



## State Employment Relations Board

65 East State Street, 12th Floor  
Columbus, OH 43215-4213

<https://serb.ohio.gov>  
Tel: (614) 644-8573 Fax: (614) 466-3074

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Mona Reed, Executive Director

January 25, 2024

Robert Mitchell, Esq.  
Law Office of Robert Mitchell  
250 East Fifth Street, #15  
Cincinnati, OH 45202

Christopher E. Hogan, Esq.  
Newhouse, Prophater, Kilman & Hogan, LLC  
3366 Riverside Drive, Suite 103  
Columbus, OH 43221

RE: Case No(s). 2023-MED-07-0533  
International Union of Operating Engineers, Local 20 (HVAC, Engineers, Grounds) and Cincinnati State  
Technical and Community College

Dear Messrs. Mitchell and Hogan:

Please find enclosed a Notice and the fact-finding report to be posted. This Notice with the attached copy of the report should be posted immediately, where it can be viewed by employees and the public. In accordance with Ohio Administrative Code Rule 4117-9-05(P), the notice of rejection is to be posted for a period of thirty days or until settlement occurs, whichever is earlier.

Sincerely,

Mary E. Laurent  
Administrative Assistant  
Bureau of Mediation  
cc: Gregory J. Lavelle  
Enclosures



# NOTICE

## FROM THE STATE EMPLOYMENT RELATIONS BOARD

PUBLICATION DATE: January 25, 2024

CASE NO(S). 2023-MED-07-0533

In the Matter of

International Union of Operating Engineers, Local 20

AND

Cincinnati State Technical and Community College

The attached report of the fact-finding panel has been acted on as follows:

Cincinnati State Technical and Community College - (HVAC, Engineers, Grounds) - REJECTED

Pursuant to Chapter 4117.14 of the Ohio Revised Code, this notice and attachment serves as publication of the findings of fact and recommendations of the fact-finding panel. On the publication date, the original notice of rejection of the fact-finding report was sent to a daily newspaper which serves the vicinity where the governmental entity is located. A copy of the notice has been posted in the Clerk's Office of the State Employment Relations Board.

Individuals may contact the above named parties to determine if copies of the report are available or contact the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215.

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
BEFORE GREGORY J. LAVELLE, ESQ.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 20      CASE NO. 2023-MED-07-0533

Union

and

REPORT AND RECOMMENDATION

CINCINNATI STATE TECHNICAL AND  
COMMUNITY COLLEGE

Employer

APPEARANCES

UNION

Robert Mitchell, Esq.	Advocate
Rick Gerrein	Business Manager
Mike Mays	Union Representative
Max Szturm	Bargaining Unit Member

EMPLOYER

Christopher E. Hogan, Esq.	Counsel
Steve Morris	V.P. Administrator
Chris Calvert	CFO
Kim Vasko	Manager
Gerd Christopher	Assistant Director
Falonda Rodgers	Human Resources

January 17, 2024

## **BACKGROUND**

International Union of Operating Engineers, Local 20 (hereinafter, the Union) and Cincinnati Technical and Community College (hereinafter, the College) were parties to a collective bargaining agreement, effective October 12, 2020 to October 11, 2023. (College Exhibit A, Article 29, Duration) (hereinafter, the 2020 Agreement) The 2020 Agreement covered Lead Technicians, HVAC Technicians, Facilities Technicians 1 and Facilities Technicians 2. (Article 1, Recognition) The current staffing at the College is three (3) HVAC Technicians, six (6) Facilities Technicians 1, one (1) of whom is classified as Crew Leader and three (3) Facilities Technicians 2. (See College Exhibit G)

There are four (4) other bargaining units at the College, a bargaining unit represented by the American Association of University Professors (hereinafter, the AAUP) 148 employees, a bargaining unit represented by the Service Employees International Union (hereinafter, SEIU), 79 employees, a bargaining unit represented by the Fraternal Order of Police (hereinafter, the FOP) 8 employees and another unit of the Union, 11 employees. A new AAUP Agreement has been completed. The FOP and other IUOE collective bargaining agreements are in negotiations and the SEIU Agreement expires in April of 2024.

