

**THE STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT-FINDING BETWEEN**

SERB CASE NO. 2020-MED-01-0075
Youngstown State University YEA

and

YOUNGSTOWN STATE UNIVERSITY
CHAPTER OF THE OHIO EDUCATION ASSOCIATION,

Employee Organization.

PRESENTED TO:

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INTRODUCTION

This Fact-Finding arises pursuant to Ohio Revised Code Section 4117.14C)(2) to (C)(6) and Ohio Administrative Code Rule 4117-9-05(F). Youngstown State University was represented

by Seth P. Briskin, Esq., Meyers, Roman, Friedberg & Lewis, 28601 Chagrin Blvd., Suite 500, Cleveland, Ohio 44122, sbriskin@meyersroman.com and Kevin M. Kralj, kmkralj01@ysu.edu.

The Youngstown State University Chapter of the Ohio Education

Association was represented by Susan W. Clutter, Esq. 425 Niles Cortland Rd. SE, Suite 101,

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Brief Background of Negotiation and Mediation Efforts

Before the undersigned was assigned to the instant fact-finding matter, the parties had completed twenty mediation sessions with a Federal mediator. Finding common ground for creative options or mutually beneficial concessions was difficult, and they were able to reach a Tentative Agreement on only a fraction of their outstanding issues. Their below listed timeline of their negotiations before and during the onset of COVID-19 concerns demonstrates the extent of that difficulty.

1. December 10, 2019: First Joint Negotiations Meeting
2. Joint Negotiations Meetings 1-5 (Negotiating Ground Rules and Alternate Dispute Mediation/ Timeline documents.)
3. January 22, 2020: Ground Rules and Alternate Dispute Settlement Documents signed
4. Joint Negotiations Meetings 6-10 (Nine articles discussed)
5. March 16, 2020: COVID lockdown
6. March 23, 2020: OEA requested 1-year contract extension
7. March 30, April 4, April 13, 2020: (Numerous attempts to begin online negotiations--no agreement reached)
8. April 23, 2020: Joint Negotiations Meeting 11.
9. Supposal for a contract extension denied
10. Administration announced it would rewrite all articles —would not be ready to negotiate again until after May 13th. No extension of timeline for mediation and fact-finding.
11. May 13, 2020: Administration presented a comprehensive proposal.

12. The Association viewed the Administration's proposal as highly regressive.
13. May 28, 2020: The Administration announced YSU reorganization
14. May 13, May 28, May 29, 2020: The parties work to resolve several procedural disagreements created by the pandemic.
15. June 5, 2020: The parties sign an MOU to continue negotiating an additional two weeks beyond the Fact-finding starting date of June 26, 2020 to July 13, 2020 unless parties reach an impasse.
16. June 11, June 18, and June 19:, parties TA three Articles. Two others are brought to “tentative-tentative” agreement.

Tentative Agreements (TAs)

On June 19, 2020, SERB appointed the undersigned Fact-Finder to hold Fact-Finding hearings for case No: 2020-MED-01-0075 under the **MAD** procedure. The parties met with the undersigned Fact-Finder for a total of nine hearing days. The parties spent the first day in mediation, and were able to resolve and TA a number of additional issues. The Fact-Finder hereby incorporates by reference into her recommendations each and every Tentative Agreement reached by the parties before, during, and after the Fact-Finding in this matter, including, but not limited to those listed below:

Article 1 – Preamble

Article 2- Recognition and Scope of Unit

Article 3- Term of Agreement

Article 10/15- Tenure and Promotion, to be combined with current Article 15- Promotion in Faculty Rank

Article 17- Personnel Files

Article 20.1 and 20.2- Students

Article 23- Dues Deduction and Fair Share Fee

Article 24- Administration-Association Relations

Article 25- Separability

Article 29 – Miscellaneous

At the start of the Fact-finding hearing, the below listed Articles and provisions remained outstanding; several of the Articles contain numerous subsections with outstanding issues:

Article 4 – Salaries, Salary Increments, and Rates of Pay

Article 5 – Insurance Benefits

Article 6- Sabbaticals and Faculty Improvement Leaves

Article 7 – Leaves
Article 8- Grievance Procedure
Article 9 – The Academic Environment
Article 11- Non-Reappointment of Non-Tenured Faculty
Article 12 – Corrective Action and Termination for Cause
Article 13 Retrenchment of Faculty
Article 14 – Faculty Evaluation
Article 16 – Workload Activities
Article 18- Academic Freedom
Article 19 – Retirement
Article 20.3- Students (20.1 and 20.2 language are agreed upon)
Article 22 – Association Rights
Article 26- Academic Workplace Environment
Article 27 – Faculty Development and Research
Article 28 – Teaching Rights and Responsibilities
Article 30 – Types and Duration of Contracts
Article 31 – Distance Education
Appendix A
Appendix B
Appendix C
Appendix D

Given issues still in dispute, the Arbitrator acknowledges that the parties may well be hard pressed to mutually accept all of the recommendations. Throughout the discussions in mediation and presentations during fact-finding, it became clear that there is an entrenched distrust between the parties and that it has hampered their efforts to resolve their underlying interests and concerns. Beneath some of the distrust is a fundamental philosophical difference in the parties' views of shared governance. This difference surfaced in their discussions on nearly every issue.

