetings, seminars, conferences or other professional activities.” The College seeks to eliminate this leave and the Union to expand it.

Although the College believes it should not be required to provide such leave, it negotiated to do so. No compelling reason was presented to take that negotiated benefit away. Similarly, the Union did not demonstrate a need for the changes it proposes. It did not show a need for more professional leave under this article or for more leave for contract administration and grievance management beyond what is already provided under Article 6.

Based on the record before me, I recommend current contract language.

## **CONCLUSION**

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in Ohio Revised Code 4117.14, the Fact Finder recommends the provisions herein.

In addition, all tentative agreements reached by the parties are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted,

/s/ Sherrie J. Passmore  
Sherrie J. Passmore  
Fact Finder

July 17, 2014

### **CERTIFICATE OF SERVICE**

This Fact Finding Report was sent by email on July 17, 2014 to:

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