The collective bargaining agreement of each bargaining unit other than that of the AAUP contains a “me too clause” similar to that contained in the agreement between the College and the Union:

Parity Compensation: If during the duration of this contract, the Board of Trustees approves an across-the-board salary increase or lump sum payment for another bargaining unit or a broad class of non-bargaining unit staff within a fiscal year which is greater than the amount the members received during the same fiscal year, the members’ pay will be adjusted so that they receive parity for that fiscal year. ...

Parity adjustments are made to the individual wage rates of employees covered by the collective bargaining agreement between the College and the Union. Those employed during the entire term of the 2020 Agreement had their wages adjusted by 5.33%.

The College and the Union negotiated for a successor collective bargaining agreement. Tentative agreements were reached with respect to many items, but complete agreement was not reached. Fact-Finding was demanded and a Fact-Finding Hearing was scheduled for December 18, 2023. Position Statements were timely filed and a Pre-Hearing Telephone Conference was held on December 15, 2023. It was confirmed at the Pre-Hearing Telephone Conference that the sole issues for Fact-Finding related to Article 8 – Compensation. The Fact-Finding Hearing was conducted and it was stipulated that the Report and Recommendation be issued and delivered electronically on January 17, 2024.

## **INTRODUCTION**

The issues discussed herein are being considered pursuant to Ohio Revised Code Section 4117-09-05(K)

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section [4117.14](#) of the Revised Code:

(1) Past collectively bargained agreements, if any, between the parties;

(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) The 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 standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations 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 in private employment.

## **POSITIONS OF THE PARTIES**

### **POSITION OF THE UNION**

The Union proposes to delete the first paragraph of Article 8, Section A referring to historical wage increases received under the collective bargaining agreement in effect from October 12, 2018 to October 11, 2020 (hereinafter, the 2018 Agreement). The Union proposes to eliminate the re-opener provision contained in the third paragraph of Article 8, Section A.

The Union proposes to change the title of Article 8, Section D from “Minimum and Hiring Base Rates” to “Base Rates” and to delete the word “minimum” from the first sentence of that section. The Union proposes eliminate the title of HVAC Tech, placing those in that classification into the classification of Facilities Tech I, grandfathering those having held the title of HVAC Tech to their duties prior to July 1, 2023. The Union proposes that, effective July 1, 2023, the rate of Facilities Tech I be increased to \$ 34.42 per hour and the rate of Facilities Tech II be increased to \$ 30.58 per hour. The Union proposes that the language

of the parity clause be clarified by adding language to specify that upon an increase triggering a parity increase for members of the bargaining unit, the base rate for members of the bargaining unit would increase in the same amount and on the same date as the triggering increase.

### **POSITION OF THE COLLEGE**

The College proposes to update language of Article 8, Section A to refer to parity increases received by members of the bargaining unit during the 2018 Agreement and to relate the increases to be afforded to the bargaining unit based on the application of the parity clause to the increases negotiated for the AAUP. The College proposes wage increases in August of 2024 and 2025 based on the dates and amounts negotiated in the AAUP Agreement. The College does not oppose the proposal of the Union to eliminate the language relative to the re-opener in the 2020 Agreement.

The College opposes the changes in the title of Article 8, Section A and the elimination of the word “minimum” from the text of that section. The College proposes to maintain the separate classification of HVAC Tech. The College proposes new minimum base rates for all classifications, effective October 12, 2023 and to adjust those rates based on parity increases applied since the effective renewal date of the successor collective bargaining agreement. The College opposes the additional language proposed by the Union with respect to the parity clause.

### **DISCUSSION**

#### **INTRODUCTION**

The Union has proposed to consolidate the classifications of HVAC Tech and Facilities Tech I, claiming that the employees of both classifications perform the same duties. There is

some history that employees were cross trained and that new job descriptions were created only for Facilities Tech I and Facilities Tech II. (See Union Exhibits 4, 5 and 6) That does not mean that there does not remain a distinction in the actual duties between those in the HVAC Tech classification and the Facilities Tech I classification. The Union appears to acknowledge that fact by proposing that the duties of the HVAC Tech be “grandfathered”. One must also presume that the College would be rational and not want to pay more when not required. The College proposes a differential of one dollar and sixty-two cents (\$ 1.62) per hour in the rates of the HVAC Tech classification and the Facilities Tech I classification, the difference between \$ 28.13 and \$ 26.51. Considering PERS, payroll taxes and potential overtime, the cost would exceed four thousand dollars (\$ 4,000.000) per year.