Given the above-described reality, it is the Fact-Finder's hope that the two sides will deliberately carefully consider what shared governance truly means to the other side and that they will find the appropriate spots to tweak the Fact-Finder's recommendations as necessary into a form that will be acceptable to the extent that it will allow the parties to go forward in pursuing

the central objective of their work: providing the best university education possible for the students entrusted to their care and instruction.

Shared Governance

The Fact-Finder asked the parties to summarize their interpretation and understanding of shared governance. Not surprisingly, although the definitions are similar, the parties' interpretation of what shared governance means to their inter-relationship varies significantly. The table below set-forth the two interpretations and some specifics they include to support and explain their views. It is the Fact-Finder's hope that the parties will find this visual instructive as they attempt to tweak the recommendations herein and forge their way to contract modifications both sides can accept.

<p><i>The Administration</i></p> <p>Preamble</p> <p>“The CBA has been cobbled together over time and in many instances, it has become unwieldy, difficult to administer, unnecessarily inefficient and in many ways very costly</p> <p>Primary themes for proposed enhancement</p> <ol style="list-style-type: none"> 1. Student success 2. Simplification and efficiency of processes 3. Compliance with the law 4. Sustainability, vitality, and vibrancy of the University, as well as the Association <p>→ Shared Governance is the process by which the University Community ... influences decisions ... and or present alternatives</p> <p>→ Collective Bargaining ... is separate and distinct from Shared Governance</p> <p>→ This is a clear, mutually-agreed definition</p> <p>→ Various proposals attempt to control YSU’s committee structure—these are contrary to this established definition of Shared Governance</p>	<p><i>The Association</i></p> <p>Principles of Shared Governance</p> <p>Shared Governance is</p> <p>→ an avenue for affected parties regarding policy and procedure</p> <p>→ where they “can be informed and can influence governance decisions</p> <p>→ shared governance relies upon “consistent, trustworthy communication ... multiple directional and reciprocal”</p> <p>→ requires mutual accountability of all members of the University Community</p> <p>→ permeates all levels of decision making within the University Community</p> <p>→ anticipates full and active participation of all levels of shared governance is encouraged</p> <p>→ recognizes that recommendations made through shared governance processes can influence University decision making.</p> <ul style="list-style-type: none"> ❖ The Association cites language from the March 26, 2018, Higher Learning Commission Report as support to the premise that the issue of shared governance is a crucial issue that is pivotal for the University to address as it moves forward: ❖ “The most recent climate survey indicated ... increasing concerns about shared governance” ... concerns raised ... inconsistencies in the application of policy, communication, and shared governance ... will help ... provided that the initial work done on communication and shared governance issues improves and reported aberrations in following policy are corrected.”
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Rule 4117-9-05 Requirements

As required by Rule 4117-9-05, the Fact-Finder considered the criteria set forth below as she formulated her recommendations.

1. Cast collectively bargained agreements, if any.
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
3. interest 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 standards of public service.
4. The lawful authority of the public employer.
5. Any stipulation of the parties.
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

The Fact Finder’s Recommendations

Article 4	Association	Management	Fact-Finder’s Recommendations
4.1— Salary Minima for Ranks	<p>Raise the salary minima for each of the five faculty ranks by approximately 4% (section 4.1);</p> <p>Add language to ensure that salary increases earned as part of the Distinguished Professor Awards are added to the salary minima to ensure that faculty who have received the awards for outstanding performance continue to enjoy them after they are promoted.</p>	<p>Current contract language aside from the following change: Delete “Instructor” as it is no longer a relevant title for a faculty member.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends a current contract language.</p>

