

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

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Faculty Alliance of Miami, :
 AAUP (FAM, AAUP), :
 :
 Employee Organization, :
 : Case No. 2022-REP-06-0069
 and :
 :
 Miami University, :
 :
 Employer. :

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VOLUME I

- - -

PROCEEDINGS

before James R. Sprague, Administrative Law Judge, at
 the State Employment Relations Board, 65 East State
 Street, 12th Floor, Columbus, Ohio, called at 10:15
 a.m. on Monday, December 12, 2022.

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On behalf of Miami University.

ALSO PRESENT:

Amy Shoemaker, General Counsel,
Miami University

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1 Monday Morning Session,
2 December 12, 2022.

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4 ALJ SPRAGUE: We're on the record. State
5 of Ohio, State Employees Relations Board, Faculty
6 Alliance of Miami (FAM, AAUP), Employer Organization
7 versus Miami University, Employer, Case No.
8 2022-REP-06-0069. Will the parties and their
9 representatives please introduce themselves on the
10 record.

11 MS. DAY: Jourdan Day on behalf of Miami
12 University.

13 MS. SQUILLANTE: Sarah Squillante on
14 behalf of Miami University.

15 MS. MUSKOVITZ: Susannah Muskovitz on
16 behalf of -- oh, I'm sorry.

17 MS. SHOEMAKER: I was just going to
18 identify myself for the record as representative Amy
19 Shoemaker.

20 ALJ SPRAGUE: Okay. And also -- Miss
21 Muskovitz. Also I will note that we have a court
22 reporter present, Cindy Cunningham. Miss Cunningham,
23 just for purposes in case we hear your voice, you'll
24 want to identify yourself for the record.

1 MS. CUNNINGHAM: I'm Cindy Cunningham
2 with Armstrong and Okey.

3 ALJ SPRAGUE: All right. Prior to --

4 MS. MUSKOVITZ: Do you want me to
5 introduce myself?

6 ALJ SPRAGUE: Oh, I think you just did.

7 MS. MUSKOVITZ: No, I didn't.

8 MS. SHOEMAKER: I interjected.

9 ALJ SPRAGUE: Oh, you cut her off, okay.

10 MS. MUSKOVITZ: No, I think I cut off
11 Miss Shoemaker.

12 ALJ SPRAGUE: Okay, that's fine.

13 MS. MUSKOVITZ: Susannah Muskovitz on
14 behalf of Faculty Alliance of Miami, AAUP AFT.

15 ALJ SPRAGUE: I was so busy making sure
16 we recorded you. All right, thank you all. This
17 cause comes on due to filing of a petition for
18 representation election with SERB and a direction to
19 general counsel inquiry.

20 Prior to today, we had a lot of activity
21 which included an initial telephone status
22 conference, prehearing and a lot of exchange of
23 correspondence as I may have said.

24 All right, we all know what the directive

1 says. We have identified witnesses. We've gone over
2 our administrative matters. The parties have
3 submitted evidence for review. Let's see, I think
4 that mostly covers what we've done. If anybody wants
5 to amend that, we can do that until everyone is
6 satisfied. Okay with you guys?

7 MS. DAY: Yes.

8 ALJ SPRAGUE: Is that all right with you?

9 MS. MUSKOVITZ: Yes.

10 ALJ SPRAGUE: Okay. Thank you. All
11 right. So today we are going to try to get through
12 the Employer's Exhibits and witnesses, and if
13 possible we will try to get to the Employee
14 Organization's witnesses.

15 Do I need to go over the order of
16 presentation again as far as burden of proof, who
17 goes first, that sort of stuff?

18 MS. DAY: No, your Honor.

19 ALJ SPRAGUE: All right. Is the
20 University going to be offering an opening at this
21 time?

22 MS. DAY: Yes.

23 ALJ SPRAGUE: Okay. I'm guessing that
24 will be you.

1 MS. DAY: Your Honor, as a preliminary
2 note to you, one of our counsel is unavailable to be
3 here today due to a serious family emergency room.
4 He hopes to attend tomorrow if possible. As well as
5 we do have one of our four witnesses also
6 experiencing a serious family emergency. Should
7 something arise, we will sidebar and let you know
8 what changes may need to occur.

9 ALJ SPRAGUE: Okay, thank you.

10 MS. DAY: Miami University believes that
11 this unit as proposed by the Employee Organization is
12 inappropriate. Based on the facts and the unique and
13 different positions that the employee organization
14 has proposed, the only appropriate Bargaining Unit
15 here is to include the tenured and tenured track
16 faculty.

17 The Employee Organization has proposed
18 the inclusion of the following groups of persons at
19 Miami University: Tenured and tenured track faculty,
20 the Teaching Clinical Professors and Lecturers which
21 are known as the TCPLs, the Visiting Assistant
22 Professors and Instructors collectively known as the
23 VAPs, the librarians, as well as full-time faculty
24 that hold multiple appointments.

1 While each of these groups of persons are
2 important to the University's overall mission, they
3 do not share a community of interest with one another
4 and have competing interests that would make
5 inclusion in a single Bargaining Unit inefficient and
6 burdensome.

7 The titles proposed to be included in the
8 Bargaining Unit here very significantly in numerous
9 respects including workload expectations, work
10 duties, expectations for continued employment,
11 involvement in governance, promotional opportunities
12 and discipline and termination procedures.

13 Just for ease and summary, I will give a
14 brief overview of each of these categories of
15 positions. Tenured and tenure track faculty are
16 faculty appointments, persons who are eligible or
17 have already earned tenure, affording the person a
18 lot of protections regarding academic freedom and job
19 protection. Tenured and tenure track faculty members
20 are engaged in teaching, scholarship and service.

21 TCPLs, on the other hand, are eligible at
22 certain promotional points for three or five-year
23 contracts. They are not eligible for tenure. Unlike
24 tenured and tenure track faculty, their contract can

1 be non-renewed with one year's notice. They are
2 engaged in teaching and service but typically not
3 scholarship as a part of their work duties.

4 The VAPs are eligible for one-year
5 contracts which are capped at a five-year maximum.
6 There is no expectation of continued employment for
7 VAPs, including there is high turnover margin that
8 would qualify them as seasonal or casual employees
9 under Chapter 4117. Unlike the tenured and tenure
10 track faculty and TCPLs, VAPs are only engaged in
11 teaching as part of their work duties.

12 Differently, librarians are unclassified
13 staff, not faculty appointments. They have 12-month
14 appointments, whereas faculty have nine-month
15 appointments. Librarians follow their own policies
16 that apply to them or they follow the policies that
17 apply to all other unclassified staff. While a
18 librarian may teach a session of a class, typically
19 librarians are not expected to teach whole courses
20 and simply they are not treated the same as faculty
21 members.

22 Finally, in the multiple appointments
23 categories, these are persons who have appointments
24 as directors of programs or other similar titles, but

1 the evidence today will show that only one of these
2 persons has a faculty appointment. Each category has
3 unique terms and conditions of employment such that
4 they do not share a community of interest with one
5 another.

6 With such varying interests and
7 differences, there are inherent conflicts between
8 these groups. These conflicts between materially
9 different groups of employees would render
10 negotiations with an all inclusive Bargaining Unit
11 inefficient, ineffective, unnecessarily complex and
12 burdensome on the University.

13 For all of these reasons and for the
14 reasons that will come through testimony today, the
15 only appropriate Bargaining Unit here is the tenured
16 and tenure tract faculty. Thank you.

17 ALJ SPRAGUE: Thank you.

18 Miss Muskovitz, do you wish to offer an
19 opening now, waive or hold your opening in abeyance?

20 MS. MUSKOVITZ: Now, Mr. Sprague.

21 Mr. Sprague, the faculty at Miami University are one
22 faculty. And the one faculty has many faculty
23 members with different job classifications. There's
24 tenured faculty, there's tenure track faculty,

1 there's TCPL faculty, there's Visiting faculty,
2 there's Instructors, there's librarians. All of
3 these individuals have a primary responsibility for
4 teaching and learning. They are the individuals that
5 interact directly day in, day out with students.

6 They have more in common than what
7 separates them. There are 13 universities in Ohio in
8 the public sector. Ten of those universities have
9 unionized faculty. All of those universities except
10 one have tenured, tenure track and some non-tenure
11 track faculty covered under the same Collective
12 Bargaining Agreement.

13 Many of them include librarians, but none
14 of them have a separate Bargaining Unit of
15 librarians. And the librarians at Miami very clearly
16 have shown an interest in being part of this
17 Bargaining Unit.

18 Many of them include Visiting faculty,
19 over half, but none of them have a separate
20 Bargaining Unit for Visiting faculty. And many of
21 them have all these categories, and somehow all of
22 the job duties and responsibilities that have been
23 identified by the University are covered by a single
24 labor contract, workload, work duties, continuing

1 employment, governance, promotion, discipline,
2 termination.

3 If you look through the 14 labor
4 contracts in Ohio for higher education in the public
5 sector governed by SERB, governed by 4117, you'll
6 find that there are different sections in some of
7 them because there's some different job duties in
8 some of them, but somehow they're all working
9 together under an umbrella of a single Bargaining
10 Unit.

11 What the University wants to do through
12 this case is to divide and conquer. It is solely an
13 anti-union motive and nothing more. They want silos
14 of each classification separately: A contract for
15 tenured and tenure track, a contract for visitors, a
16 contract -- Because we clearly meet the threshold
17 required of 60 percent. They want a contract for
18 librarians, a contract for TCPLs. That is not
19 easier. That's a nightmare for employers, I will
20 tell you. So sometimes you have to be careful what
21 you ask for, you might get it.

22 There are competing interests in every
23 Bargaining Unit in Ohio. If you look at all of the
24 labor contracts that SERB governs, you will see that

1 somehow the parties are able to address those
2 competing interests. That is the norm in collective
3 bargaining.

4 In any Bargaining Unit, there are more
5 senior employees that care more about longevity and
6 younger employees that might want better dental
7 insurance. Those interests are worked out at the
8 bargaining table.

9 There are contracts that govern K to 12s,
10 and they have sections that deal with school nurses
11 or psychologists or guidance counselors that are not
12 classroom teachers but as one labor contract.
13 There's labor contracts with police departments and
14 they have a separate section for K9 officers, a
15 School Resource Officer. Those are the norm with
16 collective bargaining, and the same holds for higher
17 ed.

18 There are contracts in Ohio that govern
19 people with different job classifications and job
20 duties but they have one provision that addresses
21 academic freedom and one provision that addresses
22 health insurance, and they might have more than one
23 provision that addresses workload. That's normal.

24 There is absolutely no reason in this

1 case that this board should allow the University to
 2 divide and conquer. All of the individuals in all of
 3 these classifications have shown an overwhelming
 4 interest in being represented by FAM under a single
 5 Bargaining Unit, and that's what we hope to achieve
 6 through this hearing. Thank you.

7 ALJ SPRAGUE: Thank you. Let's go off
 8 for a moment.

9 (Off the record.)

10 ALJ SPRAGUE: We're back on the record.
 11 Dean Conley has taken the stand. Please raise your
 12 right hand.

13 (Witness placed under oath.)

14 ALJ SPRAGUE: Please state your full name
 15 for the record.

16 THE WITNESS: My name is Jerome,
 17 J-E-R-O-M-E, Conley, C-O-N-L-E-Y.

18 ALJ SPRAGUE: Thank you. I was going to
 19 say spell your last name, but that's all right.
 20 Thank you, Mr. Conley.

21 And this is going to be Miss Day.

22 MS. DAY: Yes.

23 ALJ SPRAGUE: Please proceed.

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JEROME CONLEY

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Day:

Q. Dean Conley, what is your current job?

A. My current job is Dean and University Librarian at Miami University in Oxford, Ohio.

Q. How long have you been in that position?

A. I became the Interim Dean in 2013 and the permanent Dean in 2014.

Q. Tell us a little bit about your job duties as the Dean.

A. I am the Chief Administrative Officer for the Miami University libraries. That includes budget, that includes personnel issues, that includes articulating a vision for the University and University libraries. That works with other Deans and other administrators, as well as other stakeholders across campus and throughout the nation in international as well.

Q. What type of job duties do you have as it regards personnel?

A. I review all portfolios and dossiers that

1 comes before us for promotion and continuing
2 contract. I evaluate staff. I review annual reviews
3 that have been done by others within our
4 organization.

5 Q. What type of staff are librarians?

6 A. Librarians are unclassified staff members
7 at Miami.

8 Q. What type of appointments do they hold?

9 A. They are appointed in 12-month contracts,
10 appointments.

11 Q. What does it mean to be unclassified
12 staff?

13 A. It means that you are -- you have a year
14 long contract, annual contract. You have certain
15 responsibilities that are tasks that are assigned to
16 you that you are expected to fulfill and that you are
17 evaluated on an annual basis.

18 Q. What does it mean to have a 12-month
19 appointment?

20 A. We expect you to work on a 12-month basis
21 with the exception of vacation and sick, but you work
22 from January through the calendar year.

23 Q. Is that different than faculty members?

24 A. As far as I know. My understanding, the

1 faculty have nine-month contracts; whereas,
 2 librarians have 12-month contracts.

3 Q. Do librarians hold faculty appointments
 4 at Miami University?

5 A. They do not hold faculty appointments.

6 Q. What is the significance of that?

7 A. Faculty are -- one, it's a 9-month
 8 contract. Two, they have a workable policy that
 9 librarians are not expected to have. Three,
 10 librarians have the day-to-day responsibilities of a
 11 librarian are that we expect you to come unless, like
 12 I said, you're on vacation or sick which we're
 13 assigned similar to other professional staff and
 14 classified staff within the University.

15 Q. Outside of Deans and chairs and other
 16 administrators, what ranks do librarians hold?

17 A. Librarians hold the rank of Assistant
 18 Librarian, Associate Librarian or Principal Librarian
 19 within our system.

20 ALJ SPRAGUE: I'm sorry, what was the
 21 last one?

22 THE WITNESS: Principal.

23 Q. (By Ms. Day) How are librarians hired at
 24 Miami University?

1 A. It traditionally starts with a department
2 head expressing an interest to fulfill a role. That
3 department head sends a request to me or to their
4 Assistant or Associate Dean for a request to fill.
5 We review or take a look at that.

6 Department heads work amongst themselves
7 in prioritizing those positions as well and making
8 recommendations to the library administration. I
9 then work with the staff to compile or put together a
10 job description which is then forwarded to the
11 Academic Affairs approval process, with ultimately
12 the Provost making a determination whether or not
13 it's going to be filled.

14 Q. Is there ever a panel of people that
15 interview candidates for --

16 A. Yes. So once it's approved, we have a
17 search committee. That search committee is
18 traditionally chaired by the department head within
19 the organization. It's made up of other members of
20 the Miami University librarian community. Sometimes
21 we have classified staff or hourly staff included on
22 that as well. They go through a....

23 Q. Go ahead.

24 A. They go through a process where they

1 bring candidates on campus after most of the time
2 doing a phone screen, and we normally narrow it down
3 to three individuals. They do presentations during
4 that process, and then we make a recommendation --
5 they make a recommendation to me. The ultimate
6 authority rests with the Provost in terms of
7 extending an offer on behalf of the University. I do
8 not have that power, nor does anyone in my
9 organization have that power.

10 Q. Does the Dean effectively recommend the
11 hire of any given candidate?

12 A. The Dean makes a recommendation to the
13 Provost, and that exclusively is my authority.

14 Q. Do faculty members ever sit on the search
15 committee for librarian candidates?

16 A. Faculty within the University?

17 Q. Yes.

18 A. No, not traditionally.

19 Q. What are the work expectations for
20 librarians?

21 A. Librarians are judged on three criteria
22 within the University libraries, one -- as
23 articulated in our LARPS document. One is their
24 primary professional responsibilities which is their

1 primary day-to-day responsibilities. The second is
2 either service or scholarship and creative activity.

3 Q. What type of research do librarians
4 engage in?

5 ALJ SPRAGUE: Can I back you up just a
6 second?

7 MS. DAY: Sure.

8 ALJ SPRAGUE: So primary professional
9 responsibilities?

10 THE WITNESS: Yes.

11 ALJ SPRAGUE: Then we have had service,
12 scholarship or....

13 THE WITNESS: Creative activity.

14 ALJ SPRAGUE: And I thought -- and I'm
15 sorry if I got that wrong, I thought you said there
16 were three criteria?

17 THE WITNESS: Yes. Primary professional
18 responsibility is one, service is two and then
19 scholarship and creative activities is three.

20 ALJ SPRAGUE: Thank you.

21 THE WITNESS: Yes, sir.

22 Q. (By Ms. Day) What type of research do
23 librarians engage in?

24 A. Librarians, it varies based off of the

1 individual. Some individuals work with our
2 professional organization and colleagues across
3 campus -- I mean across the country, as well as
4 campus to produce publications. Some do poster
5 sessions. Some do grants and contracts through our
6 research office, but for the most part, many of them
7 do publications in our professional organizations in
8 public periodicals.

9 Q. If you could assign a percentage to the
10 amount of their job duties that are assigned to
11 research, what percentage would you give it?

12 A. It varies because librarians have to have
13 a very strong record in their primary professional
14 responsibilities. That's what they primarily have to
15 do. Then they can choose service or scholarship and
16 creativity as the the other very strong criteria they
17 choose. If they choose to do research, they have to
18 sustain a very strong record over a period of time.
19 I would say no more than 20 percent.

20 Q. Do some librarians choose service over
21 scholarship?

22 A. Absolutely.

23 Q. Do librarians engage in teaching or
24 instruction?

1 A. Librarians traditionally have a
2 bibliographic instruction which we used to call BI
3 which is these one shot or a series of invites from a
4 faculty member where the librarian brings his or her
5 their expertise to the table, but they also have
6 had -- we've also had a longstanding relationship
7 with our IMS, now Emerging Technology and Design,
8 ETBD, or department, where librarians have taught a
9 course, but that's an overload.

10 ALJ SPRAGUE: Dean, for the record, can
11 you tell us what IMS stands for.

12 THE WITNESS: Interactive Media Studies.

13 ALJ SPRAGUE: Thank you.

14 THE WITNESS: Yes, sir.

15 Q. You said a lot there, so I want to break
16 it down a little bit. So first you said librarians
17 engage in bibliographic instruction?

18 A. BI, yes.

19 Q. BI. Is that an entire course in and of
20 itself?

21 A. No, that's a one shot or a series of
22 invites that a librarian may have from a faculty
23 member to come and instruct on a specific topic or
24 research area for a class.

1 Q. Can you give an example?

2 A. When I've used -- back in the day when I
3 was a librarian, public service librarian, I would
4 come in and teach a law class on LexisNexis. So I
5 would come in and bring -- or digest or various other
6 sources within the field of law. They may go two
7 classes, but faculty members tend to guard their
8 classes, so they don't want us to go much more than
9 that. And librarians are actually doing some videos
10 in order to allow students to be able to have access
11 to that material because classes are so -- class time
12 is so important to faculty.

13 Q. You said it may be one class or may be
14 two class. Do you mean one day, two days within an
15 entire course?

16 A. That's correct, semester.

17 Q. Sure. Now, you also said librarians on
18 occasion teach a course on IMS or Emerging
19 Technology --

20 A. Or some other field that brings his or
21 her or their expertise to the table, but that's not
22 part of their job. They're bringing their knowledge
23 or expertise, and that's an overload that they get
24 paid for separately, not through the University

1 libraries.

2 Q. So let me break down the word overload.
3 So you said it's not -- it's not part of their job
4 duties; is that correct?

5 A. That's not assigned their day-to-day job
6 duties.

7 Q. Is it an elective, meaning the librarian
8 elects to teach this course?

9 A. That's exactly right.

10 Q. Does overload mean anything in regards to
11 compensation?

12 A. Yes, they get paid by the department
13 outside of the University libraries' budget.

14 Q. So they would get their normal salary for
15 their librarian duties, plus their overload pay?

16 A. Correct.

17 Q. What promotional opportunities do
18 librarians have?

19 A. Librarians have the opportunity to be
20 promoted both within the rank from Assistant to
21 Associate or Associate to Principal, as well as being
22 granted continuing contract.

23 Q. Is this process set out in any policy?

24 A. Yes, our LARPS policy articulates the

1 criteria associated with the promotion system.

2 ALJ SPRAGUE: And just again for
3 clarification, sorry to jump in every once in a
4 while --

5 MS. DAY: That's okay.

6 ALJ SPRAGUE: -- a continuing contract,
7 can you tell us what that means.

8 THE WITNESS: A continuing contract is in
9 a -- the University has granted to a librarian a
10 non-annual contract, so they work in an indefinite
11 period based off of performance.

12 Q. (By Ms. Day) Dean, can you turn in the
13 black binder to Exhibit F.

14 A. This?

15 Q. Yes.

16 A. That he had pointed to? Yes. To F?

17 Q. F.

18 A. Yes.

19 Q. Now, a moment ago you mentioned something
20 called LARPS.

21 A. Yes.

22 Q. Do you recognize this document?

23 A. I recognize the document as indicated in
24 Joint Exhibit F.

1 Q. And what is this document?

2 A. The document as titled Miami University
3 Libraries Appointment Rank Promotion System.

4 Q. And is that the same thing as LARPS?

5 A. Yes.

6 Q. What is LARPS?

7 A. LARPS is a guide that the University has
8 put together for librarians that is only exclusively
9 to librarians in terms of how they are governed and
10 how they're managed within the University.

11 Q. Do librarians serve a probationary
12 period?

13 A. Librarians do serve a probationary
14 period.

15 Q. How long is that probationary per?

16 A. Five years. In their sixth year, they
17 have to submit a portfolio for promotion.

18 Q. During that probationary period, are
19 librarians on a contract for continued employment?

20 A. For one year, an annual contract.

21 Q. So during their probationary period, they
22 have an annual contract?

23 A. That's correct.

24 Q. The University can decide whether or not

1 to renew it?

2 A. At any time throughout that period of
3 time.

4 Q. During their probationary period how can
5 librarians be terminated?

6 A. For cause, if they're not performing
7 their duties as assigned, if for some reason they --
8 budget could be a reason, financial.

9 Q. Earlier you said the probationary period
10 is five years. After that five years, what happens?

11 A. After the fifth year, a librarian is
12 required to submit a dossier for promotion and
13 continuing contract. That's done in their sixth
14 year. That's a pretty exhaustive process, but for
15 the most part a rewarding one as well.

16 Q. I should have asked you earlier, is there
17 a rank associated with probationary librarians?

18 A. Assistant Librarians traditionally. We
19 do have at times librarians who have some experience
20 who come in as an Associate Librarian, but they may
21 not be granted continuing contract at that time.

22 Q. Is the Associate Librarian title the
23 promotional, meaning higher level, of librarian rank?

24 A. That's correct.

1 Q. What happens if a probationary librarian,
 2 an Assistant Librarian, what happens if they do not
 3 get a continuing contract?

4 A. If they are rejected by -- in the
 5 process?

6 Q. Yes.

7 A. They are then given a notice that their
 8 relationship with the University will be terminated.
 9 They're given one year through June of the next year
 10 to separate from the University.

11 Q. So whenever the decision is made
 12 regarding a denial of a continuing contract, they're
 13 given until the following June to leave the
 14 University?

15 A. That's correct.

16 Q. Is there an appeal process related to
 17 that decision regarding continuing contracts?

18 A. A librarian can appeal their decision if
 19 they feel that that decision has been incorrect, yes.

20 Q. And what is that appeal process?

21 A. Can I refer to the document?

22 Q. Sure. Just let us know where you're
 23 looking.

24 A. If for some reason if the -- I'm looking

1 at section V which starts out -- I mean Page 5 which
2 starts out the criteria, and if for some reason the
3 librarian doesn't feel that they have -- section IV,
4 it starts on Page 8. It's on Page 12.

5 Q. Okay. So Page 12 of Joint Exhibit F, is
6 there a certain section that you're looking at?

7 A. Yes, we're talking in reference to your
8 question, section D and sections E both articulate
9 the reconsideration thereof, as well as the appeal of
10 a promotion and/or continuing contract.

11 Q. In your own words, can you just summarize
12 for us these processes.

13 A. It ultimately goes to the Provost for
14 decision. In this case, she makes the final decision
15 determination, but there's a period of time in which
16 they have to make that appeal or that request for
17 reconsideration, traditionally 15 days, and then the
18 Provost has a period of time in which she has an
19 opportunity to take a look at it. Ultimately the
20 decision for reconsideration will rest with the
21 Provost.

22 Q. Is there any appeal from the Provost's
23 ultimate decision?

24 A. No.

1 Q. Does it go to any committee within Senate
2 or Faculty Assembly for review?

3 A. It does not.

4 Q. So we've been talking a little bit about
5 continuing contracts and that a probationary or
6 Assistant Librarian is eligible potentially for
7 continuing contract in their or after their sixth
8 year. How long is a continuing contract for?

9 A. A continuing contract is an indefinite
10 period of time.

11 Q. Is it the same as tenure?

12 A. It differs from tenure, it's my
13 understanding. I've never been a tenured employee of
14 the University, but it's my understanding that there
15 are some statutory elements of tenure that perhaps
16 the continuing contract does not have.

17 Q. Can a librarian with a continuing
18 contract still be terminated?

19 A. Yes.

20 Q. What process --

21 A. For cause.

22 Q. For cause. If a librarian with a
23 continuing contract is being terminated for cause,
24 what procedures apply?

1 A. May I look at the....

2 Q. You may.

3 A. I'm referring to the section IX -- I'm
4 sorry, section VIII. Hold on one second. Hold on
5 one second, I'm sorry. Section -- Page 19
6 articulates section VII, Termination Under Financial
7 Exigency Of A Continuing Contract Appointment, as
8 well as, let me see, the process that starts on
9 section V, Page 14.

10 ALJ SPRAGUE: I'm sorry, what was the
11 page?

12 THE WITNESS: 14. It starts on 14. It
13 discusses the whole disciplinary and appeals process.

14 Q. (By Ms. Day) So this section V that is on
15 Page 14 of Joint Exhibit F, this is what would apply
16 in the example of a librarian being terminated for
17 cause?

18 A. That's exactly right, as well as section
19 IX -- I'm sorry, the one with the financial issues,
20 section VII.

21 Q. So section VII is Termination Under
22 Financial Exigency Of A Continuing Contract
23 Appointment. Under what circumstances would this
24 section apply?

1 A. It articulates here, if I may,
2 declaration of financial exigency by the President or
3 the Board of Trustees, consultation between the
4 Provost, Deans and Personnel Committee, publication
5 of guidelines for layoffs or termination. So it
6 ultimately is determined by the President and Board
7 of Trustees.

8 Q. And that would be in a case where there
9 is a financial crisis?

10 A. That's exactly right.

11 Q. Are librarians ever considered faculty?

12 A. No.

13 Q. How is compensation set for librarians?

14 A. The pool of resources are provided to the
15 University libraries through the academic personnel
16 office as determined by the President, the Board,
17 what that pool is going to be. They then provide
18 that to me. I send out requests from the Department
19 heads on -- to provide what they believe their
20 employees should be receiving. That then works its
21 way up to me and then I make that determination.

22 Q. Are there annual adjustments to
23 compensation?

24 A. That's pending, whether or not the

1 University provides a pool of money for that.

2 Q. Would that be a merit consideration?

3 A. Yes.

4 Q. Are there any eligibility factors to earn
5 merit assuming it's available?

6 A. Based off of your performance, your
7 annual review which we hope people do very well and
8 do receive their merit.

9 Q. How many campuses does Miami have?

10 A. We have three campuses and a -- we have a
11 spot on the West Chester as well, but that's not
12 considered a campus.

13 Q. Are there any differences in compensation
14 between campuses?

15 A. The Regional Dean of Librarians -- the
16 Regional Dean makes determination on compensation for
17 the librarians on the regional campus. I only
18 control that, on the Oxford campus.

19 Q. I want to shift our focus to policies.
20 What policies apply to librarians?

21 A. The LARPS which we have articulated, as
22 well as the University policy that governs all of our
23 actions.

24 Q. What is covered in the policy library for

1 librarians?

2 A. May I?

3 Q. Sure.

4 A. From looking at Joint Exhibit F as
5 articulates, some of the policies include leave,
6 grievance, disciplinary action.

7 Q. Outside of LARPS, are there other
8 policies that apply to other employees at the
9 University that would apply to librarians that don't
10 exist in a LARPS?

11 A. Are there other policies that exist for
12 outside -- for any employee?

13 Q. As it applies to librarians, are there
14 policies outside of what's contained in the LARPS
15 that apply to librarians?

16 A. Outside of the policy library which
17 trumps everything there are no other policies that
18 I'm aware of.

19 Q. Tell me about paid leave for librarians.

20 A. Librarians are entitled to professional
21 leave. That is articulated in section IX, Page 20 of
22 the Joint Exhibit, and that's traditionally an
23 improvement leave for librarians.

24 Q. How would a librarian use this leave?

1 A. So as articulated here, there's a process
2 they have to go through, but ultimately what we would
3 want them to do is continue to enhance their skill
4 set in a professional way, improve through outside
5 research, other kinds of efforts to be able to make
6 positive contributions to the University and to the
7 job that they're assigned to do.

8 Q. When would a librarian typically take
9 this professional improvement leave?

10 A. As articulated in the policy, they can't
11 do it prior to seven years. And after seven years,
12 they are entitled to that leave. That period of time
13 traditionally is about 90 days, about three months,
14 but no more than that.

15 Q. Does the three months of leave, does that
16 typically occur at any point during the year?

17 A. Traditionally we have them do it during
18 the summer when it's less busy for University
19 libraries, but because they're on a 12-month
20 contract, that three months allows them a little bit
21 more to give more time.

22 Q. Does the LARPS apply to any group of
23 employees at Miami University outside of librarians?

24 A. No. So when we -- so prior -- may I? So

1 prior to LARPS, the libraries, there was not a
2 vehicle or a mechanism for librarians to be promoted.
3 So we -- about ten years ago, we began a process that
4 allowed librarians to be able to be promoted and to
5 be able to have more security in their job.

6 Prior to that being implemented, only two
7 sets of individuals could be part of a promotion
8 system: One who held the rank of a Ph.D; the second
9 was a department head. Any other librarian within
10 our system was disenfranchised to some degree because
11 they didn't have that promotion system.

12 One of the criteria that we came with
13 when this was implemented was that we were going to
14 be considered as unclassified staff members and made
15 clear that we were not faculty. As a result, we got
16 a new section within the policy manual entitled
17 librarians to articulate this, and we created this
18 LARPS document as a result as well.

19 But what was exciting about it, those
20 individuals who contributed positively to our
21 University, we were able to reward them and to
22 promote them and to recognize their contributions to
23 the University.

24 Q. You mentioned just a second ago that

1 there was an intentional decision that librarians
2 would not be faculty. Who made that determination?

3 A. The administration at the time. So when
4 it went through the process, it had to go to
5 University Senate. And when it went through
6 University Senate, as well as to the administration,
7 it was decided that librarians would not be
8 considered faculty during this process and the
9 librarians at that time were very -- were comfortable
10 with that decision.

11 Q. Are librarians entitled to vacation
12 leave?

13 A. They are.

14 Q. Is that covered by a policy?

15 A. It is.

16 Q. I'm going to direct your attention to
17 Respondent's Exhibit 8, so Tab 8 in the black binder.
18 Let me know when you've had a chance to look at that
19 document.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. I do.

23 Q. And what is it?

24 A. As Exhibit 8, it says Vacation.

1 Q. Okay. And is this the policy regarding
2 vacation at Miami University?

3 A. It is the policy for unclassified staff
4 members related to vacation at Miami University.

5 Q. So as unclassified staff members,
6 librarians would be subject to this policy?

7 A. They are subject to this policy.

8 Q. Are faculty subject to this policy?

9 A. Not to my knowledge. I don't know.

10 Q. Are librarians entitled to sick leave?

11 A. They are.

12 Q. Is that also covered by a policy?

13 A. It is.

14 Q. I'll have you switch over to Tab 9. Let
15 me know when you've had a chance to look at that
16 document?

17 A. I have.

18 Q. Do you recognize those documents?

19 A. I do.

20 Q. And what is it?

21 A. As Exhibit 9 of the Respondent's, it has
22 sick leave and unclassified staff.

23 Q. So, again, this applies to unclassified
24 staff, including librarians?

1 A. That's correct.

2 Q. Are faculty subject to this policy?

3 A. I don't -- I don't know. To my
4 understanding, they are not.

5 Q. In addition to the professional
6 improvement leave we were already discussing that's
7 contained in the LARPS, are there other what I would
8 consider leaves that are available related to a
9 librarian's job duties?