The best evidence at hearing was that some employees in the Facilities Tech I job classification at some times perform some duties similar to the duties of the HVAC Tech. Even if it were proven that some in the Facilities Tech I classification perform duties **identical** to those of the HVAC Tech some of the time does not mean that all persons in the Facilities Tech I classification should be paid as HVAC Tech all of the time. The issue of the appropriate pay for work out of classification is a matter which would be grievable even without express contract language. As calling a swan a duck does not make it a duck, calling a person performing the duties of a HVAC Tech a Facilities Technician I does not make that person a Facilities Technician I and does not mean that the person should be paid the rate of a Facilities Technician I.

Many collective bargaining agreements have provisions for compensating individuals who perform work of a higher classification on more than a de minimis basis, for example, more than four (4) hours in a given pay period. It is suggested that the parties utilize the procedures



of Article 21, Labor/Management Committee to create a job description of HVAC Tech which sets forth the types of duties, exclusive to the HVAC Tech classification which differentiates the duties of that classification from those of Facilities Technician I and to address issues of proper compensation for employees working out of classification. Note that this is a suggestion, not a part of the recommendation. Failing to reject this Report and Recommendation would not require either party to follow the suggestion.

The Union has suggested a that a “market adjustment” be made based on external comparables of wages. To assess “comparables”, however, one must have evidence on all elements of their comparability; total compensation, budget, job descriptions/actual work duties, bargaining history, staffing, wage mechanics and all other matters which make “comparables” comparable. The argument of the Union, based on external comparables, must be rejected.

The proper manner of determining an appropriate wage for an existing classification in Fact-Finding is to begin with the existing wage or wage scale of the existing classification. The rate or rates should then be adjusted based on any changes in compensable factors since the last time the classification was evaluated. Compensable factors include required licensure or education, required skills, supervisory responsibility, workload and dangerous or uncomfortable working conditions. There appears to have been no substantial change in these compensable factors during the term of the 2020 Agreement.

If the compensable factors of the job classification have not substantially changed during the relevant time period, then the compensation generally should remain the same. “Compensation”, however, does not mean the stated dollar amount of the compensation, but the amount which would give the employee the equivalent purchasing power.

The College points out that eligible bargaining unit employees received an accumulated

increase of 5.33% during the term 2020 Agreement. What the College ignores is that purchasing power declined by over fifteen percent (15%) during the same period of time.

<https://www.investopedia.com/inflation-rate-by-year-7253832>. Adjustment should be made.

The College has not argued an inability to pay. The College introduced evidence that enrollment is projected to decline by two and one-half percent (2 1/2%). Enrollment, however, is not the best measure, since student revenues are not generated by bodies, but, by credit hours. Invoiced credit hours have only declined by slightly over one percent between 2022 and 2023. Fees per credit hour, however, have increased by five dollars (\$ 5.00) which equals 2.72%. Student revenue, thus, appears to have actually increased, despite the drop in enrollment.

The College has also admitted to getting a 3.7% increase in funding from the State of Ohio. This figure, though relevant, does not tell the complete story. An increase in the funding of 3.7% does not mean that there is 3.7% available for increases for the bargaining unit. Wages and benefits are only a portion of the budget. If other elements of the budget increased dramatically, there would be less than 3.7% available for wages and benefits. On the other hand, if the other expenses remained stagnant, there would be more available for wages and benefits.

One can assume that if there were to be other negative factors affecting the affordability of wage increases, evidence of the same would have been presented at hearing. A wage increase of three and one half percent (3 1/2%) is recommended. That increase would be in addition to any increases caused by increases to the Minimum and Hiring Rates as discussed below. This recommended increase would still place the members at least five percent (5%) below their purchasing power at the beginning of the 2020 Agreement. Increases would be effective October 12, 2023, the proposal of the Union for a July 1, 2023 effective date for the increase being rejected.

Important is the justification for this recommendation. Three (3) other bargaining units have “me too” clauses, one being represented by the Union. The “me too” clauses do not apply to certain wage increases, including wage increases due to market salary adjustments:

This parity obligation does not apply to adjustments to starting pay, **market salary adjustments** ...

If the College failing to reject this Report and Recommendation were considered agreeing to a “market salary adjustment”, then the Parity Compensation provision would not apply. The argument of the Union in favor of its wage proposal was that the proposed increase was justified as a market salary adjustment.