<p>4.2a— Salary</p>	<p>COLA in all three years of the contract;</p> <p>In year one of the contract (FY 20-21), a by-rank equity adjustment of several hundred dollars (from \$300-600) to keep</p>	<p>2020-21: One-year tiered cost reductions consistent with those already taken by Professional Administrative staff as of July 1, 2020; 2021-22: Zero increase.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends a 2% raise in each year of the contract.</p>
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	<p>the instructor levels apart, and a 1% raise to the overall salary;</p> <p>In year two (FY 21-22), an increase to our salary based on YSU's full time equivalency number (FTE).</p> <p>In year three (FY 22-23), a 4% raise to base salaries;</p> <p>a longevity increase of \$20 times the number of years of service at YSU, and a \$20-per-year increase for all full Professors with eight or more years at their rank;</p> <p>language to limit the upper Administration and Athletics Division positions, specifically a 1% salary raise for the YSU-OEA bargaining unit each time:</p> <ul style="list-style-type: none"> · there is a new or replacement position at the rank immediately beneath Vice President and higher · there is a new or replacement position in the athletic division or replacement of an existing position · there is a new or replacement position in the athletic division at a higher salary than previous · any administrative position at the rank immediately beneath Vice President or higher, or any position in the athletic division, receives a salary increase. 		
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4.2b— STRS “Salary	[current contract language]	Eliminate duplicative language and clarify that decisions on whether compensation is pensionable are made by the State	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder
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Reduction Pick-Up”		Teachers Retirement System.	recommends that the Administration’s proposal be adopted.
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4.2c— Alternative Retirement Program (ARP)	[current contract language]	Clarify that ARP contributions made by YSU will be made in compliance with the State Teachers Retirement System.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Administration’s proposal be adopted.
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4.3— Promotion	Adjust the salary increases for promotions between 10-20% per rank.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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4.4— Distinguished Professors Award (DP)	Raise the awards of the Distinguished Professorships from \$2500 to \$3000, and those who achieve the Distinguished Professor title receive an increase from \$3000 to \$4000.	Reduce the number of annual DP awards from twenty-four (24) to nine (9). In compliance with ORC 3345.45 added commercialization as a pathway to tenure. As an additional cost reduction measure, decreased the amount of the DP award from \$2500 to \$1500 and provided that it will be awarded as a lump sum rather than to base pay which creates a continuing liability moving forward.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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4.5— Distinguished Professor Title	[current contract language]	Add the word “Title” to the caption so there is no confusion with the DP award. Also clarify current language and provided that only one Distinguished Professor title may be awarded to a faculty	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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		member during their University career.	
4.6— Summer Assignments	Add language in section 4.6.2 so summer courses are only taught by full time faculty members.	Reflect the agreed-upon Art. 4.6 set forth in the April 30, 2020 MOU 2020.03 between the OEA and Administration.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Administration's proposal be adopted.
4.8— Overload Pay	A faculty member who agrees to teach more than an average of 600 student credit hours (SCH) a semester shall receive \$1,500 for every 30 SCH or portion thereof. Increase overload payments from \$1250 to \$1500 to allow for inflation.	Clarify current language confirming that faculty are on 24 workload hours (30 for lecturers) per fall/spring term, and as a result, overload should only be paid in the spring if faculty work exceeds this total amount, not on a per semester basis. Faculty can always refuse to work more than 15/17 in any given semester. Delete the student credit hour limits (800 per semester) in order to effectively manage course enrollment.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

4.11— Externally Funded Chairs	[current contract language]	Delete this section or change title to “Endowed Chairs.”	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
4.13— Faculty	[current contract language]	Remove this incentive.	Based on the parties' presentations,
Supplement for International Field Classes			comparables, positions and interests, the Fact-Finder recommends current contract language.
4.14— Virtual Assistants	Define the role of a VA and their relationship with a faculty member in section 4.14.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
4.15— Gender-Di sparity Taskforce	Create both a Gender-Disparity and a Market-equity for which the Administration shall set aside \$100,000. The Administration and Association shall each choose members to the Taskforce and shall recommend adjustments to individuals' base salaries in 2021.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Article 5	Association	the Administration	Fact-Finder's Recommendation
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5.1 A— Eligibility	[current contract language]	Delete “[u]married financially” to comply with the Affordable Care Act.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Administration’s proposal be adopted.
5.1 C.1.b. — Working Spouse Coverage Obligations	[current contract language]	Reduce “\$500” to “\$300.”	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

5.1 C.6. — Working Spouse Coverage Obligations	[current contract language]	Adopt language consistent with current YSU practice and industry standard.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
5.1 C.8. — Working Spouse Coverage Obligations	[current contract language]	Delete “sufficient evidence” language.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Administration’s proposal be adopted.