10 A. To their duties?

11 Q. Yes.

12 A. No.

13 Q. Are there other leaves that apply to
14 librarians concerning continuing education?

15 A. No.

16 Q. Is the librarian improvement leave, is
17 that the same as a sabbatical?

18 A. Can I get a clarification?

19 Q. Is the librarian improvement leave the
20 same as leave related to job duties that faculty may
21 take?

22 A. Can we go back? What section was LARPS
23 in?

24 Q. That would be Joint Exhibit F,

1 professional improvement. I'm sorry, I'm using the
2 wrong term.

3 A. That's correct, so the professional
4 improvement leave.

5 Q. Let me restate, is the librarian
6 professional improvement leave the same as a
7 sabbatical?

8 A. It is not.

9 Q. How so?

10 A. Because, one, it's -- the duration of it
11 and the purpose of it -- I've never had a sabbatical
12 because we're not eligible for one, but it is my
13 understanding this is more in gear towards your own
14 personal development, your own enhancement of a skill
15 set, et cetera that you can then apply back to the
16 University.

17 Q. What is your understanding of the
18 difference between the librarian professional
19 improvement leave and a sabbatical in terms of the
20 length of time?

21 A. Ours is traditionally three months and
22 not a semester and/or a year that is my understanding
23 that a sabbatical normally has.

24 Q. I want to shift your focus to shared

1 governance at Miami. What does that term mean,
2 shared governance?

3 A. The way I look at it, I don't know. The
4 definition that I have for shared governance is the
5 whole concept of not only transparency and having
6 diversity of ideas come to the table, but you're also
7 empowering people along the way to be able to have a
8 voice, an equal voice in the conversation and that
9 you try your best to create and foster that kind of
10 community.

11 Also, I think it's also one of those
12 responsibilities that each of us have within that
13 shared governance to be able to be honest, work with
14 integrity and try to work within the good of what
15 we're trying to do for the University as well and not
16 our own personal interests.

17 Q. Do librarians participate in shared
18 governance at Miami?

19 A. They do. They do.

20 Q. How do they participate?

21 A. In various ways. Librarians are members
22 of the Faculty Assembly. Librarians are also members
23 of the University Senate. Librarians have a -- We
24 have a Personnel Committee within the University

1 libraries. And at times, librarians can sit on some
2 committees within the Senate as well.

3 Q. You mentioned librarians can sit on some
4 committees within the Senate. What instructions
5 exist as to their participation in University Senate?

6 A. There are a couple of committees it's my
7 understanding that librarians that I know we cannot
8 sit on. One is the Rights and Responsibilities of
9 the faculty. The other is the Faculty Welfare
10 Committee and Promotion and Tenure of the University
11 because we have our own promotion and continuing
12 contract.

13 Q. And you also mentioned Faculty Assembly.
14 Are there any restrictions as to a librarian's
15 participation in Faculty Assembly?

16 A. No, only librarians who hold the rank of
17 Assistant, Associate or Principal Librarian are
18 entitled to be members of that assembly.

19 Q. You also mentioned the Personnel
20 Committee. What is that?

21 A. The Personnel Committee is the -- which
22 we're excited about -- is the committee that
23 functions in terms of evaluating the portfolios of
24 our candidates who submit their dossiers. As

1 articulated in LARPS, there are times when there may
 2 be various policies that they are assigned to review,
 3 but they are members of all who hold the rank of
 4 continuing contract are eligible to be members of the
 5 Personnel Committee. No probationary librarians can.

6 Q. Are faculty members eligible to sit on
 7 the Personnel Committee?

8 A. Are faculty? No.

9 Q. Do librarians play any role in faculty
 10 governance?

11 A. No.

12 Q. Does faculty play any role in the
 13 governance of librarians?

14 A. No.

15 Q. I think you said this, but do librarians
 16 play any role in promotion and tenure processes or
 17 committees for faculty members?

18 A. On UTP, they do not.

19 ALJ SPRAGUE: Can you say that again,
 20 please?

21 THE WITNESS: They do not.

22 Q. (By Ms. Day) What is UTP?

23 A. University Promotion and Tenure
 24 Committee.

1 Q. Outside of the Promotion and Tenure
2 Committee, do librarians engage in any
3 decision-making regarding promotion and tenure for
4 faculty?

5 A. Not to my knowledge.

6 Q. I think I may have missed something
7 minor, so I want to turn back briefly to promotional
8 opportunities --

9 ALJ SPRAGUE: I'm sorry. Let me
10 interrupt you.

11 MS. DAY: I'm sorry.

12 ALJ SPRAGUE: I think I just missed
13 something here. So for the Personnel Committee,
14 let's see, I thought you said one of them has to be
15 continuing contract or, let's see, what was that...
16 no, maybe not. Okay, never mind.

17 MS. DAY: I may know where you were
18 going. Let me reask if that's okay, to clarify.

19 Q. (By Ms. Day) The Personnel Committee,
20 which librarians are eligible to sit on that
21 committee?

22 A. Librarians who hold continuing contract
23 are eligible for the Personnel Committee.

24 Q. And what ranks do those librarians

1 typically hold?

2 A. Associate or higher.

3 Q. And by higher, do you mean Principal
4 Librarian?

5 A. That's correct.

6 Q. That segues into what I was going to
7 follow up on. How does a librarian promote from
8 Associate Librarian to Principal Librarian?

9 A. May I?

10 Q. Sure.

11 A. So I'm referring to the LARPS, Joint
12 Exhibit F, section III, Page 5. When we look at the
13 criteria to go from Assistant to Associate, as I
14 mentioned earlier, you have to have a very strong
15 record in your primary professional responsibilities.

16 You then have the option to have a very
17 strong either in the service criteria or in the
18 scholarship and creative activity where you can have
19 a strong -- so you have to have very strong in one of
20 them, strong in the other; whereas, when you move to
21 Associate to Principal, it changes. You have to have
22 an excellent record in your primary professional
23 responsibility, an excellent record in one of the
24 other two and a very strong in the second of those

1 criteria.

2 Q. So just higher Standards of Performance?

3 A. Absolutely, yes.

4 Q. Once a librarian promotes to Principal
5 Librarian, is there any change in the terms of their
6 contract?

7 A. No.

8 Q. So it's still they're on a continuing
9 contract?

10 A. Yes, but they get a little more flow,
11 cash.

12 Q. As I'm sure the highest rank of any
13 position?

14 A. That's right.

15 Q. Are there disciplinary and termination
16 procedures for probationary and/or Assistant
17 Librarians?

18 A. Probationary librarians, their contract
19 can be terminated on an annual basis, but there are
20 articulated policies that we have that govern us.

21 Q. Are there also disciplinary and
22 termination procedures for librarians with continuing
23 contracts?

24 A. Yes.

1 Q. Remind us what sections are those
2 contained in.

3 A. They are section V, Joint Exhibit F that
4 starts on Page 14.

5 Q. Are there any specific sections of the
6 LARPS that apply to probationary librarians?

7 A. Say that one more time.

8 Q. Are there any specific sections of the
9 LARPS that apply regarding discipline or termination
10 or nonrenewal for probationary librarians?

11 A. Section V articulates our disciplinary
12 processes.

13 Q. I'm going to have you look at Section
14 VIII for a second.

15 A. Uh-huh.

16 Q. That's on Page 19.

17 A. Yes.

18 Q. What is Section VIII covering?

19 A. Section VIII talks about financial for
20 financial exten-

21 MS. MUSKOVITZ: Exigency.

22 A. -- thank you. Did you get that?

23 Q. Dean Conley, isn't that section VII that
24 talks about financial exigency? I'm looking at

1 section VIII, non-reappointment of individuals with
2 probationary appointments in individuals in
3 non-continuing contract ranks.

4 A. I've got my Roman numerals wrong, I'm
5 sorry. You're correct.

6 Q. No worries. Tell us about that section.

7 A. That section, I'm sorry, it talks about
8 written notice. It gives us the process that has to
9 go through and the -- you get a written notice.

10 Q. Is this describing the process you told
11 us earlier about, having a one-year period after
12 getting notice?

13 A. Okay, the February 1st letter, you have
14 to give notice to an individual who's probationary
15 that his or her, their contract is not going to be
16 extended. This articulates that notice that has --
17 that process that has to be given.

18 ALJ SPRAGUE: Is this the same one we
19 talked about for the June, you get a year's notice
20 then?

21 THE WITNESS: That's the same thing, but
22 we give them notice in February. They have another
23 year -- That's different. If I may, your Honor. If
24 an individual does not get promoted and granted

1 continuing contract, that individual has until June
2 of the following year to find another job.

3 If a person is on a probationary and it's
4 an annual contract that we're going to terminate, we
5 have to give them notice in February that their
6 contract is not going to be renewed, but they do not
7 get that same period of time.

8 Q. Let me reiterate and make sure we got it.
9 When an Assistant Librarian is in the promotional
10 process and during their sixth year are given notice
11 of the decision that they are not going to be
12 promoted and not getting a continuing contract, then
13 at that point in time, the librarian has until the
14 following June until they must exit employment with
15 the University?

16 A. That's correct.

17 Q. However, while a probationary or
18 Assistant Librarian typically is in their
19 probationary period, the University has an option to
20 give them a notice on February 15th that their
21 contract will end at the end of that academic year?

22 A. That's correct. For years it was a
23 February 1st, but we pushed it back to February the
24 15th, so February of that year they get notice.

1 Q. When does the academic year typically
2 end?

3 A. June the 30th.

4 Q. So for a probationary librarian, if they
5 were given one of these February 15th notices, then
6 their employment would cease at the end of the
7 academic year?

8 A. That's correct. Don't forget they're on
9 an annual contract at that moment.

10 ALJ SPRAGUE: Thank you for your
11 follow-up questions.

12 Q. Is there an appeal process beyond
13 anything that we've discussed already regarding a --
14 let me start with an appeal process for someone who
15 is given a February 15th notice for librarians?

16 A. No.

17 Q. The decision is final?

18 A. That's final for a February 1st letter,
19 that's right. There -- there are cases where
20 individuals can file if there's a grievance that that
21 individual has, there's a grievance process that's
22 available to all University librarians that we have
23 within LARPS.

24 Q. Where is that grievance process?

1 A. May I?

2 Q. Yes.

3 A. The grievance process is section VI that
4 starts on Page 17 of the Joint Exhibit F.

5 Q. And so would this grievance procedure
6 apply to a librarian who was -- a probationary
7 librarian who was given a notice on February 15th of
8 nonrenewal?

9 A. No, it does not.

10 Q. What types of situations would this
11 grievance process apply to?

12 A. If I may. Earlier in the LARPS, it
13 articulates on section V that begins on Page 14 most
14 matters we try to handle internally, and it talks
15 about certain internal matters that are in that
16 process.

17 Issues of cause are different, and they
18 go through a whole different process. If for some
19 reason that internal dispute is -- we can't find
20 resolution, then that individual does have a vehicle
21 available to them through the grievance process, and
22 that articulates what some of those criteria are
23 throughout that process.

24 Q. What you've just been describing under

1 Section V of the LARPS beginning on Page 14, would
2 this also apply to termination for cause for a
3 librarian with a continuing contract?

4 A. Well, the section V, we're governed by --
5 this section V governs that whole process.

6 Q. Would section VI on grievance procedures
7 be available to a librarian who was terminated for
8 cause? Please clarify.

9 A. Can I?

10 Q. Yes.

11 A. So a grievance, it talks about in section
12 VI when a grievance cannot relate to that particular
13 situation, and that's in A, as well as in subsequent
14 parts of that.

15 Q. Are you saying that there are exclusions
16 from this grievance procedure?

17 A. That's exactly right.

18 Q. And what are those exclusions?

19 A. When you have more than one grievant,
20 when you have -- it's already been afforded the right
21 to the hearing, but it also talks about certain
22 actions in the section before that talks about what
23 is not a grievable offense, and that is if for some
24 reason someone created a heinous crime or caused,

1 those items are not available to them in the
2 grievance process.

3 Q. So it also says here that a grievance
4 cannot be initiated you said regarding where there's
5 been a hearing. Is there a hearing offered to
6 librarians who are in the process of being terminated
7 for cause?

8 A. Yes, that's a process that we go through
9 and that goes directly to the Provost on my
10 recommendation.

11 Q. So after following those hearing
12 procedures for a termination for cause, there's no
13 other appeal?

14 A. That's correct.

15 MS. DAY: Your Honor, did you have
16 follow-up questions in this area before I move on?

17 ALJ SPRAGUE: I'm sorry, I don't have
18 follow-up questions. That's your all's job, but I'm
19 just trying to clarify every once in a while so we
20 can get our terms in. I'm sure they'll be useful
21 later. So if somebody has concluded their five years
22 and they're up for a continuing contract and
23 they're -- I guess is the term, is that called
24 nonrenewal or what do they call if they don't --

1 THE WITNESS: Yes, it's a nonrenewal of
2 their contract. It's an up or down situation.

3 ALJ SPRAGUE: I just wanted to make sure
4 I got the term correct. Thank you.

5 Q. (By Ms. Day) Dean Conley, are you
6 familiar with the petition that's been filed in this
7 matter?

8 A. I am.

9 Q. What is your understanding of it?

10 A. There are individuals within our
11 community who are requesting to be recognized by a
12 union entity to represent their interests before the
13 University.

14 Q. What's your understanding of the types or
15 classifications of employees that are included in
16 that position?

17 A. My understanding is there are four or
18 five groups. One is tenured, tenure track faculty,
19 one is librarians, one is individuals who are
20 Visiting, one is TCPL, and one is individuals who are
21 administrators who may hold faculty rank.

22 Q. Do you have concerns if librarians were
23 to be included in a proposed Bargaining Unit with
24 these other classifications?

1 A. I do because one of the things that I
2 think the University has done very well for the
3 University librarians is that they've created a
4 separate channel, a separate lane for us.

5 When we had financial challenges in
6 '08-09, librarians were set aside from academic
7 affairs where we weren't lumped in with faculty or
8 other departments. We were able to make those
9 determinations ourselves relating to how we were
10 going to deal with those cuts.

11 When you think about the whole concept of
12 a 12-month contract versus a nine-month contract,
13 although librarians are entitled to professional
14 improvement leave which we discussed before, those
15 are normally a three-month after seven years, but we
16 operate our system 24 -- 52 -- I'm sorry, we operate
17 our system 12 months out of the year. And if we had
18 situations where librarians were not available to us,
19 I think it may cause some issues in how those types
20 of things are determined.

21 I would say that the other component
22 within the Bargaining Unit itself is that I hope that
23 librarians wouldn't necessarily be disenfranchised
24 when it comes to the priorities of the other

1 entities. When you think about how many librarians
2 we potentially are looking for within this Bargaining
3 Unit compared to some of the other numbers that we
4 are articulating, how do we ensure that as the
5 librarians are being negotiated, that those
6 inefficiencies or efficiencies are not brought to
7 bear in terms of -- the deficiencies are brought to
8 bear, not the inefficiencies are brought to bear.

9 Q. What efficiencies or inefficiencies are
10 you referring to?

11 A. I would say if they're hammering out
12 whether or not we're going to continue with a
13 nine-month contract or a 12 month, I think if you
14 say, hey, why doesn't all the faculty do a 12-month
15 contract like the librarians, I think that would be a
16 great thing because then the whole University can be
17 served.

18 But at the same time, if you say, hey,
19 librarians, you're going to be on a nine-month
20 contract versus 12, to me that's inefficient and it's
21 inherently not how this University has operated. I
22 think the second thing relates to as they hammer out
23 workload, we respect that right, but we don't have
24 that responsibility within the University libraries

1 as that's being hammered out. You know, I have
2 colleagues who would be sitting around waiting for
3 that part to be relevant to them to come around, and
4 is that the best use of our time as the University
5 libraries. And then I would say the last thing would
6 be, like I said, the 12 month and nine-month contract
7 would be a big one.

8 Q. Dean Conley, do you know if there is a
9 difference between academic year for faculty and for
10 librarians? Do they end at the same time?

11 A. I can only speak for librarians.
12 Librarians are given a letter from Academic Affairs
13 that commences on July the 1st of whatever year
14 through the following year of June the 30th of that
15 following year on a 12-month year.

16 Q. Do you know the University's fiscal year
17 schedule?

18 A. I think the fiscal year is similar. I'm
19 not for sure.

20 MS. DAY: No further questions, your
21 Honor.

22 MS. MUSKOVITZ: Can we take a couple
23 minutes?

24 ALJ SPRAGUE: Sure. Let's go off for a

1 moment.

2 (Recess taken.)

3 ALJ SPRAGUE: We're back on the record.

4 Dean, you're still on the stand under oath.

5 Miss Muskovitz, your cross.

6 MS. MUSKOVITZ: Thank you.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Muskovitz:

10 Q. Dean Conley, my name is Susannah
11 Muskovitz. I'm the attorney representing the Faculty
12 Alliance of Miami. I have some questions for you
13 today. So you've been at Miami about 30 years?

14 A. I just celebrated my thirtieth
15 anniversary October the 1st.

16 Q. Congratulations. And you started off as
17 a librarian before you went into the administration,
18 correct?

19 A. I started as a Minority Resident
20 Librarian. It was an effort for the University to
21 try to diversify its librarian ranks.

22 Q. And then what was your next position?

23 A. I became the -- So I went from a
24 temporary Minority Resident position to a full-time

1 librarian, public services librarian.

2 Q. What year was that?

3 A. That was within the first two years, so
4 '94, around '94.

5 Q. That predates LARPS, correct?

6 A. That predates, right, LARPS, that's
7 correct.

8 Q. And when LARPS was finally implemented
9 through the faculty, it was through the University
10 Senate, correct?

11 A. So the University Senate had to give
12 their approval to it, but ultimately the decision was
13 with the President and the Provost.

14 Q. And what was your position when LARPS was
15 implemented? Were you in administration?

16 A. I was a department head at that time.

17 Q. Okay. The library has seven departments?

18 A. The library has -- we have six
19 departments.

20 Q. Six departments, two associate Deans, one
21 Dean?

22 A. That's correct.

23 Q. Okay. And rough numbers, there's about
24 30 librarians, not counting administration; is that a

1 fair number?

2 A. That's correct.

3 Q. And are you aware the petition that we
4 filed with SERB would encompass about a thousand
5 people, a little bit north of a thousand, right?

6 A. Yes.

7 Q. So what you want is for these 30 people
8 to have their own Collective Bargaining Agreement and
9 the 970 people to have a different contract; is that
10 what I'm hearing?

11 A. What I'm hoping is to foster a
12 relationship with my colleagues where we wouldn't
13 even have to have a Collective Bargaining Agreement.

14 Q. So it's your preference they not
15 unionize?

16 A. What I'm -- what I would -- would
17 continue to have the relationship that I have with my
18 colleagues today.

19 Q. Do you know that under Ohio law the
20 librarians have a right to unionize?

21 A. Absolutely. As a matter of fact, I was a
22 union employee when I was in college.

23 Q. And the librarians of Miami have a right
24 to unionize under Ohio law, correct?

1 A. Yes.

2 Q. And do you know that the librarians at
3 Miami have signed sufficient showing of interest so
4 that we're here today?

5 A. I didn't --

6 MS. DAY: Objection. It calls for a
7 legal argument.

8 MS. MUSKOVITZ: If he knows.

9 ALJ SPRAGUE: Sustained. I think we can
10 just -- We know that SERB directed this and that's
11 one of the....

12 Q. (By Ms. Muskovitz) Are you aware that the
13 event the librarians are carved out, they can still
14 form even though it would be like a little micro unit
15 their own Bargaining Unit, correct?

16 A. Yes.

17 Q. So in this case, the reason we're here is
18 because they think they're part of the faculty
19 Bargaining Unit and want to be included in the
20 faculty Collective Bargaining Agreement, correct?

21 A. Yes.

22 Q. So do you know the librarians are
23 included in the faculty Bargaining Unit at the
24 University of Akron?

1 A. Yes.

2 Q. And have you talked to any of the
3 administrators -- well, strike that. Did you look at
4 the Bargaining Unit in Akron that governs librarians,
5 that covers librarians?

6 A. I reviewed the documents that we were
7 provided, yes.

8 Q. So you looked at the labor contract for
9 Akron, the one that includes librarians?

10 A. Yes.

11 Q. Did you look at the labor contract at
12 Bowling Green University that covers librarians?

13 A. Yes.

14 Q. Did you look at the labor contract at
15 Central State that covers librarians?

16 A. I did not look at Central State.

17 Q. Did you look at the University of
18 Cincinnati faculty Collective Bargaining Agreement?

19 A. Yes.

20 Q. Are you aware it encompasses librarians?

21 A. Yes.

22 Q. Did you look at the two Collective
23 Bargaining Agreements both of which encompassed
24 librarians?

1 A. Yes.

2 Q. And those have been able to address all
3 of those issues that you talked about earlier,
4 discipline, job promotion, salary; isn't that
5 correct?

6 A. I would say that the -- I don't know how
7 they govern their University librarians. I can only
8 share with you what I would perceive would happen
9 here at Miami libraries, but I did not talk to my
10 colleagues to get their insights on whether or not --
11 how they govern their folks.

12 Q. So you think by having the librarians be
13 part of the full faculty Bargaining Unit would be
14 harmful to librarians, correct?

15 A. What I would say to you is every day I
16 get up to ensure that the libraries are given the
17 resources necessary for my librarians to be
18 successful, and that if there's any way in which that
19 inefficiency and/or inherently situations may occur
20 where that doesn't happen, then I don't support that,
21 at all.

22 Q. So it's your testimony that you think
23 that if the librarians are included in the full
24 faculty Bargaining Unit, that it would hurt

1 librarians?

2 A. I would say that -- I would say that nine
3 months of the year, faculty are given a contract.
4 Librarians are given a 12-month contract. Workload
5 issues are something I don't have to deal with
6 University libraries which as you know -- as you
7 mentioned in the agreements are articulated in that
8 document.

9 When you look at the negotiations
10 necessary to extract what that contract may include,
11 I just want to ensure that the retention --
12 retrenchment issues that we've dealt with before as
13 articulated in the contracts that you mentioned
14 before, librarians are not disenfranchised by that.

15 Q. I appreciate that answer, but it's really
16 not responsive to my question, so I want you to
17 listen to my question. Your position is that if the
18 librarians at Miami are not a part of the full
19 faculty Collective Bargaining Agreement, that they
20 will be disadvantaged?

21 A. I would say that the -- if the University
22 librarians -- say that one more time, can you,
23 please.

24 Q. It's your position what I heard you

1 testify to is that the librarians at Miami, if they
2 are not part of the full faculty Collective
3 Bargaining Agreement, that it will be to their
4 disadvantage? Is that your position?

5 ALJ SPRAGUE: I'm not sure that --

6 MS. DAY: That mischaracterizes the
7 testimony.

8 MS. MUSKOVITZ: I think he can answer the
9 question because that's what I heard.

10 THE WITNESS: I did not say that.

11 Q. (By Ms. Muskovitz) Okay. So you're not
12 taking the position that it's to the disadvantage of
13 the librarians themselves to be covered by the full
14 Collective Bargaining Agreement?

15 A. No.

16 Q. Okay. So you don't think it's a
17 disadvantage?

18 A. No, I just don't think it's the most
19 efficient way for us to be using -- I think
20 inherently there's some issues we have to address --
21 would have to address.

22 Q. Oh, I see, okay. So are you aware at the
23 Wright State Collective Bargaining Agreement, it's in
24 your binder, there are nine-month faculty and

1 12-month faculty covered by the same labor contract?

2 A. I don't -- I did not look at the Wright
3 State.

4 Q. Do you know that there's language that
5 governs vacations that only applies to 12 month
6 faculty but not nine-month faculty?

7 MS. DAY: Objection. He testified he's
8 not looked at the exhibit.

9 Q. Well, let's look at it. Go to Tab 15, if
10 you will. I know it's in the second book.

11 A. Am I looking at this one?

12 MS. DAY: In that second binder, I think.

13 Q. Go to Tab 15, just as one example of
14 these things. Can you go to Page 139. I think
15 that's where the vacation language is. Oh, no, I'm
16 sorry, Page 128, vacation, just as one example. Do
17 you see in here there's language that applies to what
18 they call fiscal year Bargaining Unit members and
19 academic year Bargaining Unit members meaning --

20 MS. DAY: Your Honor, we would object.
21 I'm sorry to cut you off. I'll let you finish your
22 question.

23 Q. These are individuals that are covered by
24 the labor contract that some work nine months, those

1 are called academic year faculty, and some work 12
2 months and they're called fiscal year faculty, same
3 labor contract. So my question is do you see how
4 there's vacation language but it applies to the
5 12-month employees but not the nine-month employees?

6 ALJ SPRAGUE: Your Honor, we would object
7 to this line of questioning regarding this exhibit to
8 which Dean Conley testified he has no personal
9 knowledge.

10 MS. MUSKOVITZ: Your Honor, he testified
11 that somehow there would be a problem having
12 nine-month employees and 12-month employees covered
13 by the same Collective Bargaining Agreement. I will
14 tell you that there are many faculty labor contracts
15 that govern both nine-month employees and 12-month
16 employees and they make distinctions, and one example
17 is vacation.

18 MS. DAY: Even assuming that is true,
19 Dean Conley as the witness has not testified to
20 personal knowledge of this exhibit.

21 ALJ SPRAGUE: Sustained. If you want to
22 ask him about when he said he reviewed it, I think
23 there were a few number of them.

24 Q. (By Ms. Muskovitz) My question, Dean, is

1 why would that be such a big problem if it's been
2 obviously addressed successfully by all these other
3 universities?

4 A. Once again, I don't know what other
5 institutions have done related to the nine-month and
6 12-month. I would just share with you I truly
7 believe it would create challenges for us as a
8 University libraries.

9 Q. You think whoever is on the negotiating
10 committee for the union would not be able to address
11 the fact that some people work an academic year and
12 some people work a fiscal year? You think they're
13 incapable of that?

14 A. I wouldn't say that people are not
15 capable. What I would share with you is if the bulk
16 of the individuals as articulated by you are
17 individuals that have a nine-month contract, the
18 individuals who have a 12-month contract will have to
19 be in an order that perhaps the priority is not given
20 to them. So I'm not saying they're inherently unable
21 to do it; I'm just sharing it may create some
22 inefficiencies and some challenges for us.

23 Q. You're afraid that the librarians at
24 Miami will end up being second class citizens?

1 A. I didn't use the term afraid.

2 Q. You're concerned that the librarians at
3 Miami if they're in the same Bargaining Unit would
4 become second class citizens; is that correct?

5 A. What I would share with you is that as
6 the Dean, I truly hope and truly work every day to
7 ensure that my librarians have the resources they
8 need to be successful.

9 Q. That's a great thing, but that's not
10 responsive to my question. Your concern that the
11 librarians, if they're included with everyone else,
12 would become second class citizens?

13 A. I did not use the term second class
14 citizens.

15 Q. I know, I'm using that term.

16 A. Can you define it?

17 Q. They would not have the same clout at the
18 bargaining table as the nine-month faculty.

19 A. That's not what I'm saying.

20 Q. So I'm not understanding your point then.
21 I guess I'm trying to understand why the librarians
22 can't be part of the same Bargaining Unit with all
23 the faculty at Miami?

24 A. What I would share with you is that when

1 we think of -- for example, when I had to sit and
2 make a determination on getting rid of someone's job,
3 I made a pledge at that time as a Dean that we would
4 do everything we possibly can to ensure that that
5 doesn't happen again.

6 And when we look at retrenchment issues,
7 if we would have been lumped in with all the other
8 individuals who were in Academic Affairs, there could
9 have been a possibility that individuals' jobs within
10 the University's librarians would not have been
11 protected, and I do not want to do that as the Dean
12 of the University librarians.

13 Q. Are you aware that every Dean wants to
14 protect the faculty and the positions within that
15 college?

16 MS. DAY: Objection. Calls for
17 speculation.

18 ALJ SPRAGUE: Sustained.

19 Q. (By Ms. Muskovitz) Are you aware that
20 every labor contract in Ohio that covers higher ed
21 has language that governs financial exigency?

22 A. Ma'am, I have not looked at every
23 contract in higher education.

24 Q. Do you know if those provisions apply,

1 one of the things that happens in cases of financial
2 exigency is that the different components of any
3 University is examined and some are affected
4 differently than others based on a whole number of
5 reasons?

6 MS. DAY: Objection. He has not
7 testified that he has personal knowledge of all of
8 these issues.

9 MS. MUSKOVITZ: He can answer these
10 questions. If he don't know, he doesn't know. The
11 questions are not -- are not improper. The point,
12 Mr. Hearing Officer, is that the financial exigency
13 at Miami versus anywhere else in Ohio goes college by
14 college, and sometimes there's carve-outs in one
15 group and not in another.

16 ALJ SPRAGUE: All right. Thank you,
17 Miss Muskovitz, I understand that, trust me I do, but
18 I don't think the witness has personal knowledge of
19 that and he's indicated that is the case.

20 Q. (By Ms. Muskovitz) Well, do you think if
21 there was another situation in Miami involving
22 financial exigency, that librarians could be viewed
23 differently than some of the other components of the
24 University?

1 A. Can you repeat that one more time.

2 Q. Yes, if there was a situation in Miami
3 where there was a financial exigency, that one of the
4 things that would happen is the different components
5 of the University would be looked at individually?

6 A. Well, what I would say with you, ma'am,
7 is a couple years ago when the whole issue with Covid
8 was addressed, that was not a financial exigency of
9 the University, but we had to make some tough
10 decisions as a University to ensure that we could
11 make it through that Covid period.

12 We were able to do that. We were able to
13 do that with -- for the good of the whole and not
14 just for one. And I would say to you that when you
15 sit in this seat, you're reminded of those things.

16 Q. The librarians have three ranks, correct,
17 Assistant, Associate and Principal?

18 A. That's correct.

19 Q. And tenure tract faculty have three
20 ranks, Assistant, Associate and Full?

21 A. That's correct.

22 Q. And librarians when they get hired as an
23 Assistant Librarian, that's the result of a search
24 committee, correct, within the library?

1 A. That's correct.

2 Q. Would it surprise you to know that
3 there's some witnesses that are going to testify that
4 there are faculty members that have sat on the
5 library search committees?

6 A. No.

7 Q. Okay. So it's not only librarians,
8 there's faculty that sometimes sit on search
9 committees within the library?

10 A. Those are very, very rare cases.

11 Q. Okay. And it's a competitive search,
12 correct?

13 A. It is.

14 Q. And it goes through the --

15 A. Search process.

16 Q. It's a competitive search process, right.
17 You have in the library you said the Personnel
18 Committee?

19 A. That's correct.

20 Q. And within each academic department, they
21 have a search committee within their department when
22 they hire Assistant Professors, correct?

23 A. That's correct, as far as I know.

24 Q. It's a competitive search as well,

1 correct?

2 A. That's correct.

3 Q. And they make recommendations?

4 A. They do.

5 Q. And it goes up to whatever the Dean is
6 depending on where they are?

7 A. I'm not familiar, but I assume it starts
8 with the chair equivalent to the department head and
9 then to the Dean, that's correct.

10 Q. So the chair is the equivalent of your
11 department head?

12 A. That's correct.

13 Q. Then it goes up to the Dean?

14 A. That's correct.

15 Q. And then it goes up to the Provost?

16 A. That's correct.

17 Q. Then ultimately the President.

18 A. No.

19 Q. It's just the Provost?

20 A. The Provost and then I would assume that
21 the President of the University is not looking at the
22 letter that is the librarian --

23 Q. In most cases, the President is going to
24 take the recommendation of the Provost?

1 A. That's correct, all right, I assume.

2 ALJ SPRAGUE: Mr. Conley, let's not
3 assume anything. If you have personal knowledge,
4 that's great.

5 THE WITNESS: No. Thank you.

6 Q. (By Ms. Muskovitz) So then they have a
7 six-year probationary period, correct?

8 A. That's correct.

9 Q. At the end of the fifth year, they
10 provide a dossier?

11 A. Yes.

12 Q. Assistant professors have a six-year
13 probationary period?

14 A. That's correct.

15 Q. And at the end of their fifth year,
16 Assistant Professors provide a dossier?

17 A. That's correct.

18 Q. And those dossiers get reviewed in the
19 three categories that they're responsible for,
20 correct?

21 A. State that one more time, I'm sorry.

22 Q. Whether it's an Assistant Professor or an
23 Assistant Librarian, there's three criteria for
24 review of a dossier?