Market salary adjustments generally applied to situations where there was a shortage of employees of a particular skill set available in the labor market so as to require a higher level of compensation; registered nurses in the 1980’s and IT professionals in the 2000’s. Arguably, the market has so changed due to inflation that there is a shortage of all employees at the previous market price. Twenty-two (22) states increased the minimum wage on January 1, 2024. Ohio raised the minimum wage from \$ 10.10 an hour to \$ 10.45 an hour, approximately three and one half percent (3 ½%). As the minimum wage rises, so does the market. A three and one half percent (3 ½%) increase is recommended.

Traditionally, the AAUP had led the way in negotiating wage increases, being the “dog that wags the tail” of the other four (4) bargaining units. It might seem inappropriate for the Union to receive a greater percentage increase than the AAUP, although approximately the same dollar increase, based on relative minimum salary levels. It might be viewed as the “tail” attempting to “wag the dog”. There is no Parity Compensation provision, however, in the AAUP collective bargaining agreement. It was appropriate to have the AAUP lead the way when their

interests aligned with those of the other units. The mission of professors, however, in evaluating compensation, may be different than those of the employees in the other units, being less concerned with the extrinsic compensation of wages and benefits. Professors, moreover, earn twice as much as members of the other units. At that income level, professors may be less sensitive to inflation. To higher income individuals, inflation reduces the amount of money available for savings and discretionary spending. To lower income individuals, inflation may compromise their ability to purchase necessities.

### **DISCUSSION OF PARITY COMPENSATION**

The parties have separate proposals on Parity Compensation. The Union proposes that there be language added to Article 8, Compensation, Section D stating:

The base rate will increase whenever there is a Parity Compensation increase in the same amount, and on the same date.

The College appears to propose the same effect, with increases in the same amount and same date as in the AAUP contract, an increase of three percent (3.00%), effective the first day of academic year 2024-2025, and an increase of two point seven five percent (2.75%), effective the first day of academic year 2025-2026. The reason for the proposed language was not explained and would appear to be unnecessary. No proposal, however, is to be presumed to have been made for no purpose. Proposals to amend existing language are generally to be interpreted to be intended to change something. The proposal uses the word “amount”. If a professor were to receive a three percent (3.00%) raise, the “amount” of the increase could be argued to be two thousand one hundred dollars (\$ 2,100.00). Because, it would not be recommended that employees of this bargaining unit receive as parity compensation the same

dollar amount of an increase as that afforded to employees in other bargaining units and because the language proposed by the Union would otherwise be considered surplusage, this Union proposal with respect to Parity Compensation is not recommended.

The College has also proposed to add language to the Parity Compensation provide that minimum hiring rates parity increases would be adjusted for parity increases applied since the effective renewal date of the collective bargaining agreement:

For open positions, the minimum hiring rates for new hire postings will be adjusted for parity increases applied since the effective renewal date of this contract.

This language requires some clarification due to the recommendations regarding wages to explain that the 2024 and 2025 increases would be considered parity increases while the three and one half percent (3 ½%) increase effective October 12, 2023 would not be considered to be a parity increase and would not be added to the minimum hiring rates, the recommended language to state:

For open positions, the minimum hiring rates for new hire postings will be adjusted for parity including, but not limited to the increases of August 25, 2024 and August 24, 2025 above, but excluding the three and one-half percent (3 ½%) increase effective October 12, 2023.

There are some other issues which come to mind in analyzing the above language. Collective bargaining agreements are like games of Jenga in progress. Moving or adding a piece may or may not leave the remaining tower unchanged. Other pieces may move unintentionally. It is presumed that an "open position" is any position the College desires to fill, whether there is a vacancy caused by an employee leaving employment with the College or a vacancy caused by the College adding a position.

There is a potential ambiguity in the new language in the use of the term “new hire postings”. It is presumed that the added language is intended only to set the rate if an outside hire fills the vacancy and not to change any past practice with respect to job postings, filling of vacancies and wage rates upon promotion. Therefore, this provision should be read to require that an employee promoted to a higher rated classification be compensated at the greater of the amount he would have received according to the past practice of the parties or the minimum base rate for the hires in the new classification in effect at the time of the promotion.