<p>5.1 D. — Coverage Levels and Additional Coverage Features</p>	<p>The Health Care Advisory Committee (HCAC) shall review plan changes and recommendations. As indicated during Fact-Finding, the HCAC is made up of stakeholders from all university unions (50%) and the administration (50%). Providing the HCAC with the opportunity to review and make recommendations regarding plans and plan changes is an issue of shared governance. Additionally, the new language in 5.8 ensures that the HCAC take minutes and document all recommendations made by the HCAC.</p>	<p>Deleted “SuperMed Plus” as it is specific and “Preferred Provider Organization” is more general. Added “Administration may offer other plans” to provide other health care insurance options for employees.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association’s proposal be adopted.</p>
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<p>5.1 G. — Wellness Program</p>	<p>[current contract language]</p>	<p>Proposed language provides for Administration management of Wellness Program as it is a cost concern.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
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<p>5.2— Premium Sharing</p>	<p>5.2.A: Employee premium sharing contributions reduction to 12% (down from 15%) of the Estimated Funding Rates.</p> <p>5.2.B & D: Association members will pay no more than 15% premium sharing based on the Actual Funding Rates. To ensure this, the administration will provide the Actual Funding Level and the Actual Funding Rates, and refund to the members any amounts exceeding 15%.</p>	<p>Proposed language provides for an increase to the employee healthcare contribution to 20% effective July 21, 2020 in order to address consistently increasing health care costs and YSU’s cost/sustainability issues.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
<p>5.5— Annual Physical</p>	<p>[current contract language]</p>	<p>Deleted language as this benefit is already provided in the PPO Plan and covered by the ACA.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
<p>5.6— Second and/or Third Medical Opinion</p>	<p>[current contract language]</p>	<p>Deleted language for second and third opinions as Administration has no control over expensive specialized opinions outside of the PPO Plan and PPO Plan covers second and third opinions.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
<p>5.8— Health Care</p>	<p>[current contract language]</p>	<p>Administration’s proposed language recognizes that the</p>	<p>Based on the parties' presentations, comparables,</p>

Advisory Committee (HCAC)		HCAC may make recommendations, however management of health care costs is the responsibility of Administration and any changes to health care need to be negotiated and not established by the HCAC.	positions and interests, the Fact-Finder recommends current contract language.
5.10— Retirees Conversion Policy	[current contract language]	Deleted language as it is duplicative; it is addressed in Article 19 Retirement.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
5.12— Long-Term Disability Benefit Policy	5.12 The Association proposes that the university provide additional long-term disability benefit for individuals not enrolled in the State Teachers' Retirement System (STRS). Those enrolled in STRS are provided long-term disability benefits by the retirement system. As indicated on 07/30/2020, the administration indicates that it does not feel it is their responsibility to provide long-term disability to non-STRS enrollees.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

5.13— COBRA Rights	[current contract language]	Clarified language that COBRA is offered for any separation from employment and it is mandated by federal law.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
5.14— Voluntary Long-Term Care Coverage	[current contract language]	Delete this voluntary benefit.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix D Insurance Benefits/Defi nitions— HCAC Target Reserve Policy I. a.	[current contract language]	Delete “dental and vision.”	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix D Insurance Benefits/Defi nitions — HCAC Target Reserve Policy I. b.	[current contract language]	Delete “Margin” language.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix D Insurance Benefits/Emp loyee Contribution s	[current contract language]	Delete this paragraph because the amount of employee contributions is addressed in Article 5.2 and this language is duplicative.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Appendix D Insurance Benefits/Health Care Plan Design	[current contract language]	Add Health Care Plan Design to address the reasonable changes to the benefit platform.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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Article 6	Association	Administration	Fact-Finder's Recommendation
6— Article (re-titled) "Faculty Development"	<p>Unify the FIL/Sabbatical and Research Professorship committees into a single committee and adopt the procedures specific to the FIL/Sabbatical Committee where the two differ;</p> <p>Award service on the combined committee with reassigned time;</p> <p>Staff the committee through an election.</p>	Combine the two separate faculty committees that recommend reassigned time for faculty to perform research outside of classroom time.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends combining the two faculty committees.
6.1— Commercialization	[current contract language]	Add language stating that commercialization should be included as one path to tenure for consideration under scholarship, pursuant to ORC 3345.45.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder does not recommend the addition of this language.
6.2— Duration, Pay, and Number	Raise the cutoff point from \$70,000 to \$75,000.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association's proposal be adopted.

6.3— General Provisions; Student Success	Faculty member who takes a Sabbatical and resigns after completing one year of service beyond the Sabbatical only need reimburse half of the salary received while on leave—this half year is equivalent to the “other half” of the academic year in which a faculty member on a Faculty Improvement Leave	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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	renders full-time service to the University.		
6.4— Procedures	Add the language regarding the following: -broader committee latitude in substituting a lesser award than the one applied for -forbid committee members from voting on an application if they were not present for the applicant’s presentation; -provide committee feedback on applications that it elects not to support.	Add a chart providing a very concise and easy to follow timeline of requirements. The current CBA, in paragraph form, is unnecessarily confusing. By combining multiple committees into one, we felt this chart simplified the process. Provide a flexible bank of 240 workload hours from which the committee may award as many different faculty members reassigned time up to the 240 hours.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the addition of a chart to the extent that it accurately reflects the terms of the contract, for which the Fact-finder recommends current contract language.