1 A. I would say that the primary professional
2 responsibility is a criteria, teaching is a criteria,
3 service and scholarship are similar.

4 Q. Exactly. So Assistant Professors have to
5 have a teaching record. Assistant Librarians have to
6 show accomplishments in their primary professional
7 responsibility?

8 A. Correct.

9 Q. Both have to show some accomplishments
10 and scholarship?

11 A. Yes.

12 Q. Both have to show some accomplishments in
13 service?

14 A. That's correct.

15 Q. And it's reviewed, and if they succeed in
16 getting their promotion, they become either an
17 Associate Librarian or an Associate Professor?

18 A. Correct.

19 Q. That's where they get a continuing
20 contract?

21 A. For librarians.

22 Q. Right. And for faculty?

23 A. Right, they receive tenure.

24 Q. Right. And the tenure means a continuing

1 contract, does it not?

2 A. I think there's certain rights -- Right,
3 it's an element of a continuing contract for sure.

4 Q. And librarians likewise have a continuing
5 contract?

6 A. That's correct.

7 Q. And if a librarian does not make the cut,
8 it's up or out; is that correct?

9 A. For the -- within that process?

10 Q. Yes.

11 A. Yes.

12 Q. And if an Assistant Professor does not
13 make the cut, it's up or out?

14 A. To my understanding, that's correct.

15 Q. And the librarian, if they don't get the
16 continuing contract have a terminal year?

17 A. Yes.

18 Q. And an Assistant Professor, if they don't
19 get a continuing contract get a terminal year?

20 A. Yes.

21 Q. These have different names but they
22 mirror the same process, the same timeframe, very
23 similar rules; you have to agree with that?

24 A. I agree. The difference would be what

1 then happens if an individual wants to appeal his or
2 her decision not to get continuing contract.

3 Q. Well, do you know that in the event that
4 there's one labor contract -- in the event there's a
5 labor contract, that those processes are governed by
6 the language in the Collective Bargaining Agreement?

7 A. Yes.

8 Q. So the librarians, the negotiating
9 committee can address the issues of what appeal
10 rights, if any, are applicable?

11 A. I would assume -- sorry. Yes.

12 Q. And the Assistant Professors, I mean, the
13 Bargaining Committee would address what are
14 applicable to an Assistant Professor?

15 A. I think that one of the things that we
16 have done within our system that is different than
17 the faculty, however, is that we wanted to ensure
18 that the reason we have the Personnel Committee
19 reviewing the applications for continuing contract
20 and promotion versus the University Promotion and
21 Tenure Committee.

22 I think this is another example of
23 inefficiencies or perhaps inherent differences, is
24 that the librarians want to ensure that librarians

1 are evaluating it, not some other discipline
2 evaluating it.

3 If you have -- so that's why we don't go
4 through UPT. And I think if you articulate that,
5 it's going to have to be hammered out in a contract
6 that may take a little longer because it would be a
7 whole new system for the University libraries and not
8 one that we have now, currently.

9 Q. Dean, are you aware that while the first
10 contract is being negotiated, the old rules apply?

11 A. I have never gone through this process
12 before.

13 Q. So I can tell you the old rules apply
14 until then don't apply --

15 A. So this is new to me.

16 Q. -- right? The old rules apply --

17 A. So if she's not objecting, then I'm going
18 to have to say you're right.

19 Q. So once there's a labor contract, whether
20 the librarians continue to go through the Personnel
21 Committee or not is something that would be addressed
22 in the labor contract, right?

23 A. I'm going to say....

24 Q. The rules don't have to change.

1 A. Okay. I don't know.

2 Q. I'm just trying --

3 A. I literally don't know how that contract
4 is hammered out.

5 Q. Right. So librarians do research,
6 correct?

7 A. They do.

8 Q. They act as liaisons to different
9 departments?

10 A. Not all of them; some of them.

11 Q. Some of them, right?

12 A. Yes.

13 Q. Some of them teach research to both
14 undergraduate and graduate students?

15 A. Absolutely.

16 Q. Some of them work with faculty on faculty
17 research projects?

18 A. We hope.

19 Q. Some of them bring in grant money or are
20 on grants with other faculty for certain
21 scholarships?

22 A. And we celebrate it regularly. Exactly,
23 exactly.

24 Q. And some of them publish?

1 A. Absolutely.

2 Q. And they publish in peer reviewed
3 journals?

4 A. Yes.

5 Q. Those are the same things that faculty
6 do, right?

7 A. Very similar, very similar.

8 Q. Do you agree that a biology professor is
9 different than an English professor? I mean, they
10 have different fields.

11 A. Say it one more time.

12 Q. Somebody that is in biology may have a
13 lab and somebody that's in English just needs a
14 computer. I mean, there's differences within --

15 A. Yeah, cognitive areas are different,
16 right.

17 Q. Right, okay. And librarians have
18 different needs as well?

19 A. That's correct.

20 Q. But they're all part of the learning
21 community at Miami University?

22 A. Yes, but I would say that -- but I would
23 argue that a food service worker also has a
24 learning -- part of the learning -- or the janitors

1 in the King Library. I think there are some
2 differences in which the expectations of faculty
3 member in biology and a faculty member in English,
4 although they're similar, we celebrate their
5 differences and what they bring to the table and I
6 think the same thing with the librarians.

7 Q. I could not agree more. They all have
8 differences, but they all have -- they're part of the
9 big learning community that is Miami University; you
10 would agree?

11 A. We're part of Academic Affairs, yes.

12 Q. And the University also has a University
13 Senate?

14 A. That's correct.

15 Q. And tenured and tenure track faculty are
16 part of the University Senate?

17 A. I don't know the current composition of
18 University Senate, but faculty, yeah, undergraduates
19 are part of that as well as administrators.

20 Q. Students?

21 A. That's correct.

22 Q. Administrators, right?

23 A. Yes.

24 Q. And TCPL faculty are part of the

1 University Senate?

2 A. I would assume.

3 Q. And librarians are part --

4 A. Yes.

5 Q. Librarians are part of the University
6 Senate, correct?

7 A. We have a representative that's assigned
8 by the library and the they can be elected at large,
9 that's correct.

10 Q. Their vote counts the same as the vote of
11 any other member of the University Senate, do you
12 agree with that?

13 A. Oh, yeah. I mean, we would be appalled
14 if they didn't.

15 Q. Right. Then there's a Faculty Assembly
16 underneath the University Senate, correct?

17 A. No.

18 Q. There's no Faculty Assembly?

19 A. Without the Assembly, I would not say
20 it's under the University Senate. I would say that
21 the fact that they've probably are next to each
22 other.

23 Q. Okay, I'll accept that. So there's a
24 Faculty Assembly at Miami University?

1 A. That's correct.

2 Q. And all of the both tenure track and
3 tenured professors at Miami are eligible to be part
4 of the Faculty Assembly?

5 A. That's correct.

6 Q. And all of the TCPL faculty at Miami are
7 eligible to be part of the Faculty Assembly?

8 A. I'm not -- I don't know that for sure,
9 but I think that's correct.

10 Q. Okay. And all of the librarians at Miami
11 University are eligible to be part of the Faculty
12 Assembly?

13 A. That's not true.

14 Q. That's not true.

15 A. That's not.

16 Q. Why not?

17 A. Individuals who hold the rank of
18 Assistant, Associate or Principal Librarian can. We
19 do have a librarian who holds the title of Instructor
20 and he's not eligible for Faculty Assembly.

21 Q. So the Assistant, the Associate and the
22 Principal Librarians at Miami who are the people that
23 we're petitioning for all can participate equally
24 within the Faculty Assembly?

1 A. Yes.

2 Q. Okay. And their vote counts as much as
3 anyone else's vote?

4 A. Yes.

5 Q. You said there's a grievance procedure in
6 the LARPS system, correct?

7 A. That's correct.

8 Q. Do you know if there was a Collective
9 Bargaining Agreement, there would also be a grievance
10 procedure?

11 MS. DAY: Objection. Calls for
12 speculation.

13 ALJ SPRAGUE: If he knows.

14 A. I don't know.

15 Q. Do you know that there could be a
16 grievance procedure?

17 A. Yes.

18 Q. And that a grievance procedure could
19 encompass whatever grievances currently exist under
20 LARPS, could, if it's negotiated --

21 A. Yes.

22 Q. -- right?

23 And issues such as discipline could be
24 addressed in a Collective Bargaining Agreement that

1 encompass faculty?

2 A. Repeat that one more time.

3 Q. Issues such as, let's say, discipline,
4 that could be encompassed in a Collective Bargaining
5 Agreement that also govern faculty, correct?

6 A. I don't know about faculty because I have
7 a librarian's, so I don't know the answer to that.

8 Q. I'm just trying to understand why you
9 think they have to be carved out and somehow would be
10 benefited by being carved out. It just doesn't
11 make -- I'm trying to understand why other than you
12 don't want them to unionize, why you think it's to
13 their benefit to be carved out?

14 A. I don't know any other way of
15 articulating other than what I shared before.

16 Q. Do you know if any of the librarians that
17 are covered by all of the other higher ed contracts
18 in Ohio have somehow been disenfranchised just
19 because they're included with the other faculty at
20 their institutions?

21 A. I did not -- I don't know.

22 Q. Do you think that the desire of the
23 librarians at Miami should be relevant?

24 A. I hope because we're in America that

1 people do what they think is best for them and I
2 celebrate that.

3 Q. Okay. So you think that the desire of
4 the librarians at Miami should be relevant to this
5 determination?

6 A. I think that the process that we're going
7 through I think is a fine process.

8 Q. Okay. Do you know that the desire of the
9 librarians at Miami is to be included?

10 A. I don't know if all -- I don't know about
11 my 30 librarians because I didn't see the votes.

12 Q. But we're here today and they're trying
13 to be included.

14 A. But there are not 30 librarians here.

15 Q. No, there are not. No, there are not. I
16 think you testified that you do not want them to be
17 disenfranchised? Was that the word you used?

18 A. What I hope -- My desire as the Dean is
19 to ensure that the librarians are successful in their
20 chosen field of human endeavor.

21 Q. Okay. Can you give me a single reason
22 why including them in the Bargaining Unit would
23 hamper their success?

24 A. Outside of what we shared before?

1 Q. Any reason that it would hamper their
2 success.

3 A. I would say that my opinion, inherently
4 when we looked at the jobs and responsibilities of
5 University librarians, when we look at the contracts
6 that they are provided, a 12-month versus a
7 nine-month, when we look at the whole workload issues
8 that faculty have that librarians don't have, when we
9 look at the whole issues related to the librarians
10 potentially with retrenchment, negotiations may not
11 necessarily position us well.

12 Q. Can you give me a single example of any
13 university in Ohio where that's happened?

14 MS. DAY: Objection. Calls for
15 speculation; is not asked for testimony based on his
16 personal knowledge.

17 Q. If he knows.

18 A. I do not know.

19 Q. If you know, if you know, can you give me
20 a single example of any University in Ohio where that
21 has happened to the librarians?

22 A. I do not know.

23 MS. MUSKOVITZ: Thank you. No further
24 questions.

1 MS. DAY: Just a few on redirect.

2 - - -

3 REDIRECT EXAMINATION

4 By Ms. Day:

5 Q. I apologize if you said this earlier, I
6 just want to clarify. Have you ever worked for any
7 other public university in the State of Ohio?

8 A. I have not.

9 Q. Are you aware of the terms and conditions
10 of the employment for faculty members or librarians
11 in any other public university in the State of Ohio?

12 A. I am not.

13 Q. Do librarians have to show accomplishment
14 in scholarship for promotion?

15 A. They have to show -- It's according to
16 what very strong criteria they choose, but they have
17 to show some form of competency in that area or
18 contributions in that area.

19 Q. Can they choose anything other than
20 scholarship?

21 A. Service, and many librarians do choose
22 service.

23 Q. I believe you testified when
24 Miss Muskovitz was asking you questions about

1 University Senate. And in addition to faculty and
2 librarians, who serves on Senate?

3 A. I don't know the -- I truly don't know
4 all the constituencies with stakeholders, but
5 students serve on it, appointees of the President
6 serve on it, elected officials within the
7 representatives serve on it. Librarians have a seat
8 on it as well.

9 Q. Do administrators serve on Senate?

10 A. I think some administrators do serve.
11 Like the Director of EEO, I think she serves on it.
12 Global Initiative, I think the Provost, I think she
13 serves on it.

14 Q. What about Faculty Assembly, who
15 participates in Faculty Assembly?

16 A. I don't know all. The ones that I'm
17 really concerned about are the librarians. In our
18 case, the Assistant, the Associate and Principal
19 Librarians serve on it, as well as tenured and tenure
20 track faculty, so I don't -- As she mentioned, I
21 think TCPLs, but I'm not for sure.

22 Q. Do you know whether administrators serve
23 on Faculty Assembly?

24 A. I serve on Faculty Assembly, so yes.

1 Q. Do students serve on Faculty Assembly?

2 A. Absolutely not.

3 Q. Dean Conley, do you know how librarians
4 are classified at other campuses at public
5 universities in Ohio?

6 A. Outside of what I've read at this
7 document, they -- other public universities, some of
8 them refer to them as faculty librarians, but other
9 than that, I'm not for sure on all 13 institutions.

10 Q. Does Miami ever refer to librarians as
11 faculty librarians?

12 A. They do not.

13 MS. DAY: No further questions.

14 - - -

15 RE-CROSS-EXAMINATION

16 By Ms. Muskovitz:

17 Q. The distinction of faculty and
18 nonfaculty, I'm trying to figure out in substance why
19 that even matters when they have the same promotion
20 process.

21 A. That nomenclature, I didn't have anything
22 to do with. I don't know anything. I don't know
23 why.

24 MS. MUSKOVITZ: No further questions.

1 MS. DAY: Nothing further.

2 ALJ SPRAGUE: I guess be reseated. Thank
3 you for your testimony today. We'll go off the
4 record.

5 THE WITNESS: Thank you very much.

6 (Off the record.)

7 ALJ SPRAGUE: Back on the record.
8 Associate Provost Cox has taken the stand. Miss Cox,
9 I'm going to swear you in. Please raise your right
10 hand.

11 (Witness placed under oath.)

12 ALJ SPRAGUE: Please state your full name
13 for the record spelling your last name.

14 THE WITNESS: Dana Cox, C-O-X.

15 ALJ SPRAGUE: Thank you, Miss Cox. Go
16 ahead.

17 - - -

18 DANA COX, Ph.D
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Day:

23 Q. Dana, what is your current title?

24 A. Associate Provost for Faculty Affairs and

1 Professor of Mathematics Education.

2 Q. How long have you been in the Associate
3 Provost role?

4 A. Since July 2021.

5 Q. Can you describe your job duties
6 regarding your Associate Provost position.

7 A. It's essentially to care for faculty from
8 hire to retire, to examine the policies and practices
9 that are used to govern the faculty experience. I
10 serve as the Secretary of University Senate and a
11 variety of other duties and other committees where
12 faculty voice needs to be heard at the table and then
13 sometimes represent the administrative voice with
14 groups of faculty as well.

15 Q. Do you have any duties that relate
16 specifically to the terms and conditions of
17 employment for faculty?

18 A. Yes, I do. In my role I'm involved in
19 the search process for hiring all faculty. I do have
20 some approval duties, but these are minor and are
21 oriented around ensuring that when departments make
22 choices about who they want to hire, that we can
23 successfully do so.

24 I assist with probationary review of

1 TCPL faculty -- or not TCPL faculty, probationary or
2 with tenure track. I assist by providing
3 professional development and career development
4 resources for faculty as well.

5 Q. Have you held any previous roles at Miami
6 University?

7 A. I have.

8 Q. What roles?

9 A. Immediately prior to this one, I was the
10 Special Assistant to the Provost for Faculty Affairs.
11 And immediately prior to that, I was on the faculty
12 in the Mathematics Department.

13 Q. All together, how long have you been at
14 Miami?

15 A. This is year 15.

16 Q. Congratulations.

17 A. Thank you.

18 Q. What faculty roles exist at Miami?

19 A. There are a variety of faculty roles that
20 exist at Miami, and largely we've been talking about
21 them here. There's the tenure stream faculty, which
22 included tenured and also tenure eligible faculty.
23 There are TCPL faculty, Teaching and Clinically -- I
24 think we've -- okay, TCPL, can I just call them TCPL?

1 Q. That works for me.

2 A. All right, TCPL faculty. There are also
3 Visiting faculty and Instructors. And then there are
4 also per credit hour faculty which are similar to
5 what other universities might refer to as adjunct,
6 but we use adjunct to mean a different type of
7 assignment.

8 Q. Instructors, how are they treated in
9 relation to the other faculty roles? Are they
10 treated the same as anyone else?

11 A. That's a loaded question.

12 Q. Fair enough. In terms of policies, is
13 there any sort of overarching category of
14 nomenclature that we would refer to that would
15 include Instructors?

16 A. Yeah, Instructors are generally
17 considered Visiting Professors.

18 Q. So if we say Visiting Professors or VAPs,
19 would that include Instructors?

20 A. I would include them, yeah.

21 Q. What is the significance of being faculty
22 at Miami?

23 A. Wow, that's something I'm very proud of
24 and I think a lot of other people are pretty proud

1 of. The significance of being in a faculty position
2 is that you're charged with the education of our
3 students, and that's largely instruction, but it can
4 also be curriculum development. It can also be to
5 some degree administrative roles with, you know,
6 multi-section courses. Faculty are kind of charged
7 with governing what goes on there.

8 Q. Are any faculty considered to be
9 unclassified staff?

10 A. No.

11 Q. Are any librarians considered to be
12 faculty at Miami?

13 A. Not that I know of, no.

14 Q. Can you give us an overview or
15 description of the rank within each type of faculty
16 role?

17 A. Sure. So within the tenure eligible
18 faculty, we have three ranks. We have the Assistant
19 Professor rank, the Associate Professor rank and the
20 Professor rank which some people refer to as Full
21 Professor.

22 Within the TCPL category, there are also
23 three different ranks. The titles are more diverse
24 within the TCPL category, but essentially there's an

1 Assistant rank and Associate rank and then either a
2 Senior or Full.

3 ALJ SPRAGUE: Or what? Sorry.

4 A. Well, we don't -- so you could be a
5 teaching professor at that top rank, but other people
6 might refer to that as Full Teaching Professor but we
7 don't at Miami.

8 Q. So is that one of the -- is that an
9 example of how the titles differ between tenured or
10 tenure eligible faculty and TCPL faculty, you would
11 use the additional word Teaching Professor?

12 A. For some, yeah. Teaching Professor is
13 one of the titles held by TCPL faculty. Clinical
14 Professor, Clinical Lecturer, Lecturer. There are a
15 variety to represent the variety of different roles
16 that they hold.

17 Q. That's all within the TCPL category?

18 A. Uh-huh, uh-huh.

19 Q. What about VAPs and Instructors, do they
20 have --

21 ALJ SPRAGUE: Back up just a little bit.

22 MS. DAY: Sure.

23 ALJ SPRAGUE: Just for TCPL, Assistant,
24 Associate and you said Teaching Professor, but I

1 thought you said Senior also. Is that the same
2 thing?

3 THE WITNESS: So if you're a Lecturer,
4 your title is Senior Lecturer. That top one, there's
5 a little difference in the way you refer to it.

6 ALJ SPRAGUE: Okay. And there's also in
7 the Clinical Professor, Clinical Lecture and
8 Lecturer?

9 THE WITNESS: Yeah. It's complex.

10 Q. (By Ms. Day) Are there Assistant,
11 Associate and then Senior Lecturers, is that the
12 progression for Lecturers?

13 A. Yes.

14 Q. For Visiting faculty, do they have
15 different ranks?

16 A. No.

17 Q. So simply Visiting Assistant Professor?

18 A. Yeah. I think historically we have
19 brought someone in with the title of Visiting
20 Associate Professor, but that wasn't necessarily
21 representative of a promoted person. It was kind of
22 an honorific or to reflect service outside of the
23 Miami system. Currently we do not have any Visiting
24 Associate Professors on our faculty.

1 Q. What about Instructor, I know they're
2 under that Visiting faculty umbrella, but are there
3 different ranks within the Instructor role?

4 A. No.

5 Q. And you mentioned promotional points a
6 second ago. Is that what you're describing when
7 you're describing Assistant, Associate and Full for
8 tenure track and then TCPLs?

9 A. Yes. Promotion point would be the pivot
10 point in between your ranks. So when you go from
11 Assistant to Associate, you walk through a promotion
12 point.

13 Q. I want to focus a little bit on contracts
14 for employment and I'm going to start with tenure
15 eligible faculty. Do they have a contract for
16 continued employment?

17 A. Yes.

18 Q. How long is that contract for continued
19 employment?

20 A. For tenure eligible?

21 Q. For tenure eligible, yes.

22 A. So they're considered probationary, so
23 they're year-to-year.

24 Q. So how long is their probationary period?

1 A. Their probationary period is six years
2 typically.

3 Q. Switching to tenured faculty, do they
4 have a contract for continued employment?

5 A. Yes.

6 Q. How long is that contract for?

7 A. Indefinitely.

8 Q. What is the significance of tenure?

9 A. That has a lot of significance,
10 significance to me and to others. The significance
11 to me is that we are free academically to study and
12 document any phenomenon we choose; that we don't have
13 to do the work specified by others in terms of
14 scholarly investigation; that our findings are our
15 own; that we aren't expected to find certain things
16 because the University has a sponsorship with
17 Coca-Cola or Nike.

18 We are independent in terms of our
19 creativity and our scholarship, and that it protects
20 us in the event that whatever we choose to document
21 or how we choose to document it comes into question.

22 Q. Would that be commonly referred to as
23 academic freedom?

24 A. Well, sure, yeah. Academic freedom is a

1 big part of the tenure.

2 Q. Do other faculty roles at Miami have
3 academic freedom?

4 A. No -- Well, they have academic freedom to
5 teach as they wish, absolutely, but is it guaranteed
6 by tenure? No.

7 Q. Turning now to TCPLs.

8 ALJ SPRAGUE: Hang on a second.

9 MS. DAY: Sure.

10 ALJ SPRAGUE: Okay.

11 Q. Switching to TCPLs, are there
12 probationary TCPL faculty?

13 A. Yeah.

14 Q. What is their contract of employment?

15 A. So probationary TCPLs employment, they're
16 still on a year-to-year contract during their
17 probationary period.

18 Q. Is there a certain rank that would
19 typically be associated with a probationary TCPL?

20 A. Assistant.

21 Q. Going back just a smidge, is there also a
22 rank that is typically associated with a probationary
23 tenure eligibility faculty member?

24 A. Assistant Professor.

1 Q. How long is a probationary period for a
2 probationary TCPL?

3 A. Four years.

4 Q. Why different than tenure eligible
5 faculty member?

6 A. That was negotiated when the promotion
7 points were identified. The thought was that -- I
8 think the thought was that after four years of
9 teaching evaluations, we would have a sense for their
10 teaching prowess, we would have a sense for how well
11 they were serving the University and that a decision
12 could be made after four years.

13 Q. Why would a tenure eligible person need a
14 longer probationary period?

15 A. Related to scholarship. Scholarship
16 takes time. And to hurry it or to put pressure on
17 probationary faculty to investigate smaller questions
18 or to scramble to do work that isn't representative
19 of what they have as their own ambition, six years is
20 needed in a lot of cases to ensure a fair and
21 accurate view of that scholarship.

22 Q. After a TCPL faculty member is no longer
23 probationary, at that point in time do they have a
24 contract for continuing employment?

1 A. For TCPL?

2 Q. Yes, for TCPL.

3 A. Yes.

4 Q. And what do those contracts look like?

5 A. Once you've been promoted to the
6 Associate or second level, you're contract is a
7 three-year continuing contract. And once you've been
8 promoted at the senior level, the top level, your
9 contract is a five-year continuing contract.

10 Q. You said three-year and five-year
11 continuing contract. Does that mean the TCPL faculty
12 member is entitled to a three-year contract forever,
13 indefinitely?

14 A. Yeah.

15 Q. Are there reasons that those contracts
16 can be ended?

17 A. Yes.

18 Q. Such as?

19 A. They can be terminated for cause, and
20 they can be terminated for lack of solid -- If they
21 were harming students in the classroom or if they
22 were not performing their duties, then that contract
23 can be terminated.

24 Q. Can a TCPL's continuing contract be, as

1 Dean Conley testified earlier, not renewed?

2 A. Yes.

3 Q. Are TCPLs eligible for tenure?

4 A. No.

5 Q. Why not?

6 A. A tenure is reserved for those who have
7 as a component of their workload scholarly or
8 creative pursuits.

9 Q. Switching to Visiting faculty, or VAPs,
10 inclusive of Instructors, are there probationary
11 persons under the VAP umbrella?

12 A. No.

13 Q. What contracts of employment are VAPs
14 eligible for?

15 A. Year-to-year.

16 Q. Are those for continued employment?

17 A. No, there's no expectation that will
18 continue from year-to-year. And at the conclusion of
19 the fifth full year of service, there's no
20 possibility of continuation.

21 Q. Is there a policy that covers the VAP
22 category of faculty?

23 A. Yes.

24 Q. I'm going to have you turn to Joint

1 Exhibit D in the black binder. Take a second to look
2 at that and let me know when you've had a moment to
3 do so.

4 A. Okay.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. And what is it?

8 A. It's a policy that's titled Other
9 Instructional Staff Titles. That includes Visiting
10 faculty/Instructors and miscellaneous non-promotable
11 Instructor -- instructional staff titles.

12 Q. Is that five-year cap spelled out in this
13 policy?

14 A. Yes.

15 Q. Can you instruct me where?

16 A. It's at the end of the first section. It
17 says, "Visiting faculty are eligible to receive but
18 not entitled to expect annual reappointment not to
19 exceed five academic years."

20 Q. Is there similar language for
21 Instructors?

22 A. Yes.

23 Q. Can you read that for us as well?

24 A. It says, "Instructors are eligible to

1 receive but not entitled to expect annual
2 reappointment not to exceed five years."

3 Q. I want to talk a little bit about
4 compensation. How is that generally set for tenured
5 and tenure track faculty?

6 A. Well, initially you're hired in at a
7 salary. That salary can change over time either on
8 the basis of a raise offered to faculty at large or
9 the basis of merit when merit pools are available.
10 There are also two other points in which your salary
11 will automatically change, and that's at the
12 promotion points that when you are promoted, your
13 base salary is increased by a set amount.

14 Q. Tell me about how compensation is set for
15 TCPLs.

16 A. Similar, very similar. That when you --
17 you come in, your initial salary is established. It
18 can increase yearly when there are pools of
19 increases -- an increment is available and also
20 they're eligible to receive merit pay. There are
21 also two pay bumps at each of the promotion points.

22 Q. How does the compensation compare between
23 tenured and tenure eligible faculty as to TCPLs?

24 A. Initially -- Ruth can answer more

1 questions specifically about how that is set -- but
2 globally TCPL faculty are hired in I believe the
3 benchmark is about 80 percent of the market rate for
4 tenured faculty. The promotion points, the bumps,
5 are also approximately 80 percent of the promotion
6 point bumps for tenured faculty. When an increment
7 is available, it's the same regardless of your rank.
8 And when there's merit, it's handled locally.

9 Q. When you say locally, what do you mean?

10 A. It means that TCPL faculty are eligible
11 for merit, but the decisions about where that merit
12 goes and what department is largely a local decision.

13 Q. When you say local, is that like another
14 word for a department?

15 A. It's initially made at the level of the
16 department chair who then reports the overall
17 structure to the dean who has input on it.

18 Q. What about compensation for the category
19 that we're calling the VAPs, how is that set?

20 A. There's an initial salary that's offered
21 to the VAPs. I believe historically when there has
22 been an increment and a VAP comes back, that
23 sometimes they're eligible for that increment, but a
24 new VAP coming in at the same time would not

1 necessarily be at that incremented level, that they
2 might be at a lower starting salary.

3 Q. Are VAPs eligible for merit increases?

4 A. No.

5 Q. Let's talk about the work expectations of
6 these various faculty roles, and let's start with the
7 tenured and tenure eligible. What are the work
8 expectations for tenured and tenure eligible faculty
9 members?

10 A. So there are three categories of work
11 that tenure eligible and tenure track faculty do.
12 The first is teaching. That's the first primary job
13 that they do. There's also -- and advising is kind
14 of underneath that teaching umbrella. There's also
15 scholarship and creative activity, and then there's
16 service.

17 Q. Is there typically a breakdown between
18 amount of the job that should be focused on each
19 bucket?

20 A. Yes. It's understood at Miami that the
21 majority of the divisions expect 40 percent of
22 workload to be associated with teaching and advising,
23 40 in scholarship and 20 in service; however, that's
24 not consistent across all of the divisions. The

1 Farmers School of Business has a proportion of
2 45/45/10. And the regionals have a stipulation that
3 their faculty can choose to reverse the order of
4 service and scholarship if they wish, so service is
5 40 percent and scholarship would be the 20.

6 Q. How does a tenured or tenure eligible
7 faculty member engage in service?

8 A. Many different ways. A lot of it is
9 dependent on their expertise and opportunity. Within
10 their department, there's a lot of service to go
11 around and a lot of the faculty participate in and
12 do, both that they choose to do because it's good for
13 the governance of the department and also that
14 they're asked to do.

15 There are opportunities to serve your
16 division by serving on committees or participating in
17 programs at the divisional level. And there's of
18 course University level service which is largely
19 committee driven but could also be other things.

20 There's also service to your field. So
21 I'm a member of multiple professional organizations.
22 I've organized conferences before. These are all
23 roles that faculty serve in. They might also be
24 advocates within the community. They may also be

1 community organizers. They may have roles on
2 advisory boards. There's a lot.

3 Q. What are the work expectations for TCPL
4 faculty?

5 A. It's a little bit more difficult. So
6 there are two categories of work. The first is
7 teaching, which may or may not include advising, and
8 the second is service.

9 Q. So if I'm hearing you, there's no
10 scholarship expected for TCPL faculty?

11 A. No.

12 Q. Does a TCPL faculty member's teaching
13 differ in any way from that of tenured or tenure
14 eligible faculty?

15 A. Yes, yes.

16 Q. How so?

17 A. The workload is different for TCPL
18 faculty in terms of teaching. Because teaching is
19 and service are larger proportionately components of
20 the job, TCPL faculty are asked to teach more.

21 Q. How much are TCPL faculty asked to teach?

22 A. The typical workload for a TCPL faculty
23 is four three-credit classes per semester.

24 Q. So for a total of 12, if I can do my math

1 right -- you're the math professor -- 12 credit hours
2 per semester?

3 A. Right.

4 Q. How is that different from tenured and
5 tenure eligible faculty?

6 A. On the Oxford campus, tenured faculty are
7 expected to teach a three-three which means three
8 courses and then three courses or a three-two which
9 is three courses and then two courses.

10 Q. What kind of credit hour differences
11 would that amount to typically?

12 ALJ SPRAGUE: Let's go over that one more
13 time. Three-three....

14 A. Yeah. So a tenured faculty would teach
15 approximately five or six courses per academic year,
16 and that's three courses one semester and two of the
17 other or three and three. There's a lot of
18 differentiation, however, and departments have a lot
19 of discretion to adjust that.

20 And to give you a personal example, in
21 the Mathematics Department, we have a lot of four
22 credits, and up till this year, we had a five credit
23 course which was kind of a big one. So expecting a
24 faculty member to teach three five-credit classes

1 wouldn't be equivalent. So there's a lot of local
2 discretion that chairs and also senior faculty have
3 to kind of move that workload around a little bit,
4 but in all cases, we would hope that it would at
5 least be equivalent.

6 Q. What are the work expectations for the
7 category we're calling VAPs?

8 A. VAPs teach four three-credit classes per
9 semester for a total of eight classes per year. I
10 should -- I also want to go back. I was very
11 specific that I was talking about Oxford tenured
12 faculty. On the regional campuses, the teaching load
13 is higher.