## **RECOMMENDATION**

The parties had reached tentative agreement on all provisions of the collective bargaining agreement with the exception of Article 8. The tentative agreements of the parties are recommended. The recommended language with respect to Article 8 is set forth below:

### **Article 8 Compensation**

#### **A. Wages**

Consistent with the Parity Compensation (“Me-Too”) clause in the collective bargaining agreement for the period October 12, 2021 ~~18~~ – October 11, 2023 ~~20~~, eligible ~~all~~-unit members received a 5.33% ~~a 3%~~ increase to base wages due to compounding of increases of 1%, followed by an additional 1%, and 3.25%.

During the remainder of this Agreement, base wages for all members will increase as noted below.

1. Effective and retroactive to October 12, 2023, the base salary of all unit members shall be increased by three and one half percent (3 1/2%). This increase shall be calculated after any increase due to increases in the Minimum and Hiring Rates. The fact of this increase shall not be interpreted to offset or reduce the entitlement or amount of any parity increases based on increases under the AAUP contract. By way of example and not limitation, should the AAUP receive an increase in 2026 of three percent (3%) under circumstances

triggering a parity compensation adjustment, the base salary of all unit members will also increase by three percent (3%).

2. Effective August 25, 2024, the base salary of all unit members shall be increased by three percent (3%) based on the increase in the AAUP contract.
3. Effective August 24, 2025, the base salary of all unit members shall be increased by two and three-quarters percent (2.75%) based on the increase in the AAUP contract.

Parity Compensation: If during the duration of this contract, the Board of Trustees approves an across-the-board salary increase or lump sum payment for another bargaining unit or a broad class of non-bargaining unit staff within a fiscal year that is greater than the amount the members received during the same fiscal year, the members' pay will be adjusted so that they receive parity for the fiscal year. This parity obligation does not apply to adjustments to starting pay; market salary adjustments; job reclassifications; departmental reorganizations; adjustments to increase the compensation of employees who fall within the lower tiers of overall compensation for employees of the College; increases imposed by external agencies or adjudicators; or increase provided by individual contracts or grants. This provision also does not apply to individual merit increases or bonuses. For open positions, the minimum hiring rates for new hire postings will be adjusted for parity increases applied since the effective renewal date of this contract, including, but not limited to the increases of August 25, 2024 and August 24, 2025 above, but excluding the three and one-half percent (3 ½%) increase effective October 12, 2023.

B. Longevity Pay

All bargaining unit members shall be eligible for a longevity pay increase beginning on the first day of the pay period of eligibility as set forth below.

7 years of service:	0.8% increase on base wage rate
10 years of service:	1.6% increase on base wage rate
15 years of service:	2% increase on base wage rate
20 years of service:	3% increase on base wage rate
25 years of service:	4% increase on base wage rate

C. Shift Differential

Shift differential rates shall be paid for all regularly scheduled hours to bargaining unit members as follows:

2<sup>nd</sup> Shift: Bargaining unit members regularly assigned to an eight (8) hour shift which starts at or after 1:30 PM will be paid a shift differential of seventy-five cents (\$.75) per hour for all hours, including overtime.

3<sup>rd</sup> Shift: Bargaining unit members regularly assigned to an eight (8) hour shift which starts after 10:00 PM will be paid a shift differential of one dollar (\$1.00) per hour for all hours, including overtime.

D. Minimum and Hiring Rates

Throughout the course of the agreement, the minimum base rate for the unit classifications shall be as follows:

Effective October 12, 2023

HVAC Tech           \$28.13/hr

Facilities Tech 1    \$26.51/hr

Facilities Tech 2    \$24.27/hr

**SERVICE**

A copy of the within Report and Recommendation was served upon the Union by electronic mail c/o Robert Mitchell, Esq. at [robertmitchell@robertmitchell-law.com](mailto:robertmitchell@robertmitchell-law.com) and by electronic mail c/o Richard Gerrein at [rgerrein@iuoe20.org](mailto:rgerrein@iuoe20.org), upon the College by electronic mail c/o Christopher E. Hogan, Esq. at [chogan@nphlaw.com](mailto:chogan@nphlaw.com) and upon the State Employment Relations Board at [MED@serb.ohio.gov](mailto:MED@serb.ohio.gov) this 17<sup>th</sup> day of January, 2024.