27.1— Sabbaticals and Faculty Improvement Leaves	[current contract language]	[Administration proposal moved Article 27.1 into Article 6.]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Administration’s proposal.
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<p>27.2— Professional Development and Scholarship of Teaching and Learning</p>	<p>Restore language that existed up to and including the 2011—2014 Agreement with the clarification that this leave is not available to faculty who have been awarded a Research Professorship, Faculty Improvement Leave, or Sabbatical;</p> <p>Address Lecturers and Senior Lecturers, contract types that did not exist in the 2011—2014 Agreement.</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language</p>
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Article 7	Association	The Administration	Fact-Finder's Recommendation
<p>7.1— Electronic Leave Report</p>	<p>[current contract language]</p>	<p>Administration's proposal brings the Administration in line with every other YSU employee who reports leave electronically.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
<p>7.2a— Sick Leave Accumulation and Use</p>	<p>Sick leave may be used within 1-hour increments (versus the current 8-hour increment) to accommodate for short-term leave such as doctor appointments, etc. Adjust the language for the hourly accumulation rate for easier calculations.</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association's proposal be adopted.</p>

7.2.b— Emergency Sick Leave Reserve	[current contract language]	Administration’s proposal reduces emergency sick leave which brings YSU in line with its sister institutions.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
7.2.2— Maternity Leave or Primary Parental Leave	Rename the maternity leave section to primary parental leave; adjust the language to allow the primary parent up to one full academic semester upon birth or adoption.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
7.2.3— Parental Leave or Additional Parental Leave	Allow a secondary parent more calendar time to use their 3 weeks of paid leave, from 3 months to 6 months; increase an adoption allotment from \$2000 to \$6000, to keep up with inflation and travel expenses incurred with adoption from other nations.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
7.4— Other Leaves Prohibited by Law	Clarify language outlining the federal requirement that employees must give 30-days notice of their intent to use FERPA leave.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Article 8	Association	the Administration	Fact-Finder's Recommendation
8.2— Documentation To Support The Complaint	[current contract language]	Require supporting documentation to properly justify, substantiate and track grievances.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
8.3— DFR	Provide proper training in grievance procedure for the DFR and.	Formalize the previously-informal complaint process, recognizing that the informal complaint process is a formal step of the grievance procedure.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
8.4— The Pre-Grievance Process	Put in language the long-established practice of filing a Pre-Grievance prior to a formal grievance.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association's proposal be adopted.
8.5— Grievance Process	Add language to ensure that when a grievance remedy is granted it is implemented.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
8.9— Mediation	Add Mediation as an option for the parties to pursue mediation prior to arbitration, with the parties' consent.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association's proposal be adopted.

Article 9	Association	the Administration	Fact-Finder's Recommendation
9.3— Department Governance	[current contract language]	If faculty misses the February 1 st deadline, the chair will submit the governance document on behalf of the department; Remove the appeals committee language because it usurps the academic authority of the Provost as the Chief Academic Officer.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

9.3.O— Department Governance	[current contract language]	Remove all references to workload.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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9.4— Administrative Rights and Responsibilities	[current contract language]	Add workload to the list of matters that are the prerogative of the Administration.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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9.6— Teaching Schedules	Restore language that appeared in Article 16 in the 2014-2017 as Article 9.6	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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9.7— Department Chair	[current contract language]	Remove language concerning Department Chairs, as it does from the CBA.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Administration's proposal be adopted.
(new) 9.14	Add language stating that all Board of Trustees (BOT) policy changes shall be shared with the Association in redlined form.	[N/A]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association's proposal be adopted.
(new) 9.15	Adopt a process wherein faculty can anonymously evaluate their Chair and Dean in the interest of promoting better working	[N/A]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder does not recommend the addition of this language.
	relationships and more productive governance.		

Article 11	Association	the Administration	Fact-Finder's Recommendation
11.1— Notice	we propose adding a sentence that any non-reappointed senior lecturers shall occur after the number of years on their initial contract is up, to prevent faculty members being terminated in the middle of a multi-term contract.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

11.3— Appeal	[current contract language]	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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Article 12	Association	the Administration	Fact-Finder's Recommendation
12.1— General	Specify the seven tests of just cause that must be followed when the Administration seeks to impose discipline on a faculty member; Eliminate the designation "Suspension without Pay";	Current contract language? ["Not all University separations are just cause separations (i.e., inability to perform essential duties of the position) and subject to Corrective Action."]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

	<p>If the contractual timelines for termination cannot be met, that they shall not take place until the end of the following academic year;</p> <p>A faculty member who is to be terminated shall remain a member of the bargaining unit until the effective date of termination and is thus subject to the rights and responsibilities that pertain thereto.</p>		
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<p>12.2— Corrective Action</p>	<p>Move the sentence beginning “Discharge may be considered...” from its current location at the end of Article 12.2;</p> <p>Indicate that these are the “steps” of corrective action, aligning this language with that of Article 12.3: “Corrective action will always be implemented at the lowest step reasonable for the problem(s) being addressed. In most cases, corrective action will work sequentially through steps 1 through 4...”</p>	<p>Investigations language moved back to Article 2 and it was TA’d by the parties.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language with the exception that any TAs reached by the parties' on this provision is incorporated by reference into the recommendations.</p>
<p>(new) 12-3— Pre-Corrective Action and Corrective Action</p>	<p>N/A</p>	<p>Add Informal Corrective Action step to encourage early resolution of disciplinary matters as well as a streamlined corrective action to 3 steps;</p> <p>Add standardized procedures for written</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Administration’s proposal</p>
		<p>reprimand and suspension steps to eliminate confusion and duplicative language.</p>	
<p>Former 12.3— Implementing Corrective Action</p>	<p>[current contract language]</p>	<p>Delete the requirement of corrective action training for managers prior to implementation of corrective action.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>