14 ALJ SPRAGUE: Is that for the tenure
15 track?

16 THE WITNESS: Uh-huh.

17 ALJ SPRAGUE: So that's -- okay.

18 THE WITNESS: On the regional campuses,
19 tenure track faculty can be asked to teach four-three
20 really.

21 Q. (By Ms. Day) Are TCPL on the regional
22 campuses asked to teach more than TCPL on the Oxford
23 campus?

24 A. No.

1 ALJ SPRAGUE: For three and four-three.

2 THE WITNESS: Four-four for TCPL.

3 ALJ SPRAGUE: I'm sorry, the tenure track
4 is what?

5 THE WITNESS: Seven or eight classes per
6 year for tenure track, eight classes.

7 ALJ SPRAGUE: So four-three and -- for
8 regionals?

9 THE WITNESS: For regionals, they teach
10 seven or eight classes per year.

11 ALJ SPRAGUE: So four-three and
12 three-three or four-three?

13 THE WITNESS: Yes.

14 ALJ SPRAGUE: Then we were covering TCPLs
15 at the regional.

16 THE WITNESS: TCPLs have a much more
17 standard four-four load regardless of their campus.

18 Q. (By Ms. Day) When you say four-four, does
19 that in layman's terms mean four classes in the fall
20 and four in the spring?

21 A. That's what I mean, yeah. Sorry, there's
22 lingo involved.

23 Q. That's what we're here to flesh out. So
24 you said the VAPs, their work expectations are to

1 teach four-four; is that accurate?

2 A. Yes.

3 Q. So four three-credit courses in each
4 semester?

5 A. Yes.

6 Q. Other than instruction, do VAPs have any
7 other work expectations?

8 A. No.

9 Q. They do not engage in scholarship as part
10 of their work expectations?

11 A. We would not expect them to, no.

12 Q. Would you expect them to engage in
13 scholarship as part of their work expectations?

14 A. We would not expect them to engage in
15 scholarship. Many choose to, but we would not expect
16 them to.

17 Q. Would they be evaluated on their service
18 or scholarship?

19 A. No.

20 Q. Let's pivot to promotional opportunities.
21 And we started talking about this a little bit
22 earlier, but let's start with tenured and tenure
23 eligible faculty. How many levels of promotion are
24 there within that faculty role?

1 A. For tenured?

2 Q. Yes.

3 A. There are three.

4 Q. What are those three?

5 A. Assistant Professor, Associate Professor
6 and then Professor.

7 Q. Can you give us a high level summary of
8 that promotional process from Assistant to Associate
9 Professor.

10 A. Sure. In a fifth year typically, an
11 Assistant Professor will apply for tenure in March.
12 They will assemble a document called a dossier and
13 also a CV. The CV will be sent out for external
14 review which means there will be four people outside
15 of the University who are asked to weigh the impact
16 and quality of their scholarship or creative
17 activity.

18 Those letters are returned to the
19 University in August and reviewed along with the
20 dossier written by the faculty member, by the
21 Departmental Promotion and Tenure Committee which is
22 a committee of their peers there in the department.

23 It's also reviewed by the department
24 chair. And their recommendations are then sent on to

1 the divisional office for review. There are
2 committees at the divisional level who then review
3 the packet, and then the dean will also review the
4 packet.

5 And all of the results will be sent to
6 the University Promotion and Tenure Committee who
7 will do a final University level review and make a
8 recommendation to the Provost who will then make a
9 recommendation to the President who will then make a
10 recommendation to the Board of Trustees who will then
11 confer tenure and promotion.

12 Q. Is tenure only available to be earned and
13 conferred upon a faculty member at that Associate
14 level?

15 A. There are cases where faculty member
16 might come in at the Associate level but still be
17 probationary. So there are a few cases where the
18 process is conferring tenure upon an Associate
19 Professor already, and there are a few cases where
20 you can earn tenure and promotion to Full at the same
21 time.

22 Q. Is it the typical that you would earn
23 tenure between your Assistant and Associate
24 promotional process --

1 A. Correct.

2 Q. -- point?

3 ALJ SPRAGUE: So somebody could be an
4 Assistant and then get technically -- did I hear that
5 right, they could actually get jumped up to Full
6 Professor?

7 THE WITNESS: No, no, not typically. We
8 would hope not.

9 ALJ SPRAGUE: Okay.

10 ALJ SPRAGUE: So to my understanding, the
11 Associate Professor can still be in a probationary
12 period under rare circumstances, and then there was
13 another, if you could earn -- I missed the last part.

14 THE WITNESS: Say that again. I was
15 hearing something else.

16 ALJ SPRAGUE: So you said occasionally --

17 THE WITNESS: Yeah.

18 ALJ SPRAGUE: -- somebody comes in at
19 Associate but they're still on probationary period?

20 THE WITNESS: Correct.

21 ALJ SPRAGUE: Then there was a second
22 example you gave.

23 THE WITNESS: So if I come in, I've been
24 working at another University, I have a record of

1 scholarship that I'm bringing with me, I have a
2 record of strong teaching, I'm bringing that with me,
3 but the University doesn't necessarily want to confer
4 tenure right away, they want to wait. I can do a
5 shortened probationary period as an Associate
6 Professor and then be reviewed for tenure separately
7 from promotion.

8 So I as an Associate Professor could
9 earn tenure and remain an Associate Professor.
10 Similarly, if I come in with that strong record and
11 my department wants to also consider me for the
12 promotion to Full, there are some who get tenure and
13 promotion to Full at the same time.

14 ALJ SPRAGUE: Okay.

15 THE WITNESS: Not if they came in,
16 though, at the Assistant level. So if you come in at
17 the bottom level, you're going to get tenure when you
18 get to the Associate no matter what -- well, not no
19 matter what.

20 ALJ SPRAGUE: So if you were what I'm
21 going to say a strong academic candidate and you go
22 in as an Associate -- I don't want to get into the
23 weeds too much here -- so then if you just knock it
24 out the park, you could get tenured and potentially

1 promoted to a Full?

2 THE WITNESS: Yes.

3 ALJ SPRAGUE: I'm guessing that's pretty
4 rare.

5 THE WITNESS: It is rare, but sometimes
6 when we have a new program or we want to hire a
7 leader within the department, we might actually hire
8 someone who has been tenured at another university
9 for quite a while and has maybe even achieved Full
10 Professor at another university, but we would then
11 want to pull them over to Miami for their expertise
12 in which case they may come in as an Associate, do a
13 small probationary period and earn tenure and full at
14 the same time. That's an example of when that might
15 happen.

16 ALJ SPRAGUE: Okay.

17 THE WITNESS: I want to give you more
18 details, but I don't want to go beyond the question.

19 ALJ SPRAGUE: That's all right. I
20 probably too far into the weeds already. Thank you.

21 THE WITNESS: Sometimes we hire people
22 with tenure and full status on day one, so that's a
23 possibility too.

24 Q. (By Ms. Day) How often does that happen?

1 A. Usually it happens in the case where
2 hiring an external chair.

3 Q. So you might be hiring them into an
4 administration role?

5 A. Maybe, yeah.

6 Q. Are there policies that apply to this
7 tenure and promotion process for tenure eligible
8 faculty members?

9 A. Say that again.

10 Q. Are there policies or procedures that
11 apply to this tenure and promotion process?

12 A. Oh, yes. Yeah.

13 Q. I'm going to have you look at a few
14 documents. Can you could turn to Joint Exhibit A.
15 Let me know when you've had a chance to look at it.

16 A. Uh-huh, I've had a chance.

17 Q. Do your recognize this document?

18 A. I do.

19 Q. What is it?

20 A. This is a policy on tenure and promotion.

21 Q. What is this? Give us a summary of what
22 this document includes.

23 A. It talks a little bit about why we offer
24 tenure and promotion here. It describes who's

1 eligible for tenure and who's eligible for promotion.

2 Q. And who is eligible for tenure?

3 A. It requires that a person serve as a
4 full-time member of the faculty, be engaged at least
5 50 percent in his or her appointment in regular
6 teaching assignments and research except when in the
7 -- it says when in the judgment of the department,
8 the chair, the program director, the divisional dean
9 and the provost, a faculty member's responsibilities
10 warrant the protection of tenure and have an
11 appointment with a tenure eligible rank.

12 Q. I'm going to have you flip to Joint
13 Exhibit B. Let me know when you've had a chance to
14 look at that.

15 A. I'm familiar.

16 Q. And what is this document?

17 A. This determines tenure and time. It's a
18 policy document that talks a little bit about the
19 length of the probationary period.

20 Q. Who does that apply to?

21 A. It applies to tenure eligible faculty.

22 Q. I'm going to have you flip to
23 Respondent's Exhibit 1. In the black binder, after
24 the letters there's numbers, Tab 1. Let me know when

1 you've had a chance to look at this document.

2 A. Yes.

3 Q. Do you recognize this document?

4 A. I do.

5 Q. And what is it?

6 A. This describes the tenure promotion
7 process from start to finish.

8 Q. What happens if a tenure eligible person
9 is not successful and does not earn promotion or
10 tenure?

11 A. If they don't earn promotion and tenure
12 and have exhausted all forms of appeal on that
13 decision, essentially they will be notified of the
14 decision and they will have one academic year to
15 secure employment elsewhere.

16 Q. Is that the case during only when a
17 tenure eligible person is up for tenure that they
18 will be notified of the one-year period?

19 A. Yes.

20 Q. Is that what is called an up or out year?

21 A. It is up or out. People refer to it as a
22 teach-out year. There's a lot of different lingo for
23 it, but essentially it's grace period by which that
24 faculty member can expect reasonable employment while

1 they look for another job. The academic job market
2 is long and the searches are timed. You can't expect
3 faculty searches all the time, and so having the
4 grace to find the rhythm within your field and apply
5 for another job is important.

6 Q. Is the second promotional point or tenure
7 faculty also an up or out type of decision?

8 A. It is not.

9 Q. You mentioned after a person may have an
10 opportunity to appeal. So is there an appeal process
11 to a tenure and promotion decision?

12 A. There is.

13 Q. Can you describe that process for us?

14 A. I can loosely. Essentially at any point
15 in the decision, if a recommendation -- a negative
16 recommendation is given, the faculty member can
17 respond to correct the record. If an error of
18 omission or factual error can be made, they can
19 request changes.

20 There's time periods by which they have
21 to request those changes and by which administrators
22 who have made negative recommendations should respond
23 and edits at every stage. It's at the Departmental
24 stage, the divisional and then the University stage.

1 Q. When you say it's at every stage, what do
2 you mean by that?

3 A. Tenure is conferred as a result of a
4 series of decisions that are made, and at each of
5 those decision-making points, faculty can engage with
6 the administrator about it.

7 Q. By that do you mean they can appeal at
8 every stage?

9 A. They can.

10 Q. Are there policies or procedures that
11 outline this?

12 A. Yes, there are.

13 Q. Can I have you look at Respondent's
14 Exhibit 3. Tell me when you've had a chance to look
15 at this.

16 A. I have.

17 Q. Do you recognize this document?

18 A. I do.

19 Q. And what does it involve?

20 A. It's a very short policy on the failure
21 to attain tenure.

22 Q. What does it tell us?

23 A. If a probationary faculty member is not
24 granted tenure during the final year of the

1 probationary period, their Miami service will be
2 terminated no later than the end of the following
3 academic year. Reconsideration and appeal procedures
4 do not extend the date of termination of the
5 employment.

6 Q. Does that cover that teach-out year you
7 were describing?

8 A. Yes.

9 Q. I'll also have you look at Respondent's
10 Exhibit 4. Tell me when you've had a chance to look
11 at that.

12 A. I have.

13 Q. What is this document or do you recognize
14 this document?

15 A. I do recognize this document.

16 Q. And what is it?

17 A. This document is a policy on the rights
18 of a candidate who has received a negative
19 recommendation or been denied tenure or promotion.

20 Q. What's included in this policy?

21 A. It's a determination of what I just
22 described informally on reconsideration, appealing a
23 denial and then of the role of the President in
24 issuing a directive for tenure reconsideration.

1 Q. And who does this policy, the rights of a
 2 candidate who has received negative recommendation or
 3 been denied tenure or promotion, who does it apply
 4 to?

5 A. It says tenure eligible faculty.

6 Q. Are there also appeal processes for the
 7 second promotional point --

8 A. Yes.

9 Q. -- for tenured faculty? What are those
 10 processes?

11 A. It's very similar.

12 Q. Switching now, let's talk about
 13 promotional opportunities for TCPL faculty. What
 14 promotional opportunities exist for them?

15 A. So there are two promotion points for
 16 TCPL faculty: One at the conclusion of the
 17 probationary year and then another one at the
 18 discretion of the faculty members.

19 Q. Is the promotional process for TCPL the
 20 same as tenure eligible faculty?

21 A. No, it is not.

22 Q. How is it different?

23 A. First of all, during the probationary
 24 period, there are mandated probationary review points

1 for both groups that differ. Tenure eligible faculty
2 are reviewed every year at the departmental level and
3 then at the divisional level, but they are reviewed
4 at the Provost level in years 3, 4 and 5 or the
5 equivalent which is the year preceding -- the three
6 years preceding the application for tenure.

7 TCPL are not evaluated in a formative way
8 in the same way. They're not evaluated from a
9 formative perspective by the Provost office as all.
10 The first time that the Provost sees the case is
11 after the application for promotion has been
12 submitted.

13 There are some formative review processes
14 available to probationary TCPL faculty, and it's new,
15 and it's not University standard, it's divisionally
16 standardized. And there are ways that we are seeking
17 to make that more secure for TCPL faculty, but at the
18 current moment, there's a lot of difference.

19 Q. Okay. Can I have you look at Joint
20 Exhibit C for a second. Tell me when you've had a
21 chance to look at that document.

22 A. I'm familiar with this document.

23 Q. And what is this document?

24 A. This is a policy that really governs the

1 promotion process for Teaching Clinical Professors
2 and Lecturers, TCPLs.

3 Q. Does this policy contain the procedures
4 that you were just describing to us?

5 A. It does.

6 Q. And TCPLs are not eligible for tenure; is
7 that correct?

8 A. That's correct.

9 Q. Is there an appeal process for TCPL
10 promotional decisions?

11 A. That is a good question. It is not the
12 same as tenured. I don't think -- It's not the same,
13 although, if there were errors and the faculty
14 member -- I believe in every case, they can appeal to
15 the department chair to review errors of omission as
16 it goes.

17 Q. You said that you think it's different.
18 Do you know how it differs from the appeal procedure
19 for tenured or tenure eligible faculty?

20 A. That's a good question. I don't believe
21 that TCPL faculty can appeal to the University
22 Promotion and Tenure Committee in the same way that
23 tenure eligible faculty can. So there's a committee
24 at the University level that will hear grievances

1 from faculty and will consider cases where tenure has
2 not been recommended, but I do not believe that TCPL
3 faculty can appeal to that group. I believe that the
4 decision rests entirely at the Provost level.

5 Q. So it would not go beyond the Provost?

6 A. Huh-uh.

7 Q. That's not the case for tenure eligible
8 faculty?

9 A. No, that is not the case for tenure
10 eligible faculty. There's a series -- there's
11 another level of review that's possible.

12 Q. With tenure eligible faculty, you said
13 the Board of Trustees confers that upon them; is that
14 correct?

15 A. Correct.

16 Q. Is that the same for TCPL, that there are
17 various promotional points?

18 A. The Provost makes the final decision
19 about promoting with TCPL.

20 Q. Let's talk about the category we're
21 calling VAPs. Are there promotional opportunities
22 for VAPs?

23 A. No.

24 Q. How can a VAP or an Instructor achieve a

1 different faculty position at Miami University?

2 A. They can apply for any open position that
3 we have.

4 Q. Are there any exceptions to this rule
5 regarding applying to a new position?

6 A. No. University Senate recently voted to
7 prohibit VAPs from sliding into a continuing role,
8 TCPL or a tenure track; however, there is one
9 category of faculty that we should probably talk
10 about here as an extreme special case.

11 Q. And who is that?

12 A. We have a program a Miami University
13 called the Heanon Wilkins Fellowship.

14 ALJ SPRAGUE: Can you spell it?

15 A. H-E-A-N-O-N W-I-L-K-I-N-S, Heanon Wilkins
16 Fellowship. The Heanon Wilkins Fellowship is a
17 fellowship rewarded to an early career faculty
18 member, someone who has received or will receive a
19 Ph.D but not more than four years ago. So this is a
20 very early career faculty member.

21 And when they receive the fellowship,
22 they are hired into a Visiting Assistant Professor
23 role, but they are hired in with a reduced teaching
24 load and also the expectation that they will receive

1 mentoring within the department and the division and
2 that they will be incorporated into the cultural
3 fabric of the department; that they are not to be
4 seen as somebody who is only there temporarily but as
5 somebody who could potentially join a faculty for a
6 long-term position.

7 Then, historically, this program's been
8 going for quite a while, we kept it going until about
9 2016, and anybody who was in a Heanon Wilkins
10 Fellowship prior to then had the reasonable
11 expectation that with good teaching evaluations and
12 the agreement of both the department and the faculty
13 member, that they could then be appointed to a
14 continuing position at the conclusion of that
15 fellowship.

16 So we had one Heanon Wilkins Fellow who
17 accepted a TCPL position, and then most of the Heanon
18 Wilkins Fellows who choose to remain at Miami step
19 into a tenure eligible role. We stopped the program
20 in 2016 and it went on hiatus until 2021.

21 In 2021, we considered some very
22 problematic pieces of the fellowship. We redesigned
23 it. We listened to the experiences of Fellows and
24 really did our best to try and resolve some of the

1 issues that were so problematic. And one of the
2 decisions that was made is that at the conclusion of
3 the Heanon Wilkins Fellowship, we would no longer
4 move someone directly from the fellowship into a
5 continuing role; that they would need to apply.

6 And the reason behind that was the
7 Senate -- one of the reasons was, was the Senate
8 decision not to allow conversions from VAPs to
9 continuing positions. We wanted to respect that
10 University Senate decision, but also because the
11 hiring process for VAPs is so different from the
12 hiring process for TCPLs and for tenure track, that
13 there were certain reviews that weren't done early on
14 with the Heanon Wilkins Fellows that -- that led to
15 the same type of search or the same type of result as
16 a tenure search there.

17 Q. There's a lot there, so I'm going to walk
18 through it. It sounds like you're telling me about
19 two different timeframes. It sounds like there's
20 pre-2016 and then there's 2021 and current?

21 A. Uh-huh.

22 Q. Is that correct?

23 A. Yes, yes.

24 Q. Okay. First, what's the purpose? What's

1 the role of the program, the fellowship?

2 A. The Heanon Wilkins Fellowship is really
3 about increasing the cultural diversity of our
4 faculty, and it's not related to any specific
5 identity factors but overall looking at the cultural
6 diversity of what we study, what we do and who we
7 are.

8 Q. Prior to -- 2016 and prior, did the
9 Heanon Wilkins Fellows go through a search process to
10 be included as a Fellow?

11 A. They did, but it was similar to the
12 search process that you would undergo for a VAP which
13 means that in some cases there may not have been a
14 search committee, a local departmental search
15 committee.

16 In some departments, department chairs
17 can hire VAPs directly without the consultation of
18 other members of the department, and there wasn't the
19 exact -- there wasn't a review from the Office of
20 Equal Opportunity, so there was no EEO review of
21 candidates.

22 Q. Since 2021 when the program was
23 reinstated and currently, is there a search process
24 for Heanon Wilkins Fellows?

1 A. So there is a search process, but it's
2 different than a search process for a tenure track or
3 TCPL faculty in the sense that it's an open search
4 across the University. So it's really different, and
5 we try to hire a number of -- we want to bring in
6 cohorts of Heanon Wilkins Fellows.

7 Prior to 2016, the largest cohort we were
8 able to attract was two people, but our intent in
9 recent times was to bring in a larger cohort which
10 means that we were hiring in multiple departments at
11 the same time under the same search post. And so the
12 search process is really strange in that the pool is
13 really broad, but then we ask each department to
14 consider the candidates locally.

15 So I'll take all of the candidates that
16 may be appropriate for the Math Department and ask
17 them to review those candidates as they would a
18 tenure track or TCPL faculty.

19 Q. So you said you like them to bring in
20 cohorts. Prior to 2021, how many Heanon Wilkins
21 Fellows were there in any given year?

22 A. No more than.

23 Q. From 2021 to now, how many Heanon Wilkins
24 Fellows are there?

1 A. In 2021 we were lucky and able to bring
2 five wonderful Fellows to campus. In 2022, we sought
3 to bring four.

4 Q. I think you -- How long is the
5 fellowship?

6 A. It's one year. Again, you're hired as a
7 Visiting Assistant Professor, so it's year-to-year
8 with a reasonable expectation that given your first
9 year instruction, as long as the department and you
10 agree it's something you want to continue, it can
11 continue up to three years.

12 Q. At the end of that three-year period,
13 what happens to a Heanon Wilkins Fellow?

14 A. Hopefully they stay on with us, but in
15 some cases they find positions elsewhere.

16 Q. Since 2021 if they wanted to stay with
17 Miami, what would they have to do?

18 A. They would have to apply for an open
19 position in their area; however, one of the things
20 that we've been working really hard to do is to make
21 sure if we bring a Heanon Wilkins Fellow to campus,
22 there be an open position. We try to match that up
23 one-to-one.

24 Q. But they would still have to go through

1 that application process?

2 A. Yes.

3 Q. How many total VAPs are there typically
4 in any given year?

5 A. That's a much better question if you want
6 detail from Ruth; however, this year it's somewhere
7 in the vicinity of about 150.

8 ALJ SPRAGUE: This year being....

9 THE WITNESS: The 2022-2023 academic year
10 that we're currently in the middle of.

11 ALJ SPRAGUE: And just for clarification,
12 okay, so I thought I heard Dean Conley mention June.
13 So the academic year starts when?

14 THE WITNESS: For faculty, this year it
15 started August 15th which is pretty typical.

16 ALJ SPRAGUE: Goes to the following
17 August?

18 THE WITNESS: Yeah, somewhere in the
19 vicinity there. It changes based on days of the
20 week.

21 ALJ SPRAGUE: If you know, Miami is still
22 under a state fiscal year, right?

23 THE WITNESS: As far as I know. I don't
24 know.

1 ALJ SPRAGUE: Okay.

2 Q. (By Ms. Day) I want to talk now about
3 performance evaluation. Is there an annual
4 performance evaluation for tenure and tenure eligible
5 faculty?

6 A. Yes.

7 Q. When does that occur?

8 A. Typically the beginning of February is
9 when faculty are asked to submit their Annual
10 Activity Report. Some departments may do it earlier.

11 Q. What is the performance evaluation based
12 on?

13 A. The same three areas: Scholarship,
14 creative activity, teaching and service.

15 Q. What's the result of a performance
16 evaluation if somebody does well?

17 A. If someone does well, then they're
18 eligible for a salary increment and they do well.

19 Q. Would they also potentially be eligible
20 for merit increases?

21 A. Yeah, absolutely.

22 Q. What about if a tenured or tenure
23 eligible faculty member does poorly in his or her
24 evaluation?

1 A. If they do poorly in their evaluation,
2 that would definitely trigger other types of supports
3 that could kick in. If it's that they're not
4 performing well in the area of scholarship or
5 creative activity, then they may receive some
6 mentoring from the chair or other people in their
7 department. People may look out for opportunities to
8 help them get back on track.

9 If it's in the area of teaching, then we
10 might broach a Teaching Improvement Plan. We might
11 make recommendations for ways that they can work with
12 professional development opportunities on campus and
13 they made receive additional mentoring for that too.

14 With service, we might work with a chair
15 to identify ways that a faculty member's particular
16 expertise might plug into certain things on campus.

17 Q. I'd like you to turn to Respondent's
18 Exhibit 6, please.

19 MS. MUSKOVITZ: Do you have more than
20 probably ten minutes?

21 MS. DAY: Yes.

22 MS. MUSKOVITZ: Can we take a very quick
23 break? I hate to interpret your direct. Very quick.
24 Leave everybody here.

1 ALJ SPRAGUE: Let's just go off for a
2 minute. Why don't we see where we're at.

3 (Off the record.)

4 ALJ SPRAGUE: All right, folks, we're
5 back on the record.

6 Q. (By Ms. Day) Dana, I was just having you
7 look at Respondent's Exhibit 6. Have you had a
8 chance to look through that?

9 A. Yes.

10 Q. Do you recognize this document?

11 A. I do.

12 Q. And what is it?

13 A. It's the policy on the Annual Review of
14 Probationary Members of the Faculty.

15 Q. Who does this apply to?

16 A. Tenure eligible faculty.

17 Q. And so just for clarity, is this really
18 applying more to the tenure promotion process?

19 A. Correct. And it is unrelated in most
20 cases to what I just described which is the annual
21 review of faculty.

22 Q. So let me have you look at Exhibit 5,
23 Respondent's Exhibit 5.

24 A. Okay.

1 Q. Do you recognize this document?

2 A. I do.

3 Q. And what is it?

4 A. This is a policy of the Evaluation of
5 Members of the Faculty.

6 Q. Is this what you were referring to?

7 A. Yes.

8 Q. Is there an annual performance evaluation
9 for TCPL faculty as well?

10 A. Yes.

11 Q. When does this occur?

12 A. Same time as tenure eligible or tenure
13 track.

14 Q. Is it likewise based on a TCPL's work
15 expectations?

16 A. Yes.

17 Q. Does this policy, this Respondent's
18 Exhibit 5, also apply to TCPL evaluations?

19 A. Yes.

20 Q. Is there an annual performance evaluation
21 for the category we're calling VAPs?

22 A. Each year a department chair will review
23 the instructional effectiveness scores for our
24 Visiting faculty and make a determination in the

1 event there is a position open for the following year
 2 whether or not they would be considered for it.

3 Q. Is it a formal evaluation process for
 4 VAPs?

5 A. No.

6 Q. What if a VAP has a poor evaluation,
 7 what's the result?

8 A. They'd probably not be asked back even if
 9 there were a position available.

10 Q. Earlier you said that the academic year
 11 began in August. When does the academic year end at
 12 Miami?

13 A. Usually academic year ends -- graduation
 14 is always Mother's Day, so it's typically the Tuesday
 15 after Mother's day.

16 Q. So is that May?

17 A. Yeah, mid May.

18 Q. That's a little bit different than the
 19 fiscal year?

20 A. Yeah.

21 ALJ SPRAGUE: Go back, I'm sorry.

22 MS. DAY: That's a little bit
 23 different....

24 ALJ SPRAGUE: No, I got that part. Back

1 before that.

2 MS. DAY: In May, the academic year ends
3 in May?

4 ALJ SPRAGUE: And what ends in August or
5 begins in August?

6 THE WITNESS: So faculty start their work
7 contractually in August, mid August, and then end
8 their work contractually mid May. So a faculty
9 member, whether you're a TCPL, VAP, anybody would
10 submit their final grades by Tuesday at noon and then
11 that would be that.

12 MS. MUSKOVITZ: Just think of when you
13 went to college, you started in August or September
14 and you ended in May or June every year.

15 ALJ SPRAGUE: I had several years in
16 college. Seems like I went all the time in school.

17 MS. MUSKOVITZ: Or high school or middle
18 school.

19 ALJ SPRAGUE: I gotcha, I gotcha.

20 THE WITNESS: My grades are due tomorrow
21 at noon.

22 ALJ SPRAGUE: And I'm sure you're not
23 stressing over that at all. Okay, so got it. All
24 right.

1 Q. (By Ms. Day) Since we're talking about
2 academic years, is there any expectation for faculty
3 members to work over the summer?

4 A. No, but they do.

5 Q. If they do, what happens if they do
6 decide or are asked to work over the summer?

7 A. There are always projects and things that
8 faculty are asked to participate on, and faculty have
9 the choice, but many choose to continue working on
10 things over the summer, and many choose to work on
11 scholarship year-round, but it's not required.

12 Q. Is there additional compensation provided
13 to faculty members if they choose to work during the
14 summer?

15 A. In some ways, yes; in other ways, no. If
16 I'm asked to teach a course over the summer, then
17 yes, I'm compensated for that teaching.

18 Q. What about if you choose to engage in
19 scholarship over the summer?

20 A. No, I'm typically not unless I'm
21 supported by grant funding.

22 Q. I want to focus on discipline and
23 termination now. What are the reasons that a tenured
24 or a tenure eligible faculty member may be

1 disciplined or terminated?

2 A. If they're -- if they -- for cause. You
3 know, if they showed up for class inebriated or under
4 the influence, if they hurt someone, if they harassed
5 someone, if they behaved in an unethical way. There
6 are a lot of different reasons why faculty might be
7 terminated for cause.

8 Q. Other than for cause, are there other
9 reasons that a tenured or tenure eligible faculty
10 member can be terminated?

11 A. It doesn't happen often at Miami, that's
12 for sure, but there are ways that if a tenured
13 faculty member were not performing their duties, that
14 they could be terminated. There's a policy on that.
15 There's also in times of financial exigency that we
16 could terminate faculty, although it's my
17 understanding that Miami never has.

18 Q. What about probationary tenure eligible
19 faculty, is there a way to -- we talked about or Dean
20 Conley talked about it earlier -- to non-renew their
21 contract?

22 A. No.

23 Q. Even for tenure eligible?

24 A. If you're tenure eligible, then yes. If

1 you're not performing the expectations, then, yeah,
2 you aren't guaranteed a contract the next year.

3 Q. And those contracts are for how long for
4 tenure eligible faculty members?

5 A. Year-to-year.

6 Q. I'm going to have you look at
7 Respondent's Exhibit 12. Do you recognize this
8 document?

9 A. I do.

10 Q. And what is it?

11 A. This is a policy that governs
12 Nonreappointment of Persons with Probationary
13 Appointments and Persons in Nontenurable Ranks.

14 Q. Does this cover the same situations we
15 were just covering?

16 A. It sure does.

17 Q. Talking now about tenured faculty --
18 actually, strike that. How would you describe the
19 University's ability to discipline or terminate a
20 tenured faculty member?

21 A. I'm not sure. There's a lot of
22 adjectives.

23 Q. Would you say it's easy? Difficult?
24 Just trying to get a feel for....

1 A. It would be difficult in some cases and
2 not difficult in others.

3 Q. What do you mean by that?

4 A. Well, if a faculty member repeatedly
5 showed up drunk to the class, I'm pretty sure that
6 that could be a swift case. In other cases, it would
7 be more difficult and that's to protect faculty.
8 That's a good thing.

9 Q. Is Miami's ability to terminate a TCPL
10 faculty member the same or different from that of a
11 tenured faculty member?

12 A. It's different.

13 Q. How so?

14 A. There's no expectation of tenure. They
15 are on continuing contracts, and for the most part if
16 a TCPL faculty member is performing well and doing
17 their job, there's a reasonable expectation that the
18 continuing contract will be renewed. But in the case
19 when a TCPL faculty member is not performing well,
20 it's just easier -- I hate to say easier, but there's
21 a shorter process, a shorter appeals window, I guess.

22 Q. What is a shorter process regarding
23 TCPLs?

24 A. So I don't -- It's -- the appeal is not

1 the same. It's that at the end of your continuing
2 contract, there is an opportunity -- there's an
3 opportunity that you wouldn't be continued.

4 Q. So are you saying that unlike tenured
5 faculty, at the end of a TCPL's contract, that the
6 University could decide to not renew that?

7 A. Yeah, I guess that's -- I think it's a
8 possibility, although it seems theoretical to me. It
9 doesn't seem like that -- There's I think a different
10 appeals process and a different -- when a TCPL member
11 isn't performing the same way. It's just a shorter
12 process.

13 Q. Are you aware of a nonrenewal of a TCPL
14 occurring?

15 A. No.

16 Q. Would you see that as being different
17 than a termination for cause?

18 A. Yeah.

19 Q. Can you describe Miami's ability to
20 terminate or discipline a VAP. How does that differ
21 or is that similar to tenured faculty or TCPLs?

22 A. It's very different.

23 Q. How so?

24 A. Whether a faculty -- Whether a Visiting

1 Assistant Professor is teaching well, they may not be
2 reappointed to the position the following year. So
3 it's the standard is even -- for nonreappointments, I
4 guess, you don't have to have a standard; you can
5 just not reappoint someone.

