

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. :

- - -

VOLUME II

- - -

PROCEEDINGS

before James R. Sprague, Administrative Law Judge, at  
 the State Employment Relations Board, 65 East State  
 Street, 12th Floor, Columbus, Ohio