12.6— Appeal	[current contract language]	<p>Clarify current contract language that a grievance may only be filed on procedural matters relating to a termination with the effective date of termination is the receipt date of the President’s letter;</p> <p>Limit compensation to the end of the appointment date.</p>	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that current contract language.
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Article 13	Association	Administration	Fact-Finder’s Recommendation
13.2a	Add one sentence in section 13.2a to specify that senior lecturers receive protective priority over other term faculty.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends that the Association’s proposal be adopted.

Article 14	Association	Administration	Fact-Finder’s Recommendation

14.2— Student Evaluations of Teaching	Add a sentence that faculty members who become Chairs should have their evaluations written by the Dean (versus fellow Department members); Clarify that if a student wishes to see a faculty record, that the faculty member be so informed.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
14.3— Exclusions	[current contract language]	Remove exclusions and allow all student feedback.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
14.5— Printing Out Student Evaluations	[current contract language]	Add language stating that student evaluations will be entirely electronic.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Administration's proposal.
14.6— Chair's evaluation of faculty	Add two sentences requesting specific recommendations from a Chair on how to improve negative aspects of faculty performance and forbidding any references to investigations of faculty that were unsubstantiated.	Remove Two Week Notification Prior To A Visit; Delete chair training regarding evaluations; Delete chair deadlines to Dean and Dean deadlines for evaluations.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the addition of a sentence forbidding any references to investigations of faculty that were unsubstantiated.

Article 15	Association	Administration	Fact-Finder's Recommendation
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15— Force Majeure	[current contract language]	Add force majeure provision	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder does not recommend incorporation of the Administration's proposed language.
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Article 16	Association	Administration	Fact-Finder's Recommendation
16— Workload Activities	<p>Remove the clause referring to the 2017-2018 academic year;</p> <p>All full-time faculty shall receive an immediate one-time ten percent (10%) increase to base salary if there is an increase to the Board's faculty workload policy regarding the number of workload hours, or if there are other policy changes that accomplish the same results, (not a change to any individual faculty member's workload).</p>	Remove this provision.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends removal of the clause referring to the 2017-2018 academic year.

(new) 16.2	Move the language from the Side Letter of Agreement into the CBA itself to become a new Article 16.2.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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Article 18	Association	Administration	Fact-Finder's Recommendation
18— Academic Freedom	[current contract language]	Clarify faculty member responsibilities, clarifies expectations, and establishes standards of performance typically expected in higher education.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Article 19	Association	Administration	Fact-Finder's Recommendation

<p>19.2— Term of Benefits & Sick Leave Conversion</p>	<p>We propose broadening the scope of the article to encompass all kinds of separation, not just retirement. We propose an addition of section 19.2 to define the term of faculty benefits upon separation.</p>	<p>In order to be eligible for sick leave conversion, an employee must separate from employment and retire from a State of Ohio retirement system;</p> <p>Reduce the amount of sick leave conversion to be consistent with YSU Board Policy and the amount of sick leave conversion received by Professional Administrative staff;</p> <p>Reduce sick leave conversion to bring it more in line with that received by other bargaining unit employees and ORC 124.39.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Administration's proposal.</p>
<p>19.3— Continued Benefits</p>	<p>[current contract language]</p>	<p>Clarify tuition/remission benefits and conversion of life insurance for retired faculty.</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
<p>19.3— Sick Leave Conversion</p>	<p>In section 19.3, we propose broadening sick leave conversion in accordance with their retirement plan, and with ORC 124.39 (A) (2).</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>

(new) 19.5— Retirement Incentive Plan	We also propose adding a section (19.5) to provide an opportunity for a retirement incentive plan modeled on a plan that was incorporated as a Side Letter of Agreement in the 2014–2017 Agreement, wherein the retiree receives a \$15,000 check for each of the first 4 years of retirement, for a total of \$60,000.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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Article 20	Association	Administration	Fact-Finder's Recommendation
20.1— Commitment to Students	T/A	T/A	The Arbitrator incorporates by reference the parties' TA into this recommendation.
20.2— Student Academic Grievances	T/A	T/A	The Arbitrator incorporates by reference the parties' TA into this recommendation.
(new) 20.3— Other student grievances	The Association proposes adding Section 20.3 to allow formal complaints that are not academic but do have merit to be investigated by the	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder does not recommend that the proposed language be added.