6 Q. Tell us more about that, even if they're
7 performing well, they may not be reappointed. What
8 does that mean?

9 A. If I'm a VAP and I have a position this
10 school year, there's no expectation that I will come
11 back next year even if I'm a rock star teacher. If
12 the position isn't there or there are other people
13 who move into that role, there's no expectation that
14 I would continue.

15 Q. Why would that position potentially not
16 be there the following year?

17 A. The VAP position is used in temporary --
18 to fill temporary roles. So, for example, if someone
19 retires, we may not know ahead of time that someone
20 is going to retire or tragically if someone were to
21 pass away, we wouldn't know that ahead of time.

22 Q. Dana, you were saying that you may not
23 know ahead of time whether someone was retiring. Are
24 there any other reasons?

1 Why would you -- even if you said it was
2 a rock star Visiting Professor, why may you not be
3 reappointed?

4 A. Another example would be we currently
5 have an enormous sophomore class. I was -- It's
6 difficult when you're pulling in a class of students
7 to hit an exact target which means -- and there's
8 variables in the number of students that not only
9 you're able to attract to apply to your University
10 but then who agree to come there once they've been
11 accepted.

12 So right now we have a very large class
13 which means there are many, many sections of
14 sophomore classes that need to be offered. And so
15 VAPs can be hired to kind of be an accordion that
16 enable us to meet the needs of those large classes,
17 but when that class graduates, the need isn't
18 permanent, it's not there. So in those cases, the
19 VAPs would then not be renewed.

20 Q. In regards to other faculty positions,
21 when in the process, before or after, are VAPs hired?

22 A. VAPs are hired all the time. It's not
23 quite as rhythmic as TCPLs and tenure track faculty.
24 If there's a need, we anticipate hiring VAPs even up

1 until I've seen the day before the semester starts
2 and sometimes it's an unanticipated need. Sometimes
3 it's an unanticipated demand on a course, and
4 sometimes it's two weeks notice was given at the
5 start of August and faculty isn't going to be there.

6 During Covid, it was because faculty were
7 unable to come into the country or faculty were
8 unavailable to do things. It's a position that fills
9 a very local and very temporary need.

10 Q. Are there any limits on the number of
11 VAPs Miami can have in any given year?

12 A. No.

13 Q. Are there any limits on any other faculty
14 types that Miami can employ in any given year?

15 A. Yes.

16 Q. For whom?

17 A. TCPL faculty.

18 Q. What are those caps?

19 A. It's defined in the TCPL policy that you
20 referenced earlier, and those caps are given by -- by
21 division. Each division has its own cap, and the cap
22 is a numerical ratio. The number of TCPL faculty may
23 not exceed a certain mathematical ratio of continuing
24 faculty which includes tenure track and TCPL.

1 Q. And I'm going to have you look at Joint
2 Exhibit C.

3 A. Okay.

4 Q. Is this the policy you were just
5 referring to?

6 A. It is indeed.

7 Q. Are those caps listed here on this first
8 page of the policy?

9 A. They are.

10 Q. So what is CAS, CCA, EHS, what are those?

11 A. Those are our six academic divisions.
12 For instance, CAS stands for the College of Arts and
13 Science.

14 Q. So, for example, the College of Arts and
15 Science says that no more than 23 percent of faculty
16 may be TCPL?

17 A. Continuing faculty, yes.

18 Q. Continuing faculty?

19 A. Yes, that's correct.

20 Q. This does not include probationary
21 faculty?

22 A. It does, tenure and tenure track and full
23 time TCPL, whether they're probationary or not, but
24 it doesn't include Visiting Assistant Professors, it

1 does not include Instructors or per hour credit
2 faculty.

3 Q. Who decided these caps; do you know?

4 A. I do.

5 Q. Who was that?

6 A. These caps, these specific caps were
7 decided -- it used to be a -- there was one
8 University cap. And Senate, University Senate, was
9 asked to review that cap periodically to either raise
10 it to allow for more TCPL faculty. They were never
11 asked to consider lowering it, but they were asked to
12 consider raising it.

13 Then recently University Senate voted to
14 support breaking the cap up by division. So now each
15 division can control their own cap. In this case,
16 for instance, the College of Arts and Science raised
17 their own cap without raising the caps of the other
18 divisions. The College of Arts and Science requires
19 a vote within their division to change the cap, but
20 that's not enough to change the cap. They also have
21 to have University Senate approval.

22 Q. I want to talk a little bit about paid
23 time off for faculty members. Are faculty eligible
24 for vacation leave?

1 A. No.

2 Q. Are faculty eligible for sick leave?

3 A. Yes.

4 Q. What sick leave are they eligible for?

5 A. That's a really good question for Ruth,
6 and maybe she can talk about specific details, but
7 essentially you are awarded sick days which you can
8 choose to use at your discretion.

9 Q. I'll ask you to turn to Respondent's
10 Exhibit 9. Do you recognize this document?

11 A. Yes.

12 Q. Who does it -- what is it?

13 A. This is a Sick Leave policy.

14 Q. Who does it apply to?

15 A. Unclassified staff.

16 Q. Does this apply to faculty of any role?

17 A. No. I mean, I consider myself a member
18 of the faculty, but I'm also unclassified staff, so
19 this applies to me, but unclassified staff is my
20 primary role.

21 Q. Why are you unclassified staff?

22 A. It's my administrative role.

23 Q. Are all administrators, to your
24 knowledge, considered unclassified staff?

1 A. To my knowledge.

2 Q. What other types of paid leave are
3 available for faculty members?

4 A. So faculty members are eligible for what
5 is commonly outside of Miami referred to as a
6 sabbatical, but inside Miami, there's two specific
7 types of leave. One is an Assigned Research
8 Appointment, or referred to as ARA, and the other is
9 a Faculty Improvement Leave which is referred to as
10 FIL.

11 Q. ARA, what did that stand for?

12 A. Assigned Research Appointment.

13 Q. Who is eligible for an Assigned Research
14 Appointment?

15 A. Tenure eligible or tenured faculty.

16 Q. And what does an Assigned Research
17 Appointment get you?

18 A. Well, it relieves you of your teaching
19 responsibilities for a semester so that you can
20 pursue scholarship or creative activity on a deeper
21 level.

22 Q. Then you also mentioned a Faculty
23 Improvement Leave. Who is eligible for that type of
24 leave?

1 A. Only tenured professors.

2 Q. What entails a Faculty Improvement Leave?

3 A. A Faculty Improvement Leave is typically
4 taken -- it relieves you of your teaching duties. It
5 can, if you choose to go abroad or go somewhere to
6 pursue a fellowship or other work relief, you have
7 your service as well, but it doesn't always have to.

8 Q. I'll have you turn to Respondent's
9 Exhibit 11. Do you recognize this document?

10 A. I do.

11 Q. What is it?

12 A. This is our policy on Faculty Leave.

13 Q. Are TCPLs eligible to take Faculty
14 Improvement Leave?

15 A. No.

16 Q. Are VAPs eligible to take Faculty
17 Improvement Leave?

18 A. No.

19 Q. Are librarians eligible to take Faculty
20 Improvement Leave?

21 A. No.

22 Q. Regarding Assigned Research Appointments,
23 are TCPLs eligible to take those?

24 A. No.

1 Q. Are VAPs eligible to take Assigned
2 Research Appointments?

3 A. No.

4 Q. Are librarians eligible to take Assigned
5 Research Appointments?

6 A. No.

7 Q. I want to make sure I didn't miss
8 something earlier when we were talking about
9 discipline and termination. Regarding TCPLs, what
10 are the circumstances when they can be terminated?

11 A. TCPLs?

12 Q. Yes.

13 A. Is there a policy?

14 Q. Feel free to reference Joint Exhibit C.

15 A. Okay. This policy governs the nonrenewal
16 of TCPLs.

17 Q. What page are you looking at regarding
18 nonrenewal?

19 A. I'm looking at Page 4 of 7.

20 Q. And this would apply at the end of any
21 TCPL's contract regardless of how long that contract
22 is for?

23 A. Yes.

24 Q. And what would be required to not renew a

1 TCPL faculty member's contract?

2 A. Failure to perform duties and associated
3 responsibilities in a satisfactory manner.

4 Q. That process is different than
5 termination for cause for TCPL faculty members?

6 A. It's essentially for cause. It's not an
7 event. It's performance over time.

8 Q. Are there appeal procedures that apply to
9 nonrenewal of TCPL faculty members?

10 A. Yes.

11 Q. And what are those appeal procedures?

12 A. If they're terminated for cause?

13 Q. If they're not renewed.

14 A. If they're not renewed, the faculty
15 member can appeal directly to the Provost, or the
16 Provost designee, to respond in writing at the
17 faculty member's election. Faculty members are
18 entitled to be accompanied by an adviser of their
19 choice in that meeting with the Provost, but the
20 Provost imposes the disciplinary sanctions.

21 Q. Does it ever go higher than the Provost,
22 the appeal of a nonrenewal?

23 A. No.

24 Q. What about a termination for cause? What

1 are the appeal procedures for a termination of cause
2 for a TCPL?

3 A. That's what I was suggesting.

4 Q. Are there any other or different appeal
5 procedures for a nonrenewal?

6 A. No.

7 Q. Let's talk a little bit about shared
8 governance. What shared governance rights do tenured
9 and tenure eligible faculty have?

10 A. A lot. There's shared governance in the
11 department. There's shared governance in the
12 division, the University. There's a remarkable
13 number of ways that faculty members are enfranchised
14 in shared governance programs.

15 Q. I heard a few bodies of governance
16 earlier today in the testimony, so let's start with
17 the University Senate. What is the role of
18 University Senate?

19 A. University Senate is a decision-making
20 body that governs the curriculum and instruction at
21 Miami and is advisory to the University on all other
22 policies.

23 Q. Do tenured or/and tenure eligible faculty
24 members serve on Senate or are they eligible to?

1 A. Absolutely as members of Faculty
2 Assembly, they're eligible to serve.

3 Q. Are there any restrictions or limitations
4 in how tenured or tenure eligible faculty members can
5 serve or participate in University Senate?

6 A. No.

7 Q. You mentioned Faculty Assembly. What is
8 the role of Faculty Assembly?

9 A. Faculty Assembly is a large body that
10 consists of tenure eligible, tenured faculty, TCPL
11 faculty and librarians, and I think of it as a checks
12 and balances system, that they can reasonably
13 question the decisions made by University Senate and
14 ask for reconsideration.

15 Q. Do they have any -- Does Faculty Assembly
16 have decision-making authority?

17 A. They can decide to return decisions to
18 Senate. They also vote to confer degrees.

19 Q. Are there any restrictions or limitations
20 on how a tenured or tenure eligible faculty member
21 can serve or participate in Faculty Assembly?

22 A. No.

23 Q. I'll have you look at Joint Exhibit E.

24 A. Thank you.

1 Q. Do you recognize this document?

2 A. I do.

3 Q. What is it?

4 A. This is a policy that really defines
5 other instructional staff titles.

6 Q. What do you mean by that?

7 A. People who are not tenure eligible or
8 tenured or TCPL faculty but who also serve as
9 instructional staff.

10 Q. Can you look at Exhibit E, as in Edward.

11 A. Sorry, I flipped to when I saw E.
12 Faculty Assembly, this policy governs Faculty
13 Assembly. Thank you.

14 Q. Does this document, does this policy
15 regarding Faculty Assembly identify who can and who
16 cannot participate in Faculty Assembly?

17 A. It does.

18 Q. Who are those members that can
19 participate?

20 A. The Faculty Assembly is composed of all
21 members of the faculty who hold a tenure or tenure
22 track position. All librarians who hold the rank of
23 Assistant Librarian, Associate Librarian and
24 Principal Librarian and Teaching Clinical Professors

1 and Lecturers, TCPLs.

2 Q. So who is excluded in terms of faculty
3 roles from participation in Faculty Assembly?

4 A. Visiting Professors.

5 Q. That's the VAPs?

6 A. The VAPs and per credit hour faculty.

7 ALJ SPRAGUE: I'm sorry?

8 THE WITNESS: Per credit hour faculty.

9 Q. (By Ms. Day) Does this Faculty Assembly
10 policy have anything to do with who can and cannot
11 participate in University Senate?

12 A. Yes. Faculty Assembly determines who's
13 eligible to serve in Faculty Assembly -- or
14 University Senate.

15 Q. How is that governed here? Can you point
16 us in the right direction.

17 A. I might be wrong, but this isn't the
18 document.

19 Q. You believe a different document defines
20 who can participate in University Senate?

21 A. I'm thinking of the Enabling Act.

22 Q. I understand. Can TCPLs participate in
23 University Senate?

24 A. Yeah.

1 Q. Can VAPs participate in University
2 Senate?

3 A. No.

4 Q. Are there any restrictions -- Turning
5 back to TCPLs, are there any restrictions or
6 limitations on TCPL involvement and participation in
7 University Senate?

8 A. No.

9 Q. Are there any committees they're not
10 allowed to sit on?

11 A. There are committees that they cannot sit
12 on, yes.

13 Q. What are those committees?

14 A. They do not sit on the Faculty Rights and
15 Responsibilities and they do not sit on the
16 University Awards and Recognition Committee.

17 Q. Are there any limitations regarding
18 TCPL's ability to vote on any committees or
19 subcommittees?

20 A. Say that again.

21 Q. Is there any limitation on TCPL's ability
22 to vote as a part of any committee or subcommittee?

23 A. No.

24 Q. Do TCPL's serve on any committees or make

1 any decisions related to promotion and tenure?

2 A. TCPLs do make decisions about promotion,
3 but they do not make decisions about promoting
4 tenured faculty. So TCPLs may not serve -- You were
5 focusing me on the University committees, but TCPL
6 faculty also do not serve on departmental or
7 divisional or the University promotion and tenure
8 committees. That is not to say that TCPLs aren't
9 vested in deciding on promotion for TCPL faculty.

10 Q. Sure. What about Faculty Assembly, are
11 there any restrictions or limitations on a TCPL
12 faculty member's participation in that body?

13 A. No.

14 Q. And I think, correct me if I'm wrong, I
15 think you said that VAPs are not eligible to serve on
16 either Faculty Assembly or University Senate?

17 A. That's correct.

18 Q. What about librarians, are there any
19 committees or subcommittees that would prohibit
20 librarian participation?

21 A. So University committees aren't set up to
22 prevent people from serving, but there are specific
23 roles and there are not as many roles on those
24 committees for librarians, that is true.

1 Q. Dana, what is your understanding of the
2 petition that has been filed and the reason that
3 we're here today?

4 A. My understanding is that faculty feel
5 that they need representation and that they've voted
6 with the cards to secure representation from AAUP.

7 Q. What is your understanding of who is
8 included in that?

9 A. It's my understanding that that is a
10 broad group that includes tenure track and tenured
11 professors, TCPLs, Visiting Assistant Professors,
12 Instructors, librarians and another group of
13 directors and others.

14 Q. In your opinion as an administrator, what
15 issues do you think would be created if all of these
16 faculty groups and others were included in a single
17 Bargaining Unit?

18 A. From my role in the Senate in the last
19 five, six years, I've seen changes in the status of
20 faculty relative to the role that they serve. In my
21 role, I represent all faculty. I represent the
22 tenure track, but I also represent TCPLs, visitings,
23 per credit hour, and my concern is looking out for
24 the interests of all of those faculty.

1 But TCPL faculty and VAPs don't have the
2 same status as tenured track faculty, but I think
3 that they are deserving of high status, and I think
4 that I would like to continue the way that we've been
5 working to achieve that status.

6 But on the floor of University Senate,
7 sometimes things are debated, and University Senate
8 made a number of really important decisions to change
9 the status of TCPL faculty at Miami. In those
10 conversations, I don't always think that TCPL status
11 is the focus.

12 And sometimes Senate debates whether or
13 not they should lift these caps because they want to
14 preserve tenure or they want to preserve the status
15 of ever tenured individuals at Miami. And I think
16 that combining all of these groups together has the
17 potential -- It just has the potential to reduce the
18 power of the individual voices of the groups there.

19 And I see that we have policies that
20 govern the percentage of faculty that can be TCPL
21 faculty that are controlled by a body that has a lot
22 of tenure track voices. And on a Collective
23 Bargaining Agreement, I'm concerned that a Collective
24 Bargaining Agreement could get passed over the wishes

1 of a TCPL faculty member or all TCPL faculty members
2 on the basis of the numbers. I'm a mathematician
3 looking at the proportions. I'm just concerned about
4 that.

5 Q. Do you think there are any topics that
6 might be the subject of bargaining where groups have
7 different interests?

8 A. Yeah, I do. I think the leave structure
9 is one area where there are differing and perhaps
10 competing interests amongst the groups of faculty.

11 Q. How so?

12 A. Well, I think that TCPL faculty have
13 expertise that needs replenishing. We have a lot of
14 professional TCPL faculty who, for example, in
15 computer science leave an industry that changes
16 rapidly. They may need opportunities to go and
17 replenish their knowledge of how that works in some
18 of the more professional fields. That's bothering
19 me.

20 UNIDENTIFIED SPEAKER: I'm sorry, I
21 didn't mean to react.

22 Q. In addition to -- Actually, let me back
23 up. You mentioned leaves and that TCPLs need to
24 replenish their knowledge.

1 A. They do.

2 Q. How do you think that's in conflict with
3 any other group's position as it relates to leaves?

4 A. There's only a finite number of faculty
5 in each department to teach classes. And if a TCPL
6 faculty were to take a leave, the resource, and I'm
7 not talking just financially, but the teaching
8 resources in some of the smaller departments, it
9 would really be difficult. And so to even think
10 about opening up opportunities for that, I think it's
11 challenging and may actually put different types of
12 faculty in a competing role.

13 Q. Other than leaves, are there any other
14 topics that you have thought about where you see some
15 of these various groups of people having conflicting
16 interests?

17 A. I'm also worried about retrenchment.

18 Q. How so?

19 A. We haven't had a retrenchment situation
20 at Miami which means that we don't really have a
21 system by which that would be ordered or handled. So
22 in collective bargaining in one group, we have one
23 retrenchment order, and I'm anxious that we could
24 make a decision to have the retrenchment order favor

1 one group of faculty over another.

2 Q. What contract are you referring to?

3 A. I believe Akron, the Collective
4 Bargaining Agreement in Akron. They recently
5 ratified a new agreement with a new retrenchment
6 order. And if TCPL faculty as a group didn't agree
7 with that retrenchment order, tenure track faculty
8 have enough numbers at Miami that they could ratify
9 that Collective Bargaining Agreement alone.

10 Q. You see those as conflicting interests
11 how?

12 A. Well, that tenure track faculty could in
13 a Collective Bargaining Agreement order retrenchment
14 such that all of the TCPL faculty members were lower
15 on the list than tenure.

16 Q. By lower on the list, what impact would
17 that have?

18 A. That they would be earlier in the
19 retrenchment.

20 Q. Any other topics that you consider that
21 you think would be conflicting interests within this
22 broad group of people?

23 A. Those are my main ones.

24 Q. How do you think that negotiating these

1 topics where you think that there are conflicting
2 interests, how do you think that would impact the
3 University's ability to negotiate with a union that
4 includes all of these groups?

5 A. Say that again.

6 Q. Let me... Do you see any issue or
7 conflicting issue regarding workload regarding any of
8 these groups?

9 A. The workload is so different. They
10 belong in the same category. We all teach. That's
11 something that we all have in common, and that's
12 something we all care a lot about, but how do you
13 measure workload outside of teaching?

14 We have these metrics by which we measure
15 how much we teach or could be expected to teach, but
16 we don't have that metrics that determine that in
17 relation to other things. And teaching in relation
18 to scholarship, teaching in relation to service, it's
19 different across groups.

20 What does that teaching count for and
21 what more unfortunately can faculty be asked to do
22 around that teaching workload? And when I'm thinking
23 about merit decisions, I know for a fact that chairs
24 struggle sometimes to determine merit when you've got

1 a variety of different types of faculty who are
2 eligible. I think some chairs in conversations have
3 told me that they consider the two different, and in
4 some cases, they are considered as one and ranked
5 together on the same list.

6 I think that that is challenging. It's
7 really hard, and chairs find that uncomfortable as it
8 is. So on a University level, I think that that
9 could be difficult, and I think that could be
10 somewhat onerous to in some way hammer down what does
11 teaching look like in relation to the rest.

12 Q. Do you think that there is a conflict
13 between two or more groups about the amount of
14 teaching? Just trying to understand your position.

15 A. So we have an established expectation for
16 how much we teach, and that's something that would go
17 into a Collective Bargaining Agreement. But what
18 does service look like? How much service can one
19 TCPL faculty member be expected to do, and how does
20 that compare to the amount of service that a tenure
21 track person does?

22 I mean, how does scholarship -- We have
23 these vague percentages, but what does that really
24 mean? And I'm afraid in the minutia of comparison

1 and in the minutia of gathering people together, we
2 make decisions that might not be in the best
3 interests of everybody.

4 It's hard to say because I don't know
5 what a Collective Bargaining Agreement would look
6 like at Miami. I don't know what our faculty would
7 choose to put out there as different from what we
8 currently have now. I don't know. But I worry
9 because I've seen on the Senate floor that tenure
10 track interests are sometimes put above others, and I
11 am anxious that that might happen.

12 Q. Do you think that having all of these
13 groups in one Bargaining Unit would impact efficiency
14 at the University?

15 A. Again, I'm not really familiar with
16 collective bargaining, so I don't know for sure what
17 that process looks like, but it would seem to me that
18 there are a lot of things that would be negotiated in
19 reference to one group over the other. And I haven't
20 looked at a lot of Collective Bargaining Agreements,
21 I'm not an expert in what that looks like, but it
22 seems to me that it could either be so general so
23 that it applies to everybody but isn't specific
24 enough to really target the needs and interests of a

1 particular group, or as you mentioned earlier, we
2 could have these lanes where we focus on the specific
3 needs of one particular group within that contract.

4 And I wonder if all of the substantial
5 stuff might be in those lanes as opposed to kind of
6 this overarching general contract. And I don't know
7 enough about how that works to know what would be
8 more efficient or not, but it is a concern that I
9 have.

10 MS. DAY: No further questions.

11 ALJ SPRAGUE: Thank you. Go off for a
12 moment.

13 (Off the record.)

14 (At 2:00 a lunch recess was taken until
15 2:50.)

16 ALJ SPRAGUE: We're back on the record
17 after a luncheon break. Miss Muskovitz.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Muskovitz:

21 Q. Dr. Cox, my name is Susannah Muskovitz.
22 I represent the FAM AAUP, and I have some questions
23 for you. You said I think in your testimony that you
24 were -- you cared about the rights of faculty,

1 correct?

2 A. I do.

3 Q. You care about faculty voice?

4 A. Much.

5 Q. You think that TCPL should have voice?

6 A. Absolutely.

7 Q. You think librarians should have voice?

8 A. Absolutely.

9 Q. You think Visiting faculty should have
10 voice?

11 A. Yes.

12 Q. Instructors should have voice?

13 A. Yes.

14 Q. And tenured faculty should have voice?

15 A. I do.

16 Q. And tenure track faculty?

17 A. I do, yes.

18 Q. So --

19 A. They don't all speak with one voice all
20 the time, though.

21 Q. Well, they don't all speak with one voice
22 all the time?

23 A. No.

24 Q. I think that's true. Do you think all

1 the tenured faculty speak with one voice at all
2 times?

3 A. No.

4 Q. There's a great divergence of voices
5 within any large academic community, would you agree?

6 A. Absolutely.

7 Q. So if the faculty, if the people in those
8 categories that I named, if their voice collectively
9 wants one Collective Bargaining Agreement, should
10 that carry weight?

11 A. I believe in the process, and I believe
12 that faculty have the right to make this choice for
13 themselves, but even if every single one of the
14 smaller groups voted against unionization, the tenure
15 track numbers are so large, that they could carry a
16 vote if taken as a group.

17 And I don't have access to anybody's
18 position. I don't know the breakdown of who amongst
19 all of these populations wants to unionize or has
20 signed a card to indicate that they'd like to express
21 themselves. All I know is there's a chance that just
22 out of the sheer numbers, the tenure track voice is
23 the only one that will be heard in the choir on at
24 least one occasion going forward.

1 Q. Now, you said you don't know much about
2 collective bargaining, correct?

3 A. I don't.

4 Q. And you don't know how Collective
5 Bargaining Agreements have operated in other
6 universities in Ohio; is that correct?

7 A. That's correct.

8 Q. And you know that the faculty at ten out
9 of the 13 public sector universities in Ohio do have
10 collective bargaining rights; do you know that?

11 A. I'm aware of that.

12 Q. And that virtually every single one of
13 them includes both tenure track, tenured and
14 non-tenure faculty together; do you know that?

15 A. I'm aware of that.

16 Q. And the majority include librarians?

17 A. I'm aware.

18 Q. And the majority also include I believe
19 Visiting faculty?

20 A. I don't know for sure.

21 Q. Okay. I mean, do you know just as an
22 example that the most recent round of collective
23 bargaining negotiations at Cleveland State, the
24 non-tenure track faculty for the first time got

1 professional leave at the bargaining table?

2 A. I would celebrate that with them.

3 Q. Okay. And that it was something they
4 were never able to achieve except through the
5 collective bargaining process with the support of the
6 tenured and tenure track faculty.

7 A. I find that exciting.

8 Q. And do you think that it might be
9 exciting for TCPLs at Miami to have that same goal
10 working with their tenured and tenure track brothers
11 and sisters?

12 A. Yes.

13 Q. Okay. So all of those differences could
14 be accomplished under one labor contract, you agree?

15 A. Could be, but it's not -- just because it
16 happened at Cleveland State doesn't mean it would
17 happen at Miami.

18 Q. Do you know that if there was one labor
19 contract, all of these various job titles could have
20 voice in one negotiating committee?

21 A. Okay.

22 Q. And do you know that the easiest way to
23 hurt one group is to separate those voices?

24 MS. DAY: Objection. Calls for

1 speculation.

2 ALJ SPRAGUE: Sustained.

3 Q. Let me ask you about discipline just as
4 an example, correct?

5 A. Okay.

6 Q. Can a tenured faculty member be
7 terminated?

8 A. Yes.

9 Q. Give me just an example of what somebody
10 with tenure would do that would result in a
11 termination.

12 A. There's a number of heinous things I
13 could mention.

14 Q. Give me one.

15 A. They came to class incredibly inebriated
16 and operated a machine at the front of the class.

17 Q. So substance abuse, would that be a
18 reason?

19 A. Yes.

20 Q. That's not that they refused to control?

21 A. Not all cases of substance abuse would
22 lead to termination, but there are cases of substance
23 abuse that would.

24 Q. Let's say an ongoing case of substance

1 abuse that the person refused to address, would that
2 a good example?

3 A. Maybe, maybe not.

4 Q. Okay. Give me an example of when a
5 tenured person would be terminated.

6 A. If a tenured faculty member had an
7 amorous relationship with an undergraduate student
8 against their will.

9 Q. Very good example. Let's say sexual
10 harassment, a power structure, a tenured faculty
11 member that did that, they could be terminated?

12 A. Yes.

13 Q. A TCPL who was the equivalent of a Full
14 Professor could be terminated; is that correct?

15 A. Yes.

16 Q. The equivalent of a full librarian could
17 be terminated, correct?

18 A. Correct.

19 Q. Any of those -- A Visiting Professor
20 could be terminated, correct?

21 A. Uh-huh.

22 Q. An Instructor could be terminated,
23 correct?

24 A. Correct.

1 Q. Can you give me an example of something
2 that a tenured faculty member could get away with
3 that a TCPL could not get away with?

4 A. Poor teaching. Poor service. I mean,
5 there's a number of different things that would be
6 very, very difficult to make an argument to strip
7 someone of tenure on the basis of this one thing
8 alone, but it might be enough to terminate a TCPL
9 faculty member, yeah.

10 Q. So you're saying a tenured faculty member
11 that was a poor teacher could continue to work, but a
12 full TCPL who was a poor teacher could not continue
13 to work?

14 A. You're asking me to speak about
15 hypothetical situation instead of a specific case,
16 and I don't have cases that I could pull from to say
17 yes, that's how it would be handled at Miami or not,
18 but I do know that Miami has not untenured faculty.
19 I do know that there seems to be a large bar for what
20 it would take for that to happen.

21 Q. Now, librarians at Miami have three
22 ranks, correct?

23 A. Correct.

24 Q. So you start off as Assistant Librarian?

1 A. Well, you're asking me about librarians
2 which is not my area of expertise.

3 Q. I'm not going to ask you about
4 librarians.

5 A. Okay.

6 Q. TCPLs in Miami have three ranks, correct?

7 A. Correct.

8 Q. And the first rank is an Assistant?

9 A. Uh-huh.

10 Q. And in order to be hired in as an
11 Assistant, it requires a competitive search?

12 A. Correct.

13 Q. A tenure track -- the tenure track
14 faculty in Miami have three ranks?

15 A. Uh-huh.

16 Q. They start off as an Assistant?

17 A. Correct.

18 Q. To be hired, they have a competitive
19 search?

20 A. With different components than a TCPL
21 search but yes, a competitive search.

22 Q. And then with a TCPL, they provide a
23 dossier within their fourth year?

24 A. Yes.

1 Q. It's up or out?

2 A. Yes -- Well, not exactly. So in your
3 fourth year, if you do not make promotion, you can
4 have another shot at it in your fifth year.

5 Q. But it's a terminal year -- They get a
6 terminal year after their fourth year, correct?

7 A. To either find another place of
8 employment in their fifth year or they can apply
9 again for promotion.

10 Q. But if they apply a second time, they
11 don't get another terminal year, do they?

12 A. No, they do not, but they get two shots
13 at it.

14 Q. But it's still up or out?

15 A. Correct.

16 Q. And once you get promoted, you're
17 considered an Associate?

18 A. That's correct.

19 Q. With the tenure track, it's also up or
20 out, correct?

21 A. More so. The stakes are higher because
22 you only get one chance at it.

23 Q. But they also get a terminal year?

24 A. Correct.

1 Q. In their fifth year, they also provide a
2 dossier?

3 A. Yes.

4 Q. If a TCPL goes from the second promotion
5 to the third, that's an optional step; is it not?

6 A. That's optional.

7 Q. They're not required to?

8 A. No.

9 Q. For a tenured professor to go to full
10 professor, that's an optional step?

11 A. Uh-huh.

12 Q. Do you see that those very much mirror
13 each other even though there are some distinctions?

14 A. It's almost like one is a model for the
15 other.

16 Q. Exactly. Are you aware that librarians
17 also have a process that very much mirrors the tenure
18 track?

19 A. Yep.

20 Q. And that probably the tenure track was a
21 model for the librarians?

22 A. It's possible. That predates me but yes.

23 Q. So what I'm just trying to figure out is
24 why a labor contract can't address both those

1 similarities and those distinctions?

2 A. I think you're right, that there's a lot
3 that a labor contract can address that's in common
4 between the faculty. I think that there's a lot that
5 binds us together that makes us the same, but there
6 are enough differences in status, representation,
7 numbers and actually workload that makes us different
8 that gives me pause, that makes me think that there
9 are parts where one group would not have the same
10 status or voice as the others if they were
11 collectively bargaining together as you say one
12 voice.

13 In a choir, if you have ten sopranos and
14 one bass, it might be enough but it might not. I
15 just worry at Miami with the proportion of faculty
16 being what it is and also the policy being what it
17 is, to actually limit the number of TCPL voices at
18 the table, I worry that the disproportionality
19 between the groups in moments of strife, in moments
20 of financial exigency might privilege one group over
21 the other.

22 Q. Do you think your worry should override
23 the will of the faculty?

24 A. I am but one person. I don't think I

1 should override anything. In fact, my whole career
2 has been about making sure voices are heard at the
3 table, so no, I don't want my testimony today to be
4 the only source of information about whether this
5 should happen or not. I don't think that would be
6 fair, but at the same time I don't have any data
7 about what percentage of TCPL are in favor of the
8 Union or what librarians are in favor of. I don't
9 have that data.

10 So I have to assume that it's variable.
11 I don't know that all TCPLs want the union at this
12 point, but I know that if all didn't and all tenure
13 track did, they would go along with the choice
14 whether they want it or not. I'm not saying that
15 that would happen, but in my mind because I don't
16 have data to go from, it's a possibility that makes
17 me anxious. Can I --

18 Q. There's policies that you identified such
19 as sick leave, I think vacation and professional
20 leave. Do you have any idea whether those policies
21 would become covered by a Collective Bargaining
22 Agreement?

23 A. I don't. I would assume that those are
24 things that we collectively agree on that they could

1 be a part of a Collective Bargaining Unit -- or
2 Agreement.

3 Q. And do you know that in the collective
4 bargaining process, that administrators have voice?

5 A. Yes, I would imagine that they do.

6 Q. And administrators, in fact, have they're
7 one of two of sides, they in some ways have equal
8 voice to the collective faculty voice?

9 A. Yes.

10 Q. And the administrators would talk through
11 one voice, right?

12 A. I don't know. I don't think that all
13 administrators talk with my voice at all times.

14 Q. Exactly. But do you think that when a
15 Collective Bargaining Agreement was being negotiated,
16 the various Deans, the Associate Deans, the various
17 department chairs, the various provosts, the Provost,
18 the President would have no choice but to speak
19 collectively with one voice at the bargaining table?

20 A. Yeah, and I think that that sometimes
21 hurts. I think that sometimes at other universities,
22 I've heard from there people in my role at other
23 universities, that sometimes there are differing
24 opinions and that speaking with one collective voice

1 elevates one voice over another in those situations
2 for administrators too.

3 Q. If there were five different bargaining
4 units at Miami, the administrators that were
5 negotiating those five different faculty contracts
6 would still each speak with one voice, correct?

7 A. I don't know.

8 Q. Well, if there was a contract that only
9 covered TCPLs, all of the administrators would speak
10 with one voice, correct?

11 A. But they would speak on issues that were
12 related to specific workload questions and concerns
13 of the TCPL faculty.

14 Q. Keeping in mind that the tenure track are
15 in another contract, though. Do you understand how
16 the administration would have the opportunity to play
17 people against each other in a way that they could
18 not if there was one contract?

19 MS. DAY: Objection. Argumentative.

20 A. I don't --

21 ALJ SPRAGUE: Sustained.

22 Q. In this case, clearly the faculty at
23 Miami, and by faculty I'm including these various
24 groups, have chosen to try to speak with one voice,

1 and the administration is fighting that. And I'm
2 just trying to figure out from your testimony why
3 that is.

4 A. I've been very clear that my concerns
5 arise from the differential status of a variety of
6 faculty groups at Miami that is based historically,
7 that I've seen this differential status. And we've
8 made so many gains in terms of thinking about more
9 continuing faculty and less reliance on contingent
10 faculty. I think we've made a lot of gains in the
11 status of TCPL faculty.

12 We have a lot of work to do, I know that
13 we do, but I think that often that conversation, it's
14 going to be trickier with one group as opposed to how
15 can we sit down with TCPL faculty and address their
16 particular needs and interests which are often
17 different and sometimes competing with other groups.

18 Q. Do you know if there were a tenure track
19 faculty Collective Bargaining Agreement, they would
20 have the ability to limit the number of other
21 faculty?

22 A. They already do.

23 Q. No, listen to my question. If there was
24 a labor contract that only covered tenure/tenure

1 track faculty, that they would be able to limit
2 through their work jurisdiction language the number
3 of nontenure track faculty that could be hired.

4 A. They already do. It's codified in our
5 University policy.

6 Q. Okay, but I want you to listen to my
7 question. Right now the University Senate, members
8 of the University Senate that include tenure and
9 tenure track faculty, right? They're covered under
10 the University Senate, they could be members?

11 A. Everybody, yeah.

12 Q. And same with TCPL?

13 A. Yeah.

14 Q. And same with --

15 A. If they're elected, yes.

16 Q. Correct. And the same with librarians?

17 A. Yeah.

18 Q. In fact, the Faculty Assembly, tenured
19 and tenure track faculty are part of Faculty
20 Assembly, correct?

21 A. Yeah.

22 Q. TCPL are part of the Faculty Assembly,
23 correct?

24 A. Yes, I testified to that.

1 Q. And librarians are part of the Faculty
2 Assembly, correct?

3 A. Correct.

4 Q. So my question is, if there were three
5 Faculty Assemblies as opposed to one faculty
6 assembly, do you see how they could pick off each
7 other and that the tenure track have an easier
8 ability to dominate the other groups?

9 A. No.

10 Q. Do you understand that through collective
11 bargaining, that a tenure only contract, they have
12 the ability to limit the number of TCPLs if they
13 want?

14 A. We already do.

15 Q. Right. Well, but that's not my question.
16 I'm just --

17 A. I'm clearly not understanding the
18 question because I feel like I'm answering it. I
19 honestly want to make the best possible attempt at
20 answering the question that you're asking. Is there
21 another way you can phrase it so I can hear what
22 you're saying?

23 Q. Well, you testified -- Let me switch
24 gears a little bit -- earlier, that people with

1 tenure, one of the things they have is academic
2 freedom, correct? That's one of the things that the
3 job security protects?

4 A. Yes.

5 Q. Do TCPL also enjoy some level of academic
6 freedom once they get promoted to an Associate level?

7 A. Not to the same degree as tenure track.

8 Q. How so?

9 A. Tenure track have academic freedom to
10 study and learn and investigate the questions that
11 drive them. The University can't specify what a
12 tenure track person should hold as their research
13 agenda. And when the findings emerge, they can't
14 control the release of those findings. That's
15 released through a peer review system.

16 So academic freedom to me means the
17 freedom to pursue the questions that most drive me
18 and the freedom to publish the results without fear
19 of reprisal or recrimination or losing my job because
20 someone doesn't like my findings. That's all in the
21 world of scholarship and creative activity.

22 It's protected there because of the
23 inquiry nature of that work. It also extends to my
24 teaching. So I can stand up to a reasonable degree

1 teach any part of the course or curriculum that I've
2 designed, but at the same time, if I stood up in my
3 math classes and started teaching political science
4 or started teaching something else, that's not to say
5 that I have the academic freedom to stand up and say
6 whatever I want to in front of my class. And I don't
7 enjoy that, that level of freedom in my workplace,
8 and neither do TCPL faculty. I think that's best I
9 can answer that.

10 Q. So I mean, would it surprise you that
11 there's going to be a number of TCPL faculty
12 testifying at this hearing who --

13 A. No.

14 Q. Let me finish my question.

15 A. I thought that was the question.

16 Q. Who do scholarship?

17 A. No, I think our TCPL faculty are vibrant
18 in that area. They do that.

19 Q. So how is the scholarship that they do
20 subject to lower protections than the scholarship
21 that other faculty do?

22 A. The scholarship that they do isn't an
23 expectation of the TCPL role and cannot be included
24 in the evaluation of their performance. The

1 scholarship, it's there and they can use it as
2 evidence at the second promotion point for
3 distinction or excellence which is required for that
4 second promotion point, but no chair can specify in
5 the Professional Development Plan for a TCPL faculty
6 member that they must engage in scholarship or a
7 particular type of scholarship.

8 Q. But that doesn't answer the question.
9 What I'm saying is, when they engage in
10 scholarship --

11 A. If they engage --

12 Q. Let me finish my questions.

13 A. I'm sorry.

14 Q. When they engage in scholarship, how is
15 the choice of scholarship, their study, what they're
16 learning, what they're investigating, how is that
17 given a lower level of protection than the
18 scholarship that is being conducted by other members
19 of the Miami community?

20 A. So from what I know of Miami University,
21 it wouldn't, but at another institution, University
22 administration could say to a faculty member that
23 we're not renewing your contract on the basis of
24 perhaps a study that they did on white supremacy --

1 I'm trying to think of something that would be
2 provocative, but they don't have tenure. Their
3 contracts cannot be renewed. It's different.

4 Q. Do you know there was a tenured faculty
5 member last year at Cleveland State who did a paper
6 on white supremacy who was terminated?

7 MS. DAY: Objection. Foundation.

8 MS. MUSKOVITZ: If she knows.

9 A. I don't know the details of that case.

10 Q. Have you heard of it?

11 A. I don't know the details of that case.

12 Q. So you've heard of it, and you know he
13 had tenure, right?

14 A. Yes.

15 Q. And he was terminated?

16 A. Yes.

17 Q. So probably not a good example. So I'm
18 just saying if a TCPL is doing scholarship, they're
19 not -- and it hits a certain level of academic
20 standard, they have just as much protection in their
21 scholarship as anyone else, correct?

22 A. I don't know. I don't. They don't have
23 tenure, they could be let go, and I think there's
24 potential there that they would not have the same

1 level. Isn't that the argument for tenure?
2 Otherwise, why would anybody have tenure? Why would
3 we not all be satisfied with continuing contracts?

4 Q. That's actually a much deeper question
5 than this hearing will allow.

6 A. But that to be where that was going, I
7 guess, so I mean, we can go there but I don't want
8 to.

9 Q. But an Assistant Professor doesn't have
10 tenure, correct?

11 A. That's correct.

12 Q. And an Assistant TCPL doesn't have
13 jobs -- a continuing contract, correct?

14 A. That's correct.

15 Q. So I'm just trying to -- So you're
16 talking being academic freedom. What about a
17 librarian, they're required to do scholarship,
18 correct?

19 A. Yeah. Well, according to what Jerome
20 shared with me, yes. I'm not sure.

21 Q. But you're part of the University. I
22 mean, they have to do scholarship. It is required in
23 order to get promoted to Associate, correct?

24 A. Yes, I think so.

1 Q. And their scholarship is required to go
2 up to the equivalent of full, correct?

3 A. Correct.

4 Q. Until I think it's called a Principal
5 Librarian. So how is that less protected? I haven't
6 heard an answer.

7 A. So you're saying that tenure isn't
8 necessary?

9 Q. I'm definitely not saying that.

10 A. Because in my mind it is. In my mind, it
11 affords a protection for faculty that is not
12 available to either TCPL faculty or librarians.

13 Q. But you're not able to articulate what
14 that is, are you?

15 A. I'm not, no.

16 Q. You testified at some point about the
17 Heanon Wilkins Fellowship, and I think it was a
18 little confusing, but these are people that are hired
19 in as visitors with an expectation of being able to
20 stay in a more permanent role?

21 A. Expectation is a strong word but yes.
22 The goal is that they would want to stay at Miami to
23 make a permanent home.

24 Q. Are you aware that librarians are part of

1 this, that there's someone now who's actually being
2 hired in as a Heanon Wilkins Fellow?

3 A. I administer the program, so I know that
4 the posting just went live for a Heanon Wilkins
5 librarian, and I was really proud to shepherd that
6 through with my friends in the library, yeah.

7 Q. Assuming that person gets hired will have
8 the same level of expectation of continued employment
9 as any of the other Fellows, correct?

10 A. In an unclassified staff position, yes.

11 Q. Until they become an Assistant Librarian.

12 A. That would be the continuation that's
13 already for the faculty side, yes.

14 Q. That would be the goal?

15 A. That's the goal.

16 Q. And that's the intent of the program; is
17 it not?

18 A. Yeah.

19 Q. Okay. I think you testified that tenure
20 track faculty and tenure faculty have to complete a
21 Faculty Activity Report every year?

22 A. Yes.

23 Q. Do Assistant TCPL complete a Faculty
24 Activity Report every year?

1 A. Yes.

2 Q. Associate TCPLs?

3 A. There's a big workload associated with
4 documenting your productivity for probationary
5 faculty that is something I would like to work on in
6 the future, but right now you have to do an annual
7 Activity Report, a dossier, update your CV all at
8 once at the same time.

9 Q. And librarians have to complete the
10 equivalent of a Faculty Activity Report, an annual
11 report?

12 A. That might be a better question for
13 Jerome.

14 Q. Okay. Do you know if there's an end --
15 strike that. You said you have some concerns with
16 financial exigency but it's never happened at Miami,
17 correct?

18 A. That's correct.

19 Q. So obviously none of us have a crystal
20 ball. Do you have any idea how that would be
21 addressed through the collective bargaining process?

22 A. I don't, but I know how we have policies
23 that prevent the forced dissolution of programs at
24 Miami; that University Senate actually has a

1 mediation process for departments and programs where
2 an administrator has initiated cuts and the closure
3 of those programs. So I know that University Senate
4 has a role in determining how to mediate that process
5 and how to come to an agreed upon outcome in those
6 cases. That's the extent of what I know about how it
7 would happen at Miami, and I have no way of telling
8 what would happen under a Collective Bargaining
9 Agreement.

10 Q. That would depend on what's negotiated,
11 correct?

12 A. Yeah, it would.

13 Q. The process could even be exactly the
14 same as it is now; could it not?

15 A. Could be, but that process is somewhat
16 undefined right now. So I would hope that in a
17 Collective Bargaining Agreement we might come to a
18 better understanding of what we might do together in
19 those cases. So my hope for collective bargaining
20 would be yes, we could hammer that out; however, in
21 that Collective Bargaining Agreement, I would still
22 be afraid that one group of faculty would speak
23 louder than others.

24 Q. Do you know that that's actually the case

1 in every Bargaining Unit that exists in Ohio in the
 2 public sector, that there's different voices?

3 MS. DAY: Objection. Calls for
 4 speculation.

5 ALJ SPRAGUE: Sustained.

6 MS. MUSKOVITZ: I have no further
 7 questions.

8 MS. DAY: I think I have one.

9 - - -

10 REDIRECT EXAMINATION

11 By Ms. Day:

12 Q. Dana, you were testifying about the
 13 Heanon Wilkins Fellowship. Is there any guarantee
 14 that a Heanon Wilkins Fellow, even assuming he or she
 15 performs successfully throughout their three-year
 16 fellowship, is there any guarantee that that person
 17 continues at Miami?

18 A. No.

19 Q. How would they continue at Miami?

20 A. If a tenure track or a TCPL position
 21 became open and they entered it.

22 Q. By entered it, what do you mean?

23 A. At this time if they applied for it.

24 MS. DAY: No further questions.

1 MS. MUSKOVITZ: No recross.

2 ALJ SPRAGUE: I thank you for your
3 testimony today. Be reseated. Off for a moment.

4 (Off the record.)

5 ALJ SPRAGUE: We're back on the record.
6 Miss Groom has taken the stand. Miss Groom, we need
7 to swear you in. Please raise your right hand.

8 (Witness placed under oath.)

9 ALJ SPRAGUE: Please state your full name
10 for the record spelling your last name.

11 THE WITNESS: Ruth Groom, G-R-O-O-M.

12 - - -

13 RUTH GROOM

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Squillante:

18 Q. Good afternoon, Miss Groom. Is it okay
19 if I call you Ruth?

20 A. Absolutely.

21 Q. What is your title at Miami University,
22 Ruth?

23 A. I'm Associate Vice President for Academic
24 Personnel.

1 Q. How long have you been in that position?

2 A. It will be six years in February.

3 Q. Prior to your current role, what other
4 roles have you held at Miami?

5 A. So I've been with Miami for almost 25
6 years now. I was a Prospect Researcher in our
7 University Advancement, HR Technology Coordinator in
8 the Human Resources office for several years where I
9 helped implement electronic solutions for some of the
10 paperwork that we do. I've been a Data Planning
11 Analyst in the College of Arts and Science Dean's
12 Office in regards to the RCM model and budgeting and
13 then this position as well.

14 Q. So safe to say you've had about 20 or
15 more years of employment at Miami, mostly in the
16 Human Resources capacity or similar positions?

17 A. Roughly, yeah, 25 years total, yes.

18 Q. Ruth, do you hold any licensures or
19 certifications that relate to your employment at the
20 University?

21 A. I have a PHR certification which stands
22 for Professional of Human Resources which is awarded
23 by the HRCI, Human Resources Certification Institute.

24 Q. How long have you held that?

1 A. Well, I got that prior to 2013, I want to
2 say around 2010. It's been -- sometimes I don't
3 remember the exact date.

4 Q. Sure. Anything besides your PHR
5 licensure?

6 A. My Bachelor's degree is in Personnel
7 Management, as well as I hold a Master's of Business
8 Administration.

9 Q. Can you describe your job duties in your
10 current role as Associate Vice President?

11 A. Sure. I help lead the HR function for
12 Academic Affairs. I have a staff of ten people who
13 assist with the administration of hiring processes,
14 leave administration, promotion, discipline. More so
15 in the unclassified arena, the promotion and tenure
16 for faculty is handled not inside of my office
17 because that's handled by other faculty versus people
18 in staff positions.

19 I also report directly to the Provost and
20 provide to the Provost data as requested. I work
21 closely with the Provost in regards to developing the
22 faculty hiring plan. I review salary surveys along
23 with other members of my staff. Additionally, I
24 immigration paperwork for Academic Affairs employees

1 as well as do the external services reviews and
2 requests.

3 Q. Ruth, if you could open the exhibit
4 binder that's in front of you and turn to Joint
5 Exhibit D.

6 A. Okay.

7 Q. I believe Miss Cox testified earlier this
8 afternoon about some of the terms and conditions of
9 employment for the Visiting faculty and also the
10 Instructors. Does this policy cover both of those,
11 the distinct titles?

12 A. Yes, this policy defines the titling
13 groups at the University.

14 Q. What's the distinction between Visiting
15 faculty and Instructors?

16 A. So the full-time Visiting faculty and
17 Instructors are actually included in that, but like a
18 Visiting Assistant Professor versus an Instructor,
19 the differences between being a terminal degree
20 holder versus not yet having a terminal degree in the
21 discipline in which you're teaching.

22 Q. So if I'm understanding you correctly,
23 the Visiting Assistant Professors hold a terminal
24 degree?

1 A. That is correct.

2 Q. And Instructors do not?

3 A. That is correct.

4 Q. And when you say terminal degree, what
5 does that mean for those of us that are not in
6 academia?

7 A. Most -- sometimes people think a Ph.D is
8 a terminal degree for everything, but that's not
9 always the case. So it could be perhaps a Master's
10 of Fine Arts and Creative Arts is considered a
11 terminal degree for some of the disciplines. So it's
12 essentially what is recognized as the highest degree
13 or available for a discipline. A Juris Doctorate is
14 a terminal degree as well.

15 ALJ SPRAGUE: Good to hear.

16 Q. Ruth, are you familiar with the
17 University's position in this particular matter that
18 Visiting faculty -- and when I say Visiting faculty,
19 I'm referring to that as an umbrella term, so both
20 the Visiting Assistant Professors and also the
21 Instructors -- that the Visiting faculty constitutes
22 seasonal and/or casual employees under law because
23 less than 60 percent of Visiting faculty return the
24 following year; are you familiar with that?

1 A. Yes, I'm familiar with that argument.

2 Q. Did you assist the University in
3 collecting and reviewing the data related to
4 retention of Visiting faculty from year-to-year?

5 A. Yes. As my office administers records, I
6 was -- I assisted with that data collection and
7 review.

8 Q. If you would, Ruth, please turn to
9 Exhibit 16 in your black binder. Are you familiar
10 with this document?

11 A. Yes, I am.

12 Q. Did you create this document, Ruth?

13 A. Yes, I did.

14 Q. I'd like to talk a little bit about your
15 creation of this much table.

16 A. Okay.

17 Q. Let's start with the first row. That
18 reads, "IPEDS Reported-Fall Data VAPs/Instructors."
19 Can you tell me what that means?

20 A. IPEDS stand for Integrated Post Secondary
21 Education Data System. Any University that is
22 receiving financial aid is required to complete I
23 think it's eight surveys about various aspects about
24 the University.

1 One of those surveys is about employment
2 at the University. And within that survey, numbers
3 are reported off of a November 1st snapshot, so it's
4 always that fall data set on November 1. IPEDS
5 requires institutions to report tenurable, tenure
6 eligible and non-tenure eligible positions. Then at
7 Miami, we break the non-tenure eligible positions
8 down for our own use internally into the TCPL
9 positions and the --

10 ALJ SPRAGUE: Let me back up a little
11 bit. A tenurable?

12 THE WITNESS: Tenurable.

13 ALJ SPRAGUE: Tenure eligible?

14 THE WITNESS: Tenure eligible and
15 non-tenure eligible positions. The non-tenure
16 eligible is comprised of both the TCPL and the
17 full-time Visiting Assistant Professors and
18 Instructors. And so the top row number is the number
19 that represents the full-time Visiting Assistant
20 Professors and Instructors.

21 Q. And what about row I suppose it's row 3,
22 but the next row down reads "Employed Prior Year As
23 VAP/Instructor." Tell me what that means and how
24 that data was compiled.

1 A. That number looks at whether or not
2 someone in the fall of '18, if they were employed as
3 a VAP or Instructor in the fall of '17 and then
4 employed again in the fall of '18, those are what
5 those numbers represent.

6 In order to build that file out and to
7 track, it required that we track individuals across
8 years. And so every year my office is responsible
9 for implementing the policy that he says if you're a
10 Visiting Assistant Professor or Instructor, we're
11 required to send you a letter by February 15th that
12 you have -- there's not an expectation of
13 reappointment. It doesn't mean that you can't be,
14 but there's not an expectation. You have no
15 expectation that you will automatically be
16 reappointed.

17 And so we have to build a data file in
18 order to send those letters, and so I use those files
19 across the years to comprise that list of employee
20 names and then to track them across their return or
21 non-return.

22 Q. Is there a document that you put together
23 where you tracked individual by individual what year,
24 if any, they were a member, a Visiting faculty, and

1 whether or not they returned for a consecutive year
2 as Visiting faculty?

3 A. Yes, I created one spreadsheet where I
4 pulled all of those years into one spreadsheet and
5 then tracked the individual names across those years.
6 And then it created a bucket, a label that said was a
7 VAP a prior year or that was their appointment year.

8 Q. So safe to say that data is sort of the
9 background data that supports this chart which is a
10 summary of that information?

11 A. That's correct, this is a summary of that
12 information.

13 Q. If you could, Ruth, turn to Exhibit 17,
14 Employer's Exhibit 17 which is the next page there.
15 Is that the spreadsheet that you were referring to
16 just now?

17 A. Yes, that is the spreadsheet that I used
18 to provide that summary table.

19 Q. If you could turn back to Exhibit 16.

20 A. Okay.

21 Q. Safe to say if I'm understanding you
22 correctly, Ruth, you began with -- you used two
23 points of data in determining the retention rate
24 which appears at the very bottom column, and that is

1 the number of Visiting faculty in the fall of one
2 year and then the number of Visiting faculty who
3 returned that following academic year?

4 A. Yes, that's correct. The metric to
5 define retention rates, the formula that is used is
6 the number who are here today or whatever your time
7 period are that you're looking at, divided by the
8 number who were there the prior year. So in order to
9 calculate a retention rate, that's why you have to
10 know how many people there were in those positions in
11 fall of '17, for example.

12 Q. When you say that the method used, are
13 you referring to how you came to this information --
14 how you came to these numbers or sort of an industry
15 standard in determining retention rates?

16 A. That would be an industry standard.

17 Q. I'd like to point your attention
18 specifically to the fall of '21. What was the
19 retention rate of Visiting faculty in the fall of '21
20 based on this data?

21 ALJ SPRAGUE: Can I just real quick? The
22 little snapshot or whatever we're going to call it at
23 the top of 17, is that the same as the one that's on
24 16?

1 MS. SQUILLANTE: It is, your Honor.

2 ALJ SPRAGUE: Thank you. Just wanted to
3 make sure.

4 A. I'm sorry, could you repeat the question?

5 Q. Sure. If you could look specifically at
6 that chart, what was the retention rate of Visiting
7 faculty in the fall of '21?

8 A. 62.6 percent. We returned 67 of the 107
9 who were a VAP/Instructor in the fall of '21.

10 Q. Do we have any more recent data with
11 respect to the retention rate of our Visiting
12 faculty, more recent than fall of '21?

13 A. We now have available fall '22 numbers.
14 So we have tracked 88 faculty returned this fall of
15 the 153 who were employed in that capacity last fall
16 which is 57.5 percent.

17 Q. What about prior to fall of 2021, let's
18 take a look at the fall of '20, what was the
19 retention rate of Visiting faculty in the fall of
20 2020?

21 A. 36.5 percent.

22 Q. And the fall of 2019?

23 A. 56.6 percent.

24 Q. Earlier this afternoon, Miss Cox was

1 testifying about some of the factors which impact the
2 need for Visiting faculty from year-to-year, and I
3 think she mentioned the amount of continuing faculty
4 or the amount of long-term faculty who were resigning
5 in any given year or perhaps retiring in any given
6 year.

7 And she also spoke about the amount of
8 students that might be matriculating in any given
9 year and whether or not that was consistent with the
10 University's expectations. Other than those two
11 factors, is there anything else that impacts how many
12 Visiting faculty the University might need to fill
13 staffing needs in any given academic year?

14 A. Those I think are the top two,
15 retirement/resignations, along with enrollment
16 numbers are variable across years. Additionally,
17 there could be some impact around faculty leaves and
18 the numbers of faculty leaves granted. A department
19 might find themselves suddenly shorthanded for like a
20 parental leave or a personal leave of absence, for
21 instance. The research leaves and Faculty
22 Improvements Leaves are a known thing to plan for,
23 but some other types of leaves might not be.

24 Q. So all of those factors could vary from

1 year to year and each of them would impact whether we
2 would need -- whether the University would need more
3 Visiting faculty or less Visiting faculty to fill
4 roles?

5 A. Yes, that's correct.

6 Q. I'd like to switch gears a little bit,
7 Ruth, to the category of what the parties have deemed
8 the multiple appointments. Are you familiar with
9 that category of folks that the union is seeking to
10 include in the proposed unit, and they've defined
11 that group as full-time faculty for whom instruction
12 research and/or service comprises at least 50 percent
13 of that workload. Are you familiar with that concept
14 in this particular --

15 A. Yes, I am familiar with their wording in
16 their request.

17 Q. And you're familiar with the spreadsheet
18 that the union produced listing the folks that they
19 feel fall into that particular category of multiple
20 appointments?

21 A. Yes, I did see that exhibit.

22 Q. If you could turn, Ruth, to Exhibit 18 in
23 your black book. Is that this document?

24 A. This is the document that was submitted

1 by the FAM organization, yes.

2 MS. MUSKOVITZ: Objection. That's not
3 true. That's your document.

4 Q. With portions of it -- let me strike
5 that. Are you familiar, Ruth, with the first three
6 columns of this spreadsheet, and did you add the last
7 two columns of data?

8 A. I'm familiar that the last names and
9 first names were supplied by the FAM group. I did
10 have to supply some of the job titles in column 3 as
11 there were some blank job titles I believe in the
12 exhibit submitted. And then I am familiar with the
13 fourth and the fifth column, as I completed that
14 information.

15 Q. I'd like to talk about each of these
16 folks in turn, and it might be helpful to turn your
17 binder this way which you've already done, great.
18 Starting with Robbyn Abbitt who's listed as the GIS
19 Coordinator, does Robbyn have a faculty appointment?

20 A. She does not have a separate faculty
21 appointment, no. Her appointment is categorized as
22 an unclassified staff appointment.

23 Q. So Robbyn would be subject to
24 unclassified staff policies?

1 A. That is correct. She falls under
2 unclassified staff as far as the policy within the
3 policy library at the University.

4 Q. She would have different workload and
5 performance expectations than full-time faculty?

6 A. She would have -- Yes, her duties are
7 different than that of a full-time faculty member,
8 yes.

9 Q. And Jamie Anzano who's the Director of
10 Communications and Research?

11 A. Yes. So if we can walk individually
12 through, as most of the people on this list, yes, she
13 is an unclassified staff appointment. Her Position
14 Description does include information that she might
15 do some instruction but it does not comprise half of
16 her job.

17 Q. So just for clarity, Jamie does not have
18 a faculty appointment?

19 A. That is correct.

20 Q. Jamie would be subject to unclassified
21 staff policies?

22 A. Yes.

23 Q. And different workload and performance
24 expectations than faculty?

1 A. Correct.

2 Q. David Costa who's listed as a Program
3 Director, does David have a faculty appointment?

4 A. No. He is a staff appointment.

5 Q. When you say staff appointment, do you
6 mean 1 FTE staff appointment?

7 A. Yes, it's a 1 FTE 12-month staff
8 appointment that is exempt from overtime, so it's
9 unclassified.

10 Q. So David would have a different workload
11 and performance expectations than full-time faculty?

12 A. Correct.

13 Q. Matthew Duley, who's the Electron
14 Microscopist, does Matthew have a faculty
15 appointment?

16 A. He does not have a faculty appointment
17 outside of the fact that he does have adjunct status
18 in the Biology Department, and I think I should
19 clarify that Miami tends to use the word adjunct
20 differently than other institutions. In our
21 instance, an adjunct is a nonpaying appointment with
22 a department where the person could be volunteering
23 some of their time and expertise within the
24 department.

1 Q. And adjuncts, to your knowledge, are not
 2 included in the proposed Bargaining Unit in this
 3 matter?

4 A. They are not included because, one, they
 5 are nonpaying and they aren't full-time positions, so
 6 they wouldn't qualify on that part-time basis.

7 Q. Lauren Evans Toben, she's the Clinic
 8 Director, does Lauren hold a faculty appointment?

9 A. She does not.

10 Q. So she would be subject to unclassified
 11 staff policies?

12 A. Yes.

13 Q. And subject to a different workload and
 14 performance expectations than faculty?

15 A. Yes.

16 Q. John Green, who is the Director and Chief
 17 Curator, does John hold a faculty appointment?

18 A. He does not.

19 Q. So he would be subject to unclassified
 20 staff policies?

21 A. Yes.

22 Q. And subject to a different workload and
 23 performance expectations than faculty?

24 A. Yes.

1 Q. Kendall Hauer who's the Director of the
2 Limper Geology Museum --

3 ALJ SPRAGUE: Can we possibly just -- I
4 mean, can we assume that everybody down that list is
5 in that same situation? I shouldn't say us, but
6 maybe we coul short course this part of that.

7 MS. SQUILLANTE: Sure, your Honor.

8 ALJ SPRAGUE: It seems like there's some
9 changes at the bottom.

10 MS. SQUILLANTE: Sure.

11 ALJ SPRAGUE: Is that accurate,
12 Miss Groom?

13 THE WITNESS: Yes, that is accurate.

14 Q. (By Ms. Squillante) So just to clarify,
15 Ruth, everyone on this list with the exception of
16 Elizabeth Wardle who's the Professor and Director of
17 the Howe Center for Writing Excellence, none of those
18 folks hold a faculty appointment?

19 A. That is correct or I believe two of them
20 I noted are receiving additional pay for a per credit
21 faculty assignment because they are teaching
22 something, it's not part of the normal duties of
23 their job, they receive compensation for that, and we
24 call that overload.

1 Q. But that doesn't change whether or not
2 they have a faculty appointment?

3 A. No, it does not change. Their full time
4 appointment at the University is as a staff member.

5 Q. Again, just for clarity, all of these
6 folks with the exception of Miss Wardle are subject
7 to unclassified staff policies?

8 A. That is correct, they're classified as
9 staff and they're subject to the unclassified
10 policies.

11 Q. And they have different workload and
12 performance expectations than faculty?

13 A. Correct.

14 Q. With respect to Miss Wardle, does she
15 hold a faculty appointment?

16 A. Yes, Dr. Wardle is classified as a
17 faculty member at Miami University. She is in a
18 faculty classification. She's a tenured member of
19 the English Department.

20 Q. To your knowledge, Ruth, does Miss Wardle
21 supervise any other employees of the University?

22 A. So Dr. Wardle supervises several
23 employees at the University. There are -- She
24 supervises unclassified staff. She has a classified

1 staff person who reports to her. There are student
2 employees that work in the Howe Writing Center, and
3 there is also another faculty member who is tenure
4 track, Elizabeth Hutton, who is involved that
5 Dr. Wardle supervises the administrative portion of
6 Dr. Hutton's work.

7 Q. So as a supervisor of these folks of
8 those titles you just listed, she has the ability to
9 make employment related decisions with respect to
10 those folks, hire, fire, discipline, those types of
11 decisions?

12 A. She has the ability to make the
13 recommendations towards hiring and firing. Only the
14 President or Provost can do that, but she does -- she
15 is the supervisor of those employees and, therefore,
16 is the person who is evaluating their work and
17 determining whether or not there needs to be a
18 request made for those types of actions.

19 Q. Ruth, if you could turn back to Exhibit
20 16 which is the summary of the Visiting faculty
21 retention data that you're familiar with. Is the
22 62.6 percent retention rate in 2021, would you
23 consider that a anomaly as compared to the retention
24 rate in the other years?

1 A. It -- Out of four years, it's the only
2 one that is over 60 percent, but you can see fall of
3 '18 also was over 60 percent as well. But for the
4 last four years, 75 percent of the time the number
5 has been below 60 percent.

6 Q. Is there a reason why, to your knowledge,
7 2021 is an anomaly as compared to those other years?

8 A. In my opinion, there is a multiple --
9 there could be multiple reasons that impact that.
10 Some of the things is that the fall '20 number was
11 lower because of some of the impact of Covid. The
12 fall '21 numbers were partially impacted I believe
13 because we deferred the faculty ARA and FIL leaves in
14 fall of 2020, and so we had a larger number of
15 faculty taking leaves in fall of '21.

16 We had a large number of retirements and
17 resignations in the fall of '21 for that fall of '21
18 which might have created a need for deans and chairs
19 to bring back some more visitors. Those would be the
20 primary reasons for why that number is what it is.

21 Q. If you could turn once more, Ruth, to
22 Exhibit 18, I apologize for jumping around a bit.

23 A. That's okay.

24 Q. In addition to Dr. Wardle, who you

1 testified has supervisory duties, are there any other
2 individuals on this list who also have supervisory
3 duties?

4 A. Well, I don't have the position
5 descriptions in front of me that would be indicated
6 in that, but for example, Sarah Woodruff, the
7 Director of the Discovery Center, that is a large
8 grant funded center at Miami, and there are numerous
9 employees that are working in the Discovery Center
10 with Sarah being the Director of that program.

11 I believe like Tarah Trueblood has some
12 supervisory duties. Not quite as familiar with some
13 of the -- if the Heffner Museum would have staff
14 associated with that or not or the Houston Galleries.
15 John Green for certain that is director of the Art
16 Museum at Miami would have staff reporting to him.
17 Some of the director titles may have staff, and I
18 believe Kevin Madison, Associate Director of the
19 MA/MAT programs would have some supervisory
20 responsibilities.

21 Q. So safe to say that many of these titles
22 hold -- I'm sorry, many of these titles have
23 supervisory duties, and to the extent that they do,
24 those would be delineated in the Position

1 Descriptions for these titles?

2 A. Yes, it would be safe to say that some of
3 these positions do have supervisory duties and that
4 those are noted in the Position Descriptions.

5 MS. SQUILLANTE: Nothing further.

6 ALJ SPRAGUE: Miss Muskovitz, do you need
7 a minute.

8 MS. MUSKOVITZ: I'm good.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Muskovitz:

12 A. Miss Groom, my name is Susannah
13 Muskovitz. I'm the attorney representing
14 FAM/AAUP/AFT. I have some questions for you today.

15 Are you only over academics or do you
16 have any role at all in either the FOP or AFSCME
17 contract at Miami?

18 A. No, my counterpart Dawn Fahner in the
19 Human Resource Offices is the office that oversees
20 the classified employment at the University which
21 those contracts reside, and those contracts union
22 contracts are in the HR office.

23 Q. So you don't have any role in
24 administering those contracts?

1 A. I do not administer those contracts.
2 There have been times I have been asked to serve as a
3 Hearing Officer when they need a neutral Hearing
4 Officer if there's a grievance or something like that
5 filed by AFSCME.

6 Q. Have you been a Hearing Officer with the
7 AFSCME contract?

8 A. I have served a couple of times over the
9 last six years.

10 Q. So there's two very thick books. I want
11 you to look at book 2 of 3 and turn all the way if
12 you can to 19 which is the AFSCME contract.

13 A. Okay.

14 Q. First of all, go to 18, if you can
15 identify that document.

16 A. So I'm supposed to go to 18, not 19?

17 Q. Start at 18.

18 A. This the Fraternal Order of Police
19 contract. I've not had any involvement, have not
20 ever served as a Hearing Officer or had any
21 involvement with this contract.

22 Q. If you look at 19, this is the AFSCME
23 contract. I want you to turn to Page 5, Article 2,
24 Recognition, and it goes to the bottom of Page 5.

1 You could be a Hearing Officer for employees in any
2 of these multiple job classifications, correct?

3 A. If there is a need for a neutral Hearing
4 Officer, I may be asked to serve as that Hearing
5 Officer, along with our SATS employees who are not
6 unionized. They also have mechanisms or hearings in
7 the policy library, so I have served for both AFSCME
8 and SATS employees.

9 Q. And so it may encompass, for example, a
10 Cook, an Assistant Cook, Senior Cook, correct?

11 A. Those are the titles that do fall under
12 the AFSCME title, yes.

13 Q. Under the same contract, it covers
14 buildings and grounds, many job classifications,
15 correct?

16 A. That is correct, that is one of the
17 titles that is part of the AFSCME contract.

18 Q. Maintenance Repair Specialist, Specialist
19 Senior, Technician Senior, right?

20 A. Correct.

21 Q. These are pretty divergent jobs; would
22 you agree?

23 A. They are hourly positions that have to do
24 with our physical facilities and our housing, dining

1 and guest services employments, so -- but these are
2 the titles that are listed with the Civil Service,
3 yes.

4 Q. And these are pretty divergent jobs;
5 would you agree?

6 A. Well, not all of them diverge from one
7 another.

8 Q. Right. There's about four different
9 kinds of cooks and about six kinds of building and
10 grounds, but those are very different jobs, would you
11 agree?

12 A. I think I would say that I wouldn't agree
13 that across as a blanket statement to all of that,
14 no, but perhaps, yes, some of the duties are
15 different from the some of the other duties.

16 Q. And yet they're covered under a single
17 Collective Bargaining Agreement, correct?

18 A. Yes.

19 Q. And if you look at the Table of Contents,
20 which is on Page 2, 3 and 4, do you see that all of
21 these various sections of this labor contract cover
22 all these various classifications of employees at
23 Miami University?

24 A. I see the Table of Contents, and I see,

1 yes, for the contract.

2 Q. Okay. Let me ask you about Visiting
3 faculty and Instructors at Miami. Do you agree that
4 there are many Visiting Instructors -- Visiting
5 faculty and Instructors at Miami that stay in roles
6 such as TCPL or tenure track?

7 A. So I would say that we have Visiting
8 Assistant Professors and Instructors at the
9 University who have been hired into either a TCPL or
10 and a tenure track role, yes, that is something that
11 has occurred -- does occur.

12 Q. And when that's occurred, either all or
13 most of the time they're in the same department,
14 correct?

15 A. Yes, that's correct.

16 Q. And often teaching the exact same
17 classes?

18 A. I can't really speak to that. The chair
19 assigns the class that is taught by a faculty member.

20 Q. And sometimes serving on the same
21 committees?

22 A. I would say that the -- from the Position
23 Descriptions of the Visiting Assistant Professors and
24 Instructors, their assignments is to teach when we

1 post. It is posted for teaching. We do have some --
2 an area that we no longer hire this way of Visiting
3 Assistant Professors who have a 75 percent teaching
4 appointment and a 25 percent administrative
5 appointment.

6 So I can't -- I'm not involved into the
7 details, though, as to what committees certain
8 faculty are serving on. And a Visiting Assistant
9 Professor in general should be focused on the
10 teaching aspects of the position.

11 Q. Would it surprise you if I tell you we're
12 going to have faculty members testify that Visiting
13 Assistant Professors in their departments do service;
14 do you know that?

15 A. Well, I would say that would -- whether
16 or not they are in one of the 75/25 appointments, I
17 would not be surprised to hear that, but would it
18 surprise me? Yes, based upon the Position
19 Description.

20 Q. And what about the fact that there's many
21 Visiting Professors that do scholarship?

22 A. So I would -- The duties for the
23 University include instruction outside of Heanon
24 Wilkins where there has been a Position Description

1 that does include research as a piece of that. If
2 people engage in research in their own time, then
3 that is, of course, what they do as perfectly....

4 Q. So you're not sure, is that what you're
5 saying?

6 A. I am saying that the Position Description
7 at Miami is for that of instruction and it does not
8 include research.

9 Q. There's a thin white binder in front of
10 you, Book 3 of 3. Would you turn to Tab 24.

11 A. Okay.

12 Q. I'll tell you we put this together, it's
13 just anecdotal, but these are a number of Visiting
14 Professors and Instructors that have been employed
15 for over five years at Miami. Do you have any reason
16 to doubt that?

17 A. No.

18 Q. As Visiting Instructors, not just
19 employed more than five years, but employed as
20 Visiting faculty and Instructors for more than five
21 years.

22 A. I do not doubt that. That is something
23 that you would be hard pressed to find people today
24 where that happens, but there was a period of time

1 where extensions were more commonly granted.

2 Q. Of everyone on this list, they stayed in
3 a role of TCPL, correct? Do you have any reason to
4 doubt that?

5 A. I do not doubt that.

6 Q. You talked about the -- your chart about
7 the number of visitors that return, and I think it
8 was found under your tab 16, correct? I want you to
9 turn in the small white binder to Tab 22, Union 22.

10 Now, the chart at the top, we got -- we
11 got that from your chart, okay, that's the -- if
12 we're looking at 2021, it's a 62.6 percent retention
13 rate, the same number you testified to, correct?

14 A. Correct.

15 Q. Have you had an opportunity to see that
16 we found coding errors in your spreadsheet? Did you
17 have an opportunity --

18 MS. SQUILLANTE: Objection. Foundation.

19 Q. Well, I haven't even asked a question
20 yet. Have had an opportunity to see where we
21 identified coding errors in your spreadsheet?

22 A. I had an opportunity to look at what you
23 identified as coding errors, but I believe that you
24 have misidentified them as coding errors. I do not

1 believe they are coding errors.

2 Q. Okay. The numbers don't change a lot,
3 but if you look at the identified Union Exhibit 23,
4 tell me what you would dispute that we have marked as
5 coding errors if you can.

6 A. Sure. I'm happy to do that. You have
7 two people highlighted in orange that you have
8 indicated I missed. Those two faculty members were,
9 in fact, Senior Instructors which is a tenurable rank
10 at Miami, and therefore, they were not Visiting
11 faculty, they're tenurable faculty.

12 Q. Say it again.

13 A. The highlighted in orange.

14 Q. Just give me a page number.

15 A. Well, sure. It's row 17, Tammy Allen,
16 and the other person was Michel Pactat.

17 Q. Tammy Allen on Page 17, right?

18 ALJ SPRAGUE: Well, line 17.

19 Q. Page 17?

20 A. Line 17, row 17, Page 1 of 36.

21 Q. And you're telling me what is the issue
22 with --

23 A. And then row --

24 Q. One at a time, what about Tammy Allen?

1 A. She was a Senior Instructor before she
2 retired. Senior Instructor is a tenurable title at
3 the University, and if you look in the policy
4 library, it is a title that is rarely used and more
5 of a grandfathered situation, but when you look at
6 the definitions of faculty, you will see that Senior
7 Instructor is tenured.

8 Q. So you're saying she -- because this was
9 a name on your spreadsheet, correct?

10 A. No, the orange were ones you said I
11 missed and you added.

12 Q. So you're saying she should not have been
13 there, correct?

14 A. She was not on my list, nor should she be
15 on your list.

16 Q. What else do you dispute?

17 A. Michel Pactat was the other person that
18 you had in orange, and that was on Page 24 of 36, row
19 47.

20 Q. And tell me about this faculty member.

21 A. He is a Senior Instructor.

22 ALJ SPRAGUE: I'm sorry, it's Page 20....

23 THE WITNESS: 24.

24 Q. It's No. 407. See, there's numbers on

1 the left side. That's the easiest way to find it.

2 So you're saying this is also a Senior Instructor?

3 A. That is correct.

4 Q. Okay.

5 A. Those were your two oranges.

6 Q. Right. So out of the 615.

7 A. So the red highlighted that you
8 classified as errors, so I think we talked earlier
9 about faculty, when they --

10 ALJ SPRAGUE: I'm sorry, again, that was
11 Pactat?

12 THE WITNESS: Pactat, yes, correct.

13 ALJ SPRAGUE: That's the same situation?

14 THE WITNESS: Yes.

15 Q. (By Ms. Muskovitz) So let me ask you
16 about the retained as faculty. These are all of the
17 light orange retained as faculty people that were
18 visitors but they came back either in a TCPL role or
19 a tenure track role. You did not count them; is that
20 accurate?

21 A. That is correct. I guess you don't want
22 me to talk about the red errors first? I was
23 starting to talk about those.

24 Q. Because I thought you went to -- I don't

1 know how you define red.

2 A. Pink? Perhaps that's a pink shade to
3 you, the ones you removed. But if you want to talk
4 about -- Which color were you talking about, the
5 yellow or the green?

6 Q. These are relatively small numbers. I
7 think there's one under 34?

8 A. There was more than one. If we're okay
9 to talk about the pink or the red or did you want to
10 talk --

11 Q. I want to move it along. I will tell you
12 if you look at our chart, the numbers -- the changes
13 in the coding errors are under 1 percent. So let's
14 go to what has been identified as the orange because
15 that's a more substantive change. So with the ones
16 that are sort of not really orange, maybe sort of a
17 peach, you excluded -- I'm sorry?

18 ALJ SPRAGUE: At least to me, that seems
19 orange, like Tammy Allen, right?

20 MS. MUSKOVITZ: So a peach color. I'm
21 looking at -- Mr. Hearing Officer, just so you know,
22 the numbers that we identified as coding errors are
23 really under one percent, so I don't want to spend a
24 lot of time on those, but the other ones are much

1 more substantive.

2 A. I would like an opportunity to speak
3 about why I have the people on the list, and you've
4 identified them as errors and I don't believe they
5 are.

6 Q. You can do that on redirect. If you look
7 at -- Let me direct you back to 22. Do you see Union
8 22?

9 A. Union 22, okay. We're not talking --
10 okay.

11 Q. So from the Employer chart to what we
12 identified as errors in each year, the distinction is
13 under 1 percent, correct, in either direction?

14 A. That's -- You're telling me that. I
15 don't think that's a question for me.

16 Q. I'm just trying to not be here all day.
17 If you look at, for example, the difference between
18 70.0 and 71.4 percent, that's under a percent,
19 correct?

20 A. Correct.

21 ALJ SPRAGUE: Where are we?

22 MS. MUSKOVITZ: We're just trying to be
23 transparent. We found --

24 ALJ SPRAGUE: That's fine. I just want

1 to know where we are, Miss Muskovitz. So you're on
2 this last column --

3 Q. If you look at Union Exhibit 2, we
4 identify that we consider to be coding errors. We'll
5 have some testimony as to why, but my point is that
6 it doesn't matter, it's under 1 percent. I want to
7 get to the issue of Visiting faculty that come back
8 either as TCPL faculty or as tenure track faculty.
9 If you know, they're in the same department, correct?

10 A. I would find that to be logical that they
11 would likely be in the same department, yes.

12 Q. If you know, they're teaching the same
13 classes, correct, if you know?

14 A. I don't know.

15 Q. Do you know if they're doing the same --

16 A. They're not always....

17 Q. Do you know if they're doing the same
18 service?

19 A. As a VAP or Instructor, it would surprise
20 me I said if I found out they were being assigned
21 formal service. As a TCPL, I would expect them to be
22 assigned service, so that would....

23 Q. You testified about a letter that comes
24 out on February 15th each year.

1 A. Yes.

2 Q. Tell me if I'm wrong, my understanding
3 was that every VAP gets a letter on February 15th.

4 A. Yes, Visiting Assistant Professors and
5 Instructors receive a February 15th letter to remind
6 them that they are in a one-year contract and that
7 while they could be reappointed, there is no
8 expectation of reappointment.

9 Q. And that goes out to every single
10 Instructor as well, correct?

11 A. The Visiting Assistant Professors, the
12 Instructors, it also goes out to faculty who were
13 either denied or withdrew from tenure who are in a
14 teach-out year.

15 Q. So they're in what we call a terminal
16 year?

17 A. Yes.

18 Q. Okay. So if everybody gets a letter on
19 February 15th that's classified as either a Visitor
20 or Instructor, how do you get your benchmark from the
21 February 15th letters that you identified in your
22 chart?

23 A. If you get a February 15th letter in
24 consecutive years and you've returned, that year in

1 order to get a February 15th letter, you need to have
2 returned in that capacity. I did some other reviews
3 and checks as well.

4 Q. So looking back at your chart which is on
5 Employer 16.

6 A. My chart, yes.

7 Q. You said that the second row you got from
8 looking at the February 15th letters?

9 A. That was the starting point of my file,
10 correct.

11 Q. But now you're telling me that every
12 single person gets a February 15th letter?

13 A. Yes.

14 Q. So what does that -- How do you -- If
15 every single person gets a February 15th letter, how
16 does that letter factor into a calculation?

17 A. So I tracked the years in which the
18 individual received a February 15th letter, and then
19 I rolled that data up into tracking that person then
20 across did you get a letter this year, did you get a
21 letter the next year, then yes, we returned you. We
22 had to return you in order for you to receive a
23 letter. If you did not receive a letter, you aren't
24 here to get one or you have moved on to another role

1 at Miami University.

2 Q. So every single Visiting faculty member
3 and Instructor at Miami in February of 2022 received
4 a letter that says, "By the way, I want to remind you
5 you're on a one-year contract"?

6 A. Here's a friendly reminder, yes.

7 Q. You call it a friendly reminder. I'm not
8 sure they see it that way. Then how would you track
9 the fall of '22 if February hasn't happened yet?

10 A. For follow-up '22, I took a look at who
11 received pay in September, as well as -- So I also
12 did a second check by writing a sequel query and
13 pulling out people who have that classification of
14 Visiting Assistant Professor or Instructor, so I
15 double checked my fall numbers.

16 Q. And you excluded anybody that was
17 retained in another faculty capacity?

18 A. Yes, I did so because I think the ORC
19 definition says retained in the same capacity. So if
20 I was a Visiting Assistant Professor and I came back
21 as something else, I've been retained at the
22 University but I'm no longer a Visiting Assistant
23 Professor or Instructor, so I did not include them in
24 the University retention numbers for Visiting

1 Assistant faculty.

2 Q. Let me ask you about the dual appointment
3 issue. Are you aware that there's at least three
4 other labor contracts in Ohio that uses a similar
5 definition of either 50 percent or in one case
6 65 percent of responsibilities are teaching service
7 and scholarship?

8 A. No, I'm not aware of that.

9 Q. Do you know that no matter what happens
10 through this hearing, if the union is successful,
11 chairs will be excluded, correct, from the Bargaining
12 Unit?

13 A. I am aware that chairs are considered
14 management, yes.

15 Q. And are you aware that sometimes somebody
16 might gain a chair position and somebody else might
17 add a chair position and go back to faculty, so that
18 people will sometimes come in and out of the
19 Bargaining Unit?

20 A. Yes, I'm aware that we have faculty who
21 have been chair and then they return to faculty. We
22 have deans who have been deans who have referred to
23 faculty.

24 Q. So, for example, if the faculty were

1 organized and there was a dean that lost his or her
2 appointment and returned to faculty, they would enter
3 the Bargaining Unit, correct?

4 A. Use of the word lost is interesting.
5 Sometimes it's, you know, it's they --

6 Q. Gave up. I don't mean that in a
7 disparaging way. They no longer retained their
8 administrative appointment?

9 A. Tenured faculty who move into
10 administrative appointments have what we call faculty
11 retreat rights which means if they decide they no
12 longer want to continue in an administrative role,
13 then they are able to return to the classroom and
14 teach because of that tenure that they hold in that
15 department.

16 Q. You're not a faculty appointment,
17 correct?

18 A. That is correct. I am a staff
19 appointment.

20 Q. But you've never been faculty at Miami?

21 A. No, I've never been a faculty at Miami.

22 Q. Most of the administrators -- I should
23 say all of the administrators, the academic
24 administrators, have faculty rank, I'm guessing but I

1 think that's pretty normal?

2 A. Not all of the administrators. Do you
3 consider me an administrator?

4 Q. That's a fair question. So generally
5 speaking, chairs, deans, provosts, they have faculty
6 appointments, correct?

7 A. A title like Associate Provost or
8 Associate Dean would indicate that they have a
9 faculty retreat right of appointment.

10 Q. And an Assistant would not?

11 A. Assistant Deans, Assistant Provosts do
12 not. Associate Vice President may or may not
13 depending upon -- We have tenured administrators who
14 also serve in nonacademic affairs. Like Christine
15 Alcalde is Vice President for Diversity, Equity and
16 Inclusion, and that is not -- that's within the
17 President's Office instead of Academic Affairs.
18 She's a tenured faculty member.

19 Q. So if you don't know the answer to this,
20 I want you to just let me know you don't know. If we
21 have a Bargaining Unit that includes people who have
22 50 percent or more work doing teaching, research
23 and/or service, do you know -- it is possible that
24 people might come in or out of the Bargaining Unit

1 based on what they're doing in any given academic
2 year; do you know that?

3 A. Depending on that contract that is
4 negotiated, I would said yes, it's possible. I agree
5 chairs sometimes return into full-time faculty
6 appointments, absolutely.

7 Q. And the same would hold with the language
8 that would include individuals where 50 percent or at
9 least half their work is doing teaching or service or
10 scholarship or some combination, correct? They might
11 come in and out depending on what they're doing that
12 year, what their assignments are that year; do you
13 understand that?

14 A. Within faculty appointment types, I would
15 say yes. It's somewhat -- I would think over a
16 period of time, we might have to define a little
17 better what you define as instruction or what we
18 agree upon what is defined as instruction, what
19 defines as research, if qualifies for such a thing.

20 Q. So do you know when FAM gave the
21 administration of list of people that might fall
22 within that category, we were not looking for those
23 individuals but for the concept of people that at
24 least half of their work is what's really faculty

1 work should be covered by a labor contract and that
2 those cases would be viewed individually; are you
3 aware of that?

4 A. It was not worded in such a way that I
5 understood that, no.

6 Q. You also talked about supervision. I
7 think you talked about one person who does have a
8 faculty appointment in English who supervises another
9 faculty member, correct?

10 A. Supervises the administrative portion of
11 that faculty member's work.

12 Q. What does that mean? That's not their
13 faculty work, that's not their teaching, their
14 service or their scholarship, is it?

15 A. I believe that administrative work is
16 considered that person's service, but I am -- that's
17 my opinion as -- If someone who knows more, I'm open
18 to hearing a different explanation if that is, in
19 fact, not correct.

20 Q. So does the faculty member have a chair?

21 A. Yes. Actually both of those faculty
22 members have a chair.

23 Q. And who is the person who reviews their
24 annual Faculty Activity Report?

1 A. The chair reviews the Faculty Activity
2 Report along with in the case of Dr. Wardle, I
3 believe Associate Provost Carolyn Haynes provides
4 supplementary information about the administrative
5 work that Dr. Wardle is engaged in and Dr. Wardle
6 would provide additional information to Dr. Detloff
7 about Dr. Hutton.

8 Q. So by title, who are those people because
9 I don't think the Hearing Officer knows who's the
10 chair.

11 A. So the chair of the English Department is
12 Madeline Detloff, so she would be supervising. She's
13 responsible for --

14 ALJ SPRAGUE: Can you spell that for the
15 record.

16 A. Detloff is D-E-T-L-O-F-F. As the chair
17 of the English Department, then she is the person who
18 assigns the courses that are taught by those faculty
19 members and reviews their annual reports, but she
20 does with the supplementary information because the
21 administrative work in those instances are being
22 performed outside of the department with other
23 supervisors.

24 Q. So the faculty work is still being

1 supervised through -- I mean, the Faculty Activity
2 Report, the part that deals with the faculty work
3 goes up to the faculty chair, the departmental chair,
4 correct?

5 A. Correct. And there's absolutely no
6 question here that Dr. Wardle is classified as a
7 faculty member and, in fact, has been included on the
8 lists that has been previously provided as a faculty
9 member.

10 Q. So that's one out of 25 names, correct?

11 A. That's one out of 25, yes.

12 Q. So it's your understanding -- I mean,
13 obviously it's not your final decision that that
14 person would be a faculty member even though they
15 have administrative responsibilities for half their
16 work, correct?

17 A. That is correct. So that is correct.
18 The only question is whether or not Dr. Wardle should
19 be considered management or not, that's the only
20 question. That's absolutely a nine-month faculty
21 appointment and is classified as faculty as the
22 primary classification at the University.

23 Q. Do you know there's VAPs that also have
24 half teaching responsibility and half director

1 responsibilities?

2 A. I believe there is. I can think of one
3 who is in a 50/50. There are some that are in a
4 75/25, for example. That's a practice we no longer
5 engage in at the University, but there was a
6 grandfathering in of the employees who were already
7 in those appointment types.

8 Q. How many people are in the 75/25?

9 A. Total between whatever those FTEs between
10 the .5 and .75, I think there's 13 remaining. Those
11 people were included on the list provided to SERB
12 because their primary classification is faculty. We
13 already recognize that their primary job duties are
14 considered within that faculty realm.

15 Q. If there was a dispute, that 50 percent
16 language would encompass those positions?

17 A. Yes, they have already been included.

18 Q. Actually I will tell you what's included
19 is not who the University wants to include, it's who
20 was on our list; do you know that?

21 A. Yes, I am aware of that. What was
22 provided to SERB was what you requested.

23 Q. So that would encompass people that fall
24 within that 50 percent language, correct?

1 A. Yes, that is correct.

2 Q. And those 75/25 percent people I believe
3 primarily are classified as Visiting faculty that
4 have been here for well over five years?

5 A. That is correct. At the .8 FTE split is
6 where you become subject to the five-year cap.

7 Q. At .8. Is that in the rules?

8 A. There is a policy that does define .8 as
9 the considered full time ongoing, a .8 faculty
10 appointment, so these people fall below that .8.

11 Q. As long as the administration gives them
12 .25 responsibility on a program, they can kind them
13 indefinitely.

14 A. As long as the person is in an
15 appointment that is less than that designation.

16 Q. That's an internal rule to Miami
17 University; is it not?

18 A. Yes, that is an internal rule.

19 ALJ SPRAGUE: Can you run that by me
20 again? So if you're working .25 as a what you can
21 stay?

22 THE WITNESS: An administrative
23 appointment. So the people in the split appointments
24 who are classified as faculty, the list we reviewed

1 earlier, those people they are not actually in split
2 appointments. They are in what is a 1 FTE for staff
3 appointment. We have some faculty who are in a split
4 appointment of .75/.25, so they are --

5 ALJ SPRAGUE: And these are the ones
6 grandfathered in?

7 THE WITNESS: And they are grandfathered
8 in, that's correct.

9 ALJ SPRAGUE: 15 -- or I guess 12, take
10 the one out.

11 THE WITNESS: Yes. So their primary
12 classification is faculty, but 25 percent of their
13 work is administrative work, and that enables them to
14 continue on past the five years.

15 ALJ SPRAGUE: Okay.

16 MS. MUSKOVITZ: So from our point, just
17 so you know, the language that we're looking for
18 isn't to encompass any individual by name. We're not
19 here in this hearing for that reason, but just the
20 concept if at least half your job is faculty work,
21 you should be in; otherwise, you're out.

22 So there are people that are -- we have
23 no control over how the administration classifies a
24 person. It really goes down to what they do. So

1 time that we changed away from that practice, we
2 did -- they were retained. And so as they exit the
3 University, then they're not replaced in a like
4 appointment. The department has to determine how
5 they want to move forward.

6 Q. Relatedly, folks that we hire or that we
7 offer a contract to as Visiting faculty today, would
8 they be permitted to stay longer than five years as
9 Visiting faculty?

10 A. So there was a time period when the
11 Provost could grant -- the Provost can grant an
12 exception to the five years. There was a time period
13 where the TCPL cap being raised. It took a couple of
14 years to work its way through Senate which is why the
15 list that we reviewed, if you notice the time period
16 and the dates in there kind of coincide with that
17 policy was working its way through Senate, so more
18 expectations were granted than is typical. Any
19 exception now would have to be for extenuating
20 circumstances and is unusual.

21 Q. Ruth, you had started going through the
22 Union's Exhibit 23 which is their -- I'll call it
23 their response to this spreadsheet that we had
24 produced that goes faculty member to faculty member.

1 A. Yes.

2 Q. If you could, Ruth, walk us through the
3 other highlighted rows, if you would, and respond to
4 each of those.

5 A. So in the interest of time, could we talk
6 about them as color buckets if we can agree on what
7 color they are?

8 Q. Absolutely. When you select the color --

9 MS. MUSKOVITZ: I would say peach, pink
10 orange and green, how's that?

11 A. Let's go with peach because the very
12 first person is in peach. I would agree -- I don't
13 believe I have coded them incorrectly. My exercise
14 was in whether or not the person returned as either a
15 VAP or Instructor the following year.

16 So if the person did apply for a posting
17 for a TCPL or tenure track and get hired into that
18 role, I'm very happy for them, but they did not
19 return as a VAP, so they were not retained in that
20 same category. I think that comes down to the
21 definition that I used.

22 MS. MUSKOVITZ: Mr. Hearing Officer, we
23 do not consider those coding errors. Those are not
24 coding errors.

1 A. Oh, okay. So those are the peach.

2 The green, when I looked at who was
3 highlighted for that, I think that is a function of
4 we do have some calendar year appointments, and those
5 are challenging in how to categorize them, but I
6 think we have already talked about the academic year
7 which runs from the week before classes start through
8 the spring graduation, but occasionally we are hired
9 to hire VAPs on a calendar basis which means they
10 bridge two calendar years.

11 And so I have noted like Natasha Beranek
12 is a calendar year appointment. What that means is,
13 when the IPEDS numbers were recorded in the fall, she
14 was not included in those numbers. She would be in
15 the next -- the fall of '20 IPEDS number, and she
16 would be a new person reported IPEDS then, so that is
17 why I did not categorize her as returned.

18 She's still in her original appointment
19 year which is a calendar year. So that was five or
20 six of those people and that is why I categorized
21 them as such. Sorry, as I was going through this, I
22 think that accounts for all of the green.

23 Other than row 403, something happened to
24 the name there that I think was somebody whose last

1 name was O'Reilly, but I'm not sure what happened.
2 The words got replaced on her name. There was no --
3 But I understand it would be hard to track who that
4 person was given the fact that the name got replaced
5 out of there. I wasn't really sure why 472 was
6 highlighted in green but that was saved. I didn't
7 really know on that one.

8 Then as the errors for the removed, I
9 started to explain about when someone either
10 withdraws from tenure or denied tenure, they get the
11 teach-out year. In that teach-out year, they are
12 reported to IPEDS as a VAP because they are no longer
13 in a permanent appointment. They're in their last
14 year. As a courtesy, they retain the title that they
15 had at the time they withdrew or were denied tenure.

16 So if someone saw that title in a list,
17 they might think it represented someone who was
18 tenured or tenure eligible, but for those
19 individuals, they were actually temporary for that
20 year because they were in their final year of
21 appointment, and those were the red.

22 Q. Any other issues, Ruth?

23 A. No, I just -- No, thank you for the
24 opportunity to explain the methodology a little bit

1 more.

2 Q. You talked a little bit with
3 Miss Muskovitz about the notion of a member of
4 Visiting faculty returning for the following academic
5 year as either TCPL or tenured or tenure track. Is
6 it fair to say, Ruth, that's a minority of Visiting
7 faculty in any given year who would return in a
8 capacity other than Visiting faculty?

9 A. It is a minority when you look at the
10 overall percentage of Visiting faculty/Instructors at
11 the institution. There are limited postings for
12 tenure track and TCPLs. So not everyone who was
13 hired as a VAP or Instructor is able to obtain a TCPL
14 or a tenure track position.

15 Q. You also spoke a little bit, Ruth, about
16 Dr. Wardle and her appointment at the University. Do
17 you know what percentage of her appointment or what
18 percentage of the time she spends on administrative
19 duties?

20 A. She's officially classified as 50 percent
21 administrative, and so she has some course releases
22 that are also built in there that may -- she may be
23 more than 50 percent administrative, but it's through
24 her faculty appointment. And so at that point, like

1 I would still consider her -- She's still doing that
2 faculty work, whether it's teaching or not.

3 MS. SQUILLANTE: Nothing further, your
4 Honor.

5 - - -

6 RE-CROSS-EXAMINATION

7 By Ms. Muskovitz:

8 Q. If somebody is in a terminal year,
9 they're a tenure track faculty member, they don't get
10 tenure, they're in a terminal year, you're including
11 them as a VAP that's non-renewed?

12 A. They are reported that way to IPEDS, so
13 that is technically what their classification is for
14 that year. The numbers, I think was it your exhibit
15 what your numbers were, you had initially submitted
16 an exhibit where you reported them in your base
17 numbers. They aligned with the IPEDS numbers. So I
18 used the numbers that you were using for the
19 denominator and then you changed your denominator in
20 a exhibit, so....

21 Q. Okay. I'm not sure what the answer was
22 to my question. My question was is that a yes or no?

23 A. Yes, they get February 15th letters and
24 they are a VAP for that year.

1 Q. So if somebody's really a tenure track
2 person, they're in their terminal year, you're
3 counting them as a VAP that's not returning?

4 A. Well, they're no longer tenure track
5 because they withdrew from the tenure track position
6 or were denied the tenured position.

7 Q. And somebody that's in a TCPL position,
8 which is who's denied a promotion that's in their
9 terminal year, they're also reported as a VAP?

10 A. That's an interesting question. I don't
11 believe we've yet to encounter that because of the
12 policy change for the up and outs. I don't think
13 we've yet hit that four year mark of someone who's
14 not yet gone through that.

15 TCPL is already a non-tenure eligible
16 position, but -- and they can -- and because they
17 have that provision where they can go up again in the
18 fifth year, we would have to discuss the best data
19 reporting practices, but it might be that they would
20 be left as TCPL, I can't -- that's really a decision
21 for our Office of Institutional Research and looking
22 at the definitions that IPEDS requires them to report
23 things as.

24 Q. And the ones that were categorized in

1 pink you said were the tenure track people who were
 2 reported as Visiting faculty because they're in a
 3 terminal year?

4 A. That was when I looked at what you had
 5 marked and read that's what they appeared to be other
 6 than Meredith Smith who I had duplicated her row.

7 MS. MUSKOVITZ: Okay. No further
 8 questions.

9 ALJ SPRAGUE: All right. Miss Groom,
 10 thank you very much. We'll go off the record.

11 (Off the record.)

12 ALJ SPRAGUE: We're back on the record.
 13 Miss Mullenix has taken the stand. Miss Mullenix,
 14 I'll need to swear you in. At this time, please
 15 raise your right hand.

16 (Witness placed under oath.)

17 ALJ SPRAGUE: Please state your full name
 18 for the record.

19 THE WITNESS: Elizabeth Mullenix.

20 ALJ SPRAGUE: And spell the last name.

21 THE WITNESS: M-U-L-L-E-N-I-X.

22 - - -

23 ELIZABETH MULLENIX, Ph.D

24 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 By Ms. Day:

4 Q. Liz, may I call you Liz today?

5 A. Yes.

6 Q. Please tell us your current title.

7 A. My current title is Interim Provost, and
8 I am also a Professor of Theater.

9 Q. How long have you been in the Interim
10 Provost position?

11 A. Since July 1st of 2022.

12 Q. Prior to -- actually, strike that. How
13 long in total have you been at Miami University?

14 A. This is my 17th year at Miami. I was a
15 Department Chair for seven years, and then I was a
16 Dean for nine years. Then I stepped into this
17 interim Provost role.

18 Q. Just making sure I have the chronology
19 correct. Your first role at Miami was a Department
20 Chair, then you were a Dean and now you're Interim
21 Provost?

22 A. Correct.

23 Q. Do you have previous education in
24 education?

1 A. I spent the first 11 years at Illinois
2 State University, and there I was an Associate Chair,
3 as well as an Associate Dean and a Director of
4 Graduate Studies. So I have been an administrator
5 for the -- my whole career, 27 years.

6 Q. As Interim Provost, describe your general
7 job duties and responsibilities.

8 A. So the Provost is the Chief Academic
9 Officer. And as the Chief Academic Officer, it is my
10 job to support and advocate for the faculty and staff
11 in Academic Affairs. I work with the deans to
12 administer all sort of operations relative to
13 Academic Affairs. That includes policy, oversight
14 over curriculum, hiring, promotion and tenure,
15 et cetera, and I am also the Fiscal Manager of the --
16 I have fiscal responsibility over the -- over
17 Academic Affairs.

18 Q. So you mentioned promotion and tenure,
19 you mentioned hiring. Do you have any other job
20 duties specifically related to the terms and
21 conditions of employment for faculty?

22 A. Everything that sort of, yes, relates to
23 the sort of the faculty experience, yeah. Yes. I'm
24 working with the deans and the department chairs,

1 absolutely.

2 Q. Would that include discipline and
3 discharge as well?

4 A. Yes, absolutely.

5 Q. You had nine years as Dean, correct?

6 A. Uh-huh.

7 Q. How do your duties as a Dean relate to
8 the terms and conditions of employment for faculty?

9 A. So as a dean, you are working with the
10 department chairs and you are -- you are overseeing
11 sort of policies, protocols, curriculum sort of at a
12 college level and working to sort of also translate
13 those University-wide policies into your sort of
14 locally level, but, yeah, similar kinds of
15 jurisdiction over promotion and tenure. The Dean has
16 to approve hiring, searches, all that kind of stuff.

17 Q. How would you say your experience as a
18 Dean prepared you for your current role as Interim
19 Provost?

20 A. I think being a Dean is the best
21 preparation for being a Provost. You have a
22 really -- you have sort of an excellent I think
23 command of the way that Academic Affairs works. You
24 understand what -- You have spent a lot of time sort

1 of with faculty and understand their role, and I
2 certainly as a department chair, I worked very
3 closely with the faculty too. So it gives you a lot
4 of experience in all sort of aspects of faculty and
5 staff in Academic Affairs, classified and
6 unclassified, because they all are part of the
7 employment, yeah, mix.

8 Q. Here the Employee Organization is
9 proposing a single Bargaining Unit to include five
10 groups of employees: Tenure, tenure track, TCPLs,
11 VAPs, librarians and then people who hold multiple
12 appointments. Do you anticipate difficulties for
13 administration at Miami University if all are
14 represented together to bargain over the terms and
15 conditions of employment?

16 A. I do think that different types of
17 faculty have different -- have unique interests, and
18 so like Dana, I would have a concern that there would
19 be -- yeah, that some of those interests might come
20 into conflict with each other as -- in the best
21 interests of faculty.

22 Q. Can you give us some examples of those
23 unique interests that may conflict between these
24 groups of people?

1 A. So previously leaves were talked about,
2 for example, for TCPL faculty. I am totally
3 supportive of that as a concept; however, leaves are
4 competitive. There's limited personnel dollars in a
5 single year, and so a reduced teaching load for one
6 group is definitely going to result in a higher
7 teaching load for another group, and so that could
8 be -- I imagine that could potentially be a conflict.

9 Q. Typical in labor negotiations is the need
10 to address layoff or retrenchment. Do you have any
11 concerns there with these groups being combined in
12 one Bargaining Unit?

13 A. Yeah, I definitely think that everybody's
14 going to hope they don't go first in a situation like
15 that. So I think, yeah, I would fear there would be
16 a group that would be unfairly disadvantaged in that
17 type of situation. Currently at Miami we don't have
18 any policy relative to retrenchment, and I understand
19 that's a part of the union contract.

20 Q. Do you have any concerns about conflict
21 among the groups regarding workload?

22 A. Yeah, I mean, faculty -- I mean, as a
23 faculty member, I always wanted a smaller workload,
24 right, I think all faculty hope to have a lighter

1 teaching load, but there are just limited resources
2 in terms of personnel dollars. And where one is
3 going to teach less, one is going to have to teach
4 more. So yes, as Dana stated before, the workload is
5 different for different types of faculty members
6 based on their Position Description.

7 Q. What's your understanding of workload for
8 librarians?

9 A. I really don't have -- That is really --
10 Jerome is really the expert there. I don't really --
11 Certainly they're not sort of in a typical teaching
12 role.

13 Q. You advocate that these groups should not
14 be combined for bargaining. Is your interest here to
15 divide faculty?

16 A. Oh, no, no, no, no, no. I would never
17 divide the faculty, no. My concern is that the
18 interests of the faculty are unique in certain ways
19 and that that -- that we really need to think about
20 everybody's unique needs.

21 MS. DAY: No further questions.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Muskovitz:

1 Q. Dr. Mullenix, my name is Susannah
2 Muskovitz. I represent the FAM/AAUP/AFT, and what
3 I'm hearing is you think it's important that TCPL
4 have clout over being able to bargain their working
5 condition; is that right?

6 A. I think that every faculty member should
7 be dealt with and supported as best we possibly can.

8 Q. You think that tenured and tenure track
9 faculty should have some clout over negotiating their
10 working conditions?

11 A. All faculty.

12 Q. You're telling me that putting people
13 into five different silos is better than letting them
14 have one voice?

15 A. Well, that one voice might come into
16 conflict if they have separate interests.

17 Q. You don't think having five silos would
18 create an even greater conflict?

19 A. I don't think we know if five silos would
20 exist, right. That's -- I mean, that is something
21 that we don't know. That is an unknown.

22 Q. So you're hoping that the union would
23 have fewer members if you can divide?

24 A. I think that the unique interests of each

1 would be best served if they were not all in one
2 Collective Bargaining Unit.

3 Q. Have you looked at any of the 14 labor
4 contracts that cover higher ed in Ohio in the public
5 sector?

6 A. These came in on Friday night, and I have
7 not had a chance to look at them all, no.

8 Q. Have you talked to any of the equivalent
9 positions at any of the other ten universities that
10 have unionized faculty about how they're able to
11 negotiate labor contracts that cover various
12 positions?

13 A. I have not.

14 Q. Do you understand that the will of the
15 faculty is an appropriate factor of consideration?

16 A. I don't think it's the will of all
17 faculty.

18 Q. And who are you speaking for?

19 A. I'm speaking for a lot of faculty at
20 Miami who don't want to have a union, but I don't
21 think we're here to talk about that today. I think
22 we're here to talk about what we feel is the
23 Collective Bargaining Unit.

24 Q. So it's your position that you're trying

1 to protect faculty that don't want to be organized
2 under the FAM?

3 A. I as the Provost care about all faculty,
4 and it is my job to support them all and advocate for
5 them all, and that doesn't change. It's not
6 different today and it wouldn't be different a year
7 from now.

8 Q. So, for example, you talked about
9 retrenchment but you said there is no retrenchment
10 policy at Miami University?

11 A. Not that I'm aware of. I've only been in
12 this role for a few months.

13 Q. You know that retrenchment is one of the
14 issues that could be negotiated, it doesn't have to
15 be, but could be negotiated into a Collective
16 Bargaining Agreement?

17 A. Yes.

18 Q. And do you agree in that situation that
19 all of these interests could be considered by both
20 bargaining committees, the union and the management,
21 right?

22 A. I do not know.

23 Q. Do you know that Collective Bargaining
24 Agreements always have two parties, the employer and

1 the union?

2 A. I will take your word for it.

3 Q. Have you ever been involved in collective
4 bargaining?

5 A. I have not.

6 Q. So you really don't know anything about
7 collective bargaining? I don't mean this in an
8 offensive way. You have no experience with
9 collective bargaining anywhere?

10 A. The two universities I have been employed
11 at throughout my academic career have both been
12 nonunion campuses.

13 Q. So you really have no experience with
14 what a unionized faculty might look like?

15 A. I do not.

16 Q. And you haven't reviewed a single
17 Collective Bargaining Agreement at an Ohio
18 university?

19 A. Not thoroughly, no.

20 Q. And do you know that the overwhelming
21 majority include both tenure, tenure track and
22 non-tenure eligible employees together?

23 A. I have heard you say that today.

24 Q. Okay. And that the majority also include

1 librarians?

2 MS. DAY: Objection. Speculation.

3 MS. MUSKOVITZ: If she knows.

4 A. I don't know.

5 Q. And what about Visiting faculty?

6 MS. DAY: Objection. Speculation, lack
7 of foundation.

8 A. I do not know. I'm sorry, I did not have
9 time to read all that over the weekend. I had a
10 family emergency, and that is what I was dealing
11 with.

12 Q. But do you know that every single one of
13 those labor contracts is publicly available on the
14 SERB website, if you know?

15 A. I didn't know that.

16 MS. MUSKOVITZ: No further questions.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Day:

20 Q. Liz, you just testified that you don't
21 have any experience with Collective Bargaining
22 Agreements, being part of one or negotiating one?

23 A. That is correct, yeah, but I have a lot
24 of experience as an administrator.

1 Q. I was going to ask you why do you -- what
2 is your basis for believing that having all five
3 groups in one single Bargaining Unit would be
4 inappropriate.

5 A. I mean, in my experience as an
6 administrator I have worked with a lot of different
7 types of faculty, and I think there are some -- while
8 there are things that are similar, there are also a
9 lot of things that are unique. And I would hope that
10 we would work as hard as we could to support all
11 faculty and relative to all their unique interests.

12 MS. DAY: No further questions.

13 MS. MUSKOVITZ: No recross.

14 ALJ SPRAGUE: Okay, it's a little after
15 five, so I would also say let's go off for now.

16 (Off the record.)

17 ALJ SPRAGUE: We're back on.

18 MS. DAY: The University rests subject to
19 any rebuttal testimony.

20 ALJ SPRAGUE: Okay, thank you.

21 And moving on, AAUP has called Mr. McNay.
22 Professor, I'll swear you in at this time. Raise
23 your right hand.

24 (Witness placed under oath.)

1 ALJ SPRAGUE: State your full name for
2 the record spelling your last name.

3 THE WITNESS: M-C-N-A-Y, John McNay.

4 MS. MUSKOVITZ: And Hearing Officer
5 Sprague, I have in two binders 14 Collective
6 Bargaining Agreements that I obtained off the SERB
7 website which I believe to be self-authenticating.
8 And so my question is before I go through those
9 contracts with this witness, will they be admissible
10 as self-authenticated?

11 ALJ SPRAGUE: Well, I'll ask you this,
12 and I'm sure the universities are better about this
13 than some of our appointing authorities, but are they
14 all the current contracts?

15 MS. MUSKOVITZ: They are the most current
16 that they are currently on the SERB website and
17 so....

18 MS. DAY: I don't believe all of them are
19 currently binding.

20 MS. MUSKOVITZ: They are because I can
21 tell you from experience there are times when I
22 negotiate Collective Bargaining Agreements and by the
23 time they get printed and signed and posted, it could
24 be two years, three years sometimes.

1 ALJ SPRAGUE: I understand.

2 MS. MUSKOVITZ: I've negotiated contracts
3 where it's a month before we're back at the table.

4 ALJ SPRAGUE: I know there are factors
5 that aren't entirely at the control of the parties
6 that don't always facilitate rapid transmission of
7 those things. Oh, well. You have no reason to think
8 that they're not?

9 MS. DAY: I think we would object to the
10 effect that some of these CBAs are not currently in
11 effect. Some of them expired in August of 2021, June
12 of 2022, June of 2022, so not all of them are even
13 currently in effect.

14 ALJ SPRAGUE: Are they currently
15 being....

16 MS. MUSKOVITZ: Right. That doesn't mean
17 they're not in effect.

18 MS. DAY: But do we have any testimony to
19 support that?

20 MS. MUSKOVITZ: Well, my point is that
21 when a contract expires, it may take some time. I
22 can certainly go through this with Dr. McNay, but it
23 takes some time to renegotiate contracts. So I will
24 represent that I obtained these off of SERB's

1 publicly available list of contracts, and they are
2 the most current contracts available from SERB.

3 ALJ SPRAGUE: Okay, Miss Muskovitz, can
4 you assure us if they're up and they have expired, do
5 you know whether they're still in a status quo ante
6 effect?

7 MS. MUSKOVITZ: I believe so. There's
8 been no de-certs, so by definition, yes.

9 ALJ SPRAGUE: Well, they could have
10 negotiated a subsequent contract, that's all I'm
11 saying.

12 MS. MUSKOVITZ: Well, I can't
13 definitively say that -- I've got contracts that by
14 the time they get up by the Employer to SERB could be
15 some time, even though they may have been ratified by
16 the parties. These are the most current contracts
17 available through SERB.

18 ALJ SPRAGUE: They don't have to come in
19 right now or not come in. Why don't we take the
20 testimony. Somewhere in the interim, probably after
21 tomorrow, just find that out for us. If they're
22 what's the best available, then that's what they are.
23 If they've been superseded by something --

24 MS. MUSKOVITZ: If they are superseded

1 and the subsequent Collective Bargaining Agreement
2 has been filed with SERB, which is a statutory
3 requirement, then I will substitute them.

4 ALJ SPRAGUE: But see what we're
5 talking --

6 MS. MUSKOVITZ: No, because they're -- by
7 case law, it stays into effect. You cannot make a
8 unilateral change in a single one of these labor
9 contracts until it is bargained.

10 ALJ SPRAGUE: Yes, very true, but what
11 I'm saying is, it may be one of those contracts
12 that's been bargained and there's a new contract and
13 it's not that contract and it's just not up on the
14 website yet because they haven't gotten all the
15 basically signatures and had it published. And it
16 may be or not be that provisions changed in those new
17 contracts. That's all I'm saying.

18 I mean, if we've got one that's effective
19 until like '23, the chances are that's not going to
20 be the case, but if it's just dropped off recently or
21 it's like '21, that's very possible. So if you want
22 to try to put those in, what I need you to do is find
23 that out for me.

24 MS. MUSKOVITZ: I will do my best.

1 ALJ SPRAGUE: If it's pretty obvious that
 2 they're not expired, I mean if the expiration date on
 3 the contract hasn't hit yet, I don't think we're
 4 worried about those. But for the ones that looks
 5 like they are, then those are the ones we have to
 6 have assurance because it's possible those provisions
 7 have changed. Who knows. Maybe they did, maybe they
 8 didn't, probably not but we don't know. So we have
 9 to deal with certainty here as much as we can.

10 MS. MUSKOVITZ: To the extent that I'm
 11 able to, yes.

12 ALJ SPRAGUE: Of course. We don't expect
 13 you to do the impossible.

14 MS. MUSKOVITZ: Okay.

15 - - -

16 JOHN MCNAY, Ph.D
 17 being first duly sworn, as prescribed by law, was
 18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Ms. Muskovitz:

21 Q. Dr. McNay, where do you teach?

22 A. I teach at the University of Cincinnati
 23 at the regional campus in Blue Ash.

24 Q. What is your --

1 A. I'm a Cold War Historian, Professor of
2 History.

3 Q. Yes, yes. And what is your
4 classification in terms of rank? What is your rank?

5 A. I'm a Full Professor with tenure.

6 Q. How long have you been at the University
7 of Cincinnati?

8 A. This is my 22nd year.

9 Q. Have you held any positions of leadership
10 with the AAUP at the University of Cincinnati?

11 A. I was on the Executive Council for
12 roughly ten years, and then I was President of the
13 executive -- or of the union 2010 through 2011 or
14 2012. It was that period.

15 Q. Does the AAUP have an Ohio based
16 organization?

17 A. Yes, the Ohio Conference. We represent
18 about 25 chapters in Ohio, and I was President of the
19 Ohio Conference for eight years.

20 Q. What years were you President of the Ohio
21 conference of the AAUP?

22 A. 2012 through 2020.

23 Q. So that covered Senate Bill 5; is that
24 correct?

1 A. I was actually President of the union
2 during Senate Bill 5.

3 Q. Do you hold any positions of leadership
4 with the national AAUP?

5 A. This summer I got elected to the National
6 Council, so I'm on the National Council now.

7 Q. Now, the University of Cincinnati has a
8 Collective Bargaining Agreement, correct?

9 A. Yes.

10 Q. And do you understand the term deemed
11 certified?

12 A. Yes.

13 Q. So can you explain what is a deemed
14 certified Collective Bargaining Unit under the
15 collective bargaining law in Ohio?

16 A. I think in our case, we organized before
17 the collective bargaining law was put in place.

18 Q. So what happened to chairs at the
19 University of Cincinnati? Before collective
20 bargaining, were they in or out of the Bargaining
21 Unit?

22 A. In our Collective Bargaining Unit,
23 they're included in the Bargaining Unit, the chairs
24 are included.

1 Q. And is it fair to say that's because --
2 and they've now been grandfathered?

3 A. Yeah. The history that we have about
4 this is that the administration thought if they threw
5 everybody into the Bargaining Unit, that it would
6 lose. Even the medical doctors were in the
7 Bargaining Unit from the hospital. And we won the
8 vote, so it was a bad calculation on their part.

9 Q. Okay. So you've been here today
10 listening to the various administrators testify,
11 correct?

12 A. Uh-huh.

13 Q. And the position of the administration is
14 there's all these different sort of silos as I call
15 them and they should all be separated into separate
16 labor contracts because they have competing
17 interests.

18 And I want to ask you first about the
19 University of Cincinnati, but just broadly about
20 higher education in Ohio to the collective bargaining
21 universities. Has the union at the University of
22 Cincinnati been able to address the competing
23 interests between the variety of job titles and
24 faculty ranks at your university?

1 A. Yeah. You know, the University of
2 Cincinnati is a big place. It's complicated, lots of
3 different disciplines included in the Bargaining
4 Unit. We have the librarians in the Bargaining Unit.
5 They've been in the Bargaining Unit for 40 years,
6 right, so of the non-tenured track faculty in the
7 Bargaining Unit for 40 years.

8 We haven't had the conflicts like I keep
9 hearing about here that there's going to be some sort
10 of difficulty with this. And as far as in the union,
11 our last president of the union was a librarian from
12 the law school, so they have -- they play a perfect,
13 normal part of the union, and I think that's an
14 important thing to recognize.

15 I just don't see those conflicts that we
16 keep hearing about that. I think Akron is a place
17 where we can see how people overcome these things.
18 When Akron went through this really difficult time,
19 it was last year, with their budget and the
20 administration wanted to eliminate -- at the
21 beginning they wanted to eliminate a hundred
22 positions, most of them were tenured positions.

23 And what happened there is that the union
24 decided that they weren't just going to allow the

1 non-tenured track faculty to get wiped out because if
2 that's -- if we followed just the letter of the
3 contract, that's what would have happened, but
4 instead what they did is they negotiated with the
5 administration, they negotiated the people who lost
6 their jobs, and they protected some of the
7 non-tenured track faculty.

8 So this idea I keep hearing that the
9 tenured faculty might throw everybody else under the
10 bus, when push came to shove, that's not what
11 happened, and I think it's important to recognize
12 that. The union is a place where people come
13 together and they share their knowledge, they share
14 their expertise, they share their experiences. They
15 don't use it to divide one another. The opposite is
16 true.

17 Q. If you look at the first binder, it's
18 called 1 of 1, I'd like you to go to Union Exhibit 1
19 which is --

20 A. You mean book 3 of 3.

21 Q. No, book 1 of 3. Just go to Tab 1. And
22 I will tell you this is a demonstrative exhibit I put
23 together.

24 A. Yeah, it lists all the different kinds of

1 jobs that are in the Bargaining Units.

2 ALJ SPRAGUE: I'm sorry, where are we?

3 MS. MUSKOVITZ: Tab 1, Union 1. It's a
4 demonstrative exhibit which I put together, and the
5 supporting documentation is in Exhibits 3 through 16.

6 ALJ SPRAGUE: Sure.

7 Q. (By Ms. Muskovitz) If you look at the
8 last page of Union Exhibit 1, Dr. McNay, as my sort
9 of one-page cheat sheet on all 14 labor contracts in
10 in Ohio that cover university faculty, now they're
11 not all AAUP but they're mostly AAUP, correct?

12 A. Right.

13 Q. Those are members of the Ohio Conference?

14 A. Yes, they are.

15 Q. Do you work with the faculty at the other
16 AAUP Bargaining Units in Ohio?

17 A. While I was President of the Ohio
18 Conference, yeah, I visited virtual -- I think I
19 visited all those places, yeah.

20 Q. In fact, the Ohio Conference has both
21 tenured and non-tenure eligible members in their
22 leadership positions; isn't that correct?

23 A. Yes, that's true on our State board.

24 Q. Who's the new President of the State

1 Board by title?

2 A. She is Gretchen McNamara, and she's from
3 Wright State, and she's a non-tenure eligible faculty
4 member.

5 Q. She's the President of the state
6 organization?

7 A. Yes, she is.

8 Q. And she if you know in a leadership
9 position at the AAUP at Wright State University,
10 correct?

11 A. Yeah, that's right.

12 Q. And their tenure track and non-tenure
13 track are covered under one labor contract?

14 A. Yep.

15 Q. Now, just looking at the last page --

16 ALJ SPRAGUE: You said she's tenure track
17 or non-tenure track?

18 THE WITNESS: Oh, she's not tenure track.

19 Q. She's what they call NTE, non-tenure
20 eligible.

21 A. Right.

22 Q. If you look at the second book, the
23 Wright State contract is the Tab 15, the second thick
24 book. I want you to look at Tab 15. This one has

1 not yet expired, so we know it's correct.

2 A. Okay.

3 Q. If you look just as an example at the
4 Recognition Clause on Page 2, do you see how
5 there's -- they use the term tenure eligible tenure,
6 which is TET, and non-tenure eligible NTE --

7 ALJ SPRAGUE: What page are we on here?

8 Q. 2. As covered by the same Collective
9 Bargaining Agreement?

10 A. Yep.

11 Q. Under Section 2.3 on Page 2 of the labor
12 contract. Now, I want you to look at the Table of
13 Contents of this contract because I think it's one of
14 the better examples. If you look at Article 11, do
15 you see there's two Articles 11, one annual
16 evaluation section that applied to tenured and tenure
17 eligible and the other to non-tenure eligible.

18 MS. DAY: I'm going to object to this
19 line of questioning. I don't know that we've laid a
20 foundation for familiarity with this document.

21 Q. (By Ms. Muskovitz) Well, do you have some
22 familiarity with the labor contracts in Ohio that
23 cover AAUP members?

24 A. Yes, I do.

1 Q. And if you look at just example Article
2 13, Promotion and Tenure applies to tenure eligible,
3 but Appointment and Promotion applies to non-tenure
4 eligible, do you see how they have different articles
5 for those two groups?

6 A. Yep.

7 Q. In your experience, you know, when two
8 different groups covered by the same labor contract
9 have some reason to distinguish the working
10 conditions, is that something that can still be done
11 within the same document?

12 A. Yeah.

13 Q. Is that ever done at the University of
14 Cincinnati?

15 A. Yes.

16 Q. So I'm looking at Articles 15,
17 Termination, Article 17, Retrenchment, Article 29,
18 Professional Development, do you see how that group
19 at least has had the ability to negotiate some
20 distinctions even though they're all covered by one
21 Collective Bargaining Agreement?

22 A. Yes.

23 Q. And in your experience, has that happened
24 with other Collective Bargaining Agreements and other

1 Ohio universities that cover more than one group of
2 employees?

3 A. Yes. If I can use an example from UC.
4 In our College of Medicine, a lot of them, their job
5 and work really depends on them getting federal
6 grants, and federal grants are becoming increasingly
7 difficult to get.

8 So what we've done for the faculty in the
9 College of Medicine, we given them an option at the
10 end of their -- usually it takes in your sixth year
11 you apply for tenure, we allow them to extend that
12 for two more years so they have more time to get
13 those grants. So it's a special thing we arranged
14 for a group of faculty that have a special problem.

15 Q. An has that created an internal conflict
16 when that language was negotiated?

17 A. No.

18 Q. What about a contract that covers
19 nine-month and 12-month employees together under the
20 same document?

21 A. There was no problem there either. In
22 our contract, we have separate sections for the
23 librarians.

24 Q. And that's not created problems at least

1 at your university?

2 A. No problems.

3 Q. Do you think there could be problems if
4 everybody had a separate silo, if there were five
5 Collective Bargaining Agreements covering faculty
6 versus one?

7 A. Well, I think one thing that would
8 happen, they all would be too weak to be effective,
9 and I think that would be a problem.

10 Q. And do you understand why the
11 administration might want to weaken the unit?

12 MS. DAY: Objection. Calls for
13 speculation and argumentative.

14 ALJ SPRAGUE: Sustained.

15 Q. In your experience, should faculty -- is
16 the faculty voice more effective when it's
17 collective?

18 A. Well, when we all speak together, the
19 university has to listen to us. If we're just siloed
20 in small numbers, they just don't have to listen.

21 Q. Let me ask you about the advent of
22 non-tenure eligible faculty at universities in Ohio
23 and also nationally. Is that something that has
24 changed over the years?

1 A. Yeah. Well, their numbers have
2 increased.

3 Q. Is that throughout Ohio from your
4 knowledge?

5 A. Yeah.

6 Q. Is that national also?

7 A. It's a national issue, yeah.

8 Q. Now, at UC, do the tenure, tenure track,
9 non-tenure eligible and librarians all interact with
10 students?

11 A. Yes. We're all part of the same academic
12 mission. I think the difference -- The thing that
13 sets us apart from some other employees at the
14 university is the face-to-face regular contact with
15 students.

16 And librarians are very important to us
17 because they help us with the curriculum. They teach
18 our students how to access different databases. I
19 have the librarian come speak to each of my classes
20 at the beginning of the semester.

21 A lot of them don't realize we have a
22 nice little library at UC Blue Ash. And so many of
23 them are addicted to their phones and they're not
24 reading books. We need to get them to open their

1 eyes to the resources that are right at their
2 fingertips.

3 Q. What about the faculty Senate at your
4 university, does it encompass these different
5 classifications of faculty?

6 A. Yeah, it encompasses a broad selection of
7 our faculty. I think one of the important things to
8 note is two Senate presidents ago, and they're
9 elected by the faculty, was a non-tenured person. At
10 UC, we call them educator track, and she was an
11 educator track faculty member.

12 So it shows at UC anyway, everybody is
13 kind of incorporated, and I think what's driving that
14 really is the union. The union specifically focuses
15 on making the faculty Senate the shared governance
16 voice of the faculty.

17 Q. Does it encompass non-tenure eligible?

18 A. Yes.

19 Q. Does it encompass librarians?

20 A. Yes.

21 Q. Just like at Miami?

22 A. Yes.

23 Q. Do different ranks of faculty have
24 different teaching loads?

1 A. Yes.

2 Q. Or classifications? I don't want to say
3 rank. Classifications?

4 A. Yeah, and different departments,
5 different disciplines. We don't actually have
6 workload in our contract because we think it's
7 something that needs to be worked out in the
8 different departments because jobs are so different.
9 Some people are in laboratories, and other people are
10 working out in the field, other people are in the
11 classroom.

12 Q. Those are decisions that are made at the
13 table when contracts are negotiated?

14 A. Yes, to make sure that the departments
15 are in charge of this. Actually, we empower the unit
16 heads which is, of course, an interesting thing since
17 at our unit, they're part of the union, but yeah,
18 they're the ones who are really in the front in
19 charge of the curriculum and the department. Of
20 course, they're subject to being elected by the
21 department too.

22 Q. And have you heard anything in the
23 testimony today that contradicts the position that
24 one faculty, one labor contract gives faculty the

1 best voice?

2 A. No. Again, as I said, the idea that
3 there are all these conflicts between these different
4 people and that they can't work together, it would be
5 detrimental to the people that don't have tenure,
6 that's not the experience I've had.

7 MS. MUSKOVITZ: I have no further
8 questions.

9 MS. DAY: I see that it's 5:30, your
10 Honor. I am happy to start with cross but want to
11 defer to you as stop time for today.

12 MS. MUSKOVITZ: And I don't want to break
13 between direct and cross if it can be avoided.

14 ALJ SPRAGUE: How long do you think
15 you've got?

16 MS. DAY: I have quite a few contracts to
17 go over. It could take a half an hour or better.

18 ALJ SPRAGUE: Yeah, we've got part of
19 that in. What about if we just start a little early
20 tomorrow. How about if we start at 9:30, can we do
21 that?

22 MS. MUSKOVITZ: I can start at 9:00.

23 ALJ SPRAGUE: We've got some setup to do
24 that....

1 MS. MUSKOVITZ: 9:30?

2 MS. DAY: 9:30 tomorrow, that works for
3 the University.

4 ALJ SPRAGUE: All right. Dr. McNay,
5 you're available tomorrow?

6 THE WITNESS: Yes, I am.

7 ALJ SPRAGUE: Okay. We'll try to get you
8 in and get you on the road in a reasonable amount of
9 time, how about that?

10 THE WITNESS: All right. That sounds
11 good.

12 ALJ SPRAGUE: All right, we'll break for
13 today.

14 (The hearing was adjourned at 5:29 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, December 11, 2022, and carefully compared with my original stenographic notes.



Cynthia L. Cunningham

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