	Professional Conduct Committee of the Academic Senate. If that Committee finds clear and convincing evidence that the complaint is justified, a copy of said complaint may be placed into the faculty members personnel file. Additionally, we outline a procedure for addressing student complaints that is slightly modified from the one that appears in the current CBA in Article 17.3.		
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Article 21	Association	Administration	Fact-Finder's Recommendation
21— Retained Rights	[current contract language]	Rename this article as “Administration Rights” recognizes more commonly used terminology; Clarify and simplify rights of Administration consistent with ORC 4117.08.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Article 22	Association	Administration	Fact-Finder's Recommendation

22.4 & 22.5 — University Facilities and Availability of Agreement	Retain the Agreement in hard copy so that it is available as a ready reference for those who need to consult it.	Administration believes agreement was reached on Administration’s proposals for these two sections of Article 22.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language with the exception that any TAs reached by the parties'
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			on this provision is incorporated by reference into the recommendations.
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22.6	Add the following clarifying language: “Members of the Association’s Negotiations Team shall be excused from any department meetings that conflict with Joint Negotiating Sessions or Association Planning Meetings”; Increase the reassignment pools by 6 workload hours each year, so that they become 24, 24, and 66, respectively;	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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22.8— Association Reassigned Time	[current contract language]	Administration proposes to set a limit of fifty-four (54) hours of reassigned time because it is in line with, but still more than what has been used in prior negotiation years.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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<p>22.9— Negotiating Team Summer Compensation</p>	<p>Change language as follows: “Negotiating Team Summer Compensation: Should negotiations of a successor Agreement extend beyond the end-point of the members of the negotiations team’s nine-month employment contract, then all up to two members of the negotiations team shall be provided with a supplemental contract equivalent to the compensation for a fully enrolled three 1.5 credit hour summer course.</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
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Article 26	Association	Administration	Fact-Finder’s Recommendation
<p>26.2 @26.3— Sexual Harassment & Discrimination</p>	<p>Add an additional paragraph in section 26.2 to include protocols specific to allegations of sexual harassment and Federal Title IX guidelines, including a clear and convincing standard of evidence, the faculty members right to be informed of the allegations, and their right to have preparatory time to respond to questions before an investigatory meeting.</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>

(new) 26.3 — Parking	[current contract language]	Remove card-activated gates from all lots.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
26.4— Academic Workplace Environment and Safety Task Force	Change the participants of the Academic Workplace Environment/ Safety Task Force to allow members of other bargaining units to attend.	Remove language regarding this non-functioning committee???	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
(new) 26.5 — Informational Technology Resources	[current contract language]	Bring language in line with the BOT policy to safely and securely store data across campus – not just among faculty.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Administration's proposal.

26.6— Classroom and Laboratory Space	Add research/scholarship language when considering classroom and laboratory space.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
26.11— Committee Assignments	Limit the number of committees a faculty member can sit on to a maximum of 4 and specify that Lecturers and Senior Lecturers shall not be required to serve on committees due to their higher teaching load.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

<p>26.12— Committee Meetings</p>	<p>No classes shall be held between the hours of 4-5pm on Mondays and Wednesdays to allow for meeting and committee time.</p>	<p>[Adopts the Association’s proposal with the exception of the last sentence, which was unclear.]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Association’s proposal.</p>
<p>26.13— Workday</p>	<p>Specify that a faculty member who has a class that runs beyond 8pm shall not have a class the next day until at least 12 noon, and that there shall be a 10-hour break between classes on consecutive days of the week;</p> <p>Faculty shall not be scheduled to teach classes more than 5 days a week, or more than 3 evenings per week, unless both the Chair and the faculty member consent to such an arrangement.</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>
<p>26.14— Academic Calendar</p>	<p>Identify start of the contract year to allow for business and departmental meetings and clarify that no courses shall be taught on YSU-recognized holidays.</p>	<p>[current contract language]</p>	<p>Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.</p>

26.15— Instructional Personnel	Identify teaching as the purview of the bargaining unit, such that all YSU courses shall only be taught by YSU faculty, Graduate students, Chairs, and the Director of Faculty Relations as long as they have no other administrative post. Any other appointments shall be via adjunct faculty contracts that must be compensated on the standard rate per teaching hour of instruction.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
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Article 27	Association	Administration	Fact-Finder's Recommendation
27.1— Research Professors	[current contract language]	Move Research Professors to Article 6, combine with Sabbaticals and Faculty Improvement Leaves and retitle Research Professors to Faculty Scholarship Support.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
(former) 27.2a— Intellectual Property Rights	[current contract language]	Delete language that is inconsistent with federal copyright law.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

(former) 27.2b— Use of Instructional Work	[current contract language]	Give the commonly accepted title to the work product description listed in the article; broadening the Administration’s ability to use the instructional work product and achieving consistency with federal copyright law and current practice in academia nationwide.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
27.4— University Outreach Fee Remission	[current contract language]	Delete University Outreach Fee Remission as the Continuing Education department of University Outreach no longer exists.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
27.4— Faculty Development and Travel	Raise the Department Faculty Development and Travel budget per faculty member from \$900 to \$950, and the College Faculty Development and Travel budget per faculty member from \$525 to \$550. This total increase of \$75 represents about a 1.6% increase annualized over the past three years, a figure well below the inflation rate.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Association’s proposal.

Article 28	Association	Administration	Fact-Finder’s Recommendation
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28.1— Right to Teach	[current contract language]	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
28.2— Textbook and Course Materials Selection	Add a sentence specifying that faculty who do not hold administrative roles shall be permitted to collect royalties on any textbooks they have authored.	Bring language into compliance with ORC 3345.025, which outlines provisions within the current Board Policy.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Administration's proposal.
28.3— Course Requirements	[current contract language]	<p>Syllabus must be due to the chairperson seven (7) days before the semester begins, not seven (7) days after the semester begins.</p> <p>Add a statement to faculty members that office hours for the benefit of students shall continue over break.</p> <p>Faculty members shall not give final exams before the final exam period.</p>	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
28.6— Office Hours	[current contract language]	The Administration is willing to accept the OEA's counter (dated 8/6/2020) to its Supposal language. The OEA's counter states that faculty will maintain five (5) in person office hours per week and then two (2) more by appointment when necessary. This provides flexibility for student schedules.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends the Association's 8/6/20 counter proposal as agreed to by the Administration.

28.8— Certification of Foreign Nationals	Add language regarding the certification of foreign-national faculty, to mandate that Administration files the appropriate federally-required paperwork for that faculty member in a timely fashion.	[current contract language] // N/A	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder does not recommend the incorporation of the Association's proposed language.
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Article 30	Association	Administration	Fact-Finder's Recommendation
30— Types and Durations of Contracts	Enhance the job security of Senior Lecturers, who have already demonstrated their teaching excellence during their five years as Lecturers, by offering them “rolling” three-year contracts, which would restart at the beginning of each academic year unless they were notified of non-reappointment as per Article 11.	[Current contract language on this issue]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Article 31	Association	Administration	Fact-Finder's Recommendation
31.2— Distance Education Learning Community	[current contract language]	Remove this language. If it is needed, this community should be recommended by the Academic Senate in a process of shared governance.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

31.3— Rights and Responsibilities	Add a provision that sets limitations for how and when a department chair may gain access to an online course.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
31.4— Asynchronous Class Size	[current contract language]	Delete references to DELC because the committee does not exist.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
31.6— Compensation for Web-Based (WB) courses ONLY	[current contract language]	Move issues related to summer rotation to governance documents per Article 9. Specify that, for courses where faculty have received additional compensation by the University to develop online courses, the University has the right to make teaching assignments for said courses.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Appendices	Association	Administration	Fact-Finder's Recommendation
Appendix A— Commercialization	[current contract language]	Bring language into compliance with ORC 3345.45, which specifically details the need for the University to recognize commercialization as an avenue for scholarship.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.

Appendix A— Distance Education	[current contract language]	Change definition to align the distance education definition with that of our accrediting body, The Higher Learning Commission.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix A— Copyright, Intellectual Property, Patent, Works for Hire	[current contract language]	Change definition to align with other universities to minimize inconsistencies and expand our opportunities.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix A— Department Chair	Clarify the definition for Department Chair.	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix B	[current contract language]	Delete as duplicative of Article 13.	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix C	[current contract language]	[current contract language]	Based on the parties' presentations, comparables, positions and interests, the Fact-Finder recommends current contract language.
Appendix D	Addressed with Article 5	Addressed with Article 5	Addressed with Article 5

Betty R. Widgeon
Betty R. Widgeon, Fact-Finder

September 25, 2020
September 25, 2020

Certification:

I, Betty R. Widgeon, hereby certify that a true copy of the foregoing Fact-Finder's Report was served by electronic mail via email attachment on September 25, 2020 at 5:00 pm upon Susan W. Clutter, Esq. 425 Niles Cortland Rd. SE, Suite 101, Warren, Ohio 44484: swclutter@ysu.edu Counsel for the Union (along with Herman Pipe, pipeh@ohea.org), Seth P. Briskin, Esq., Meyers, Roman, Friedberg & Lewis, 28601 Chagrin Blvd., Suite 500, Cleveland, Ohio 44122—Counsel for the Employer: sbriskin@meyersroman.com (along with Kevin M. Kralj, kmkralj01@ysu.edu), and upon the Ohio State Employment Relations Board (via Michael Allen , General Counsel, Bureau of Mediation—State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, OH 43215-4213) also via electronic attachment, this 25th day of September 2020.

Betty R. Widgeon
Betty R. Widgeon

September 25, 2020
September 25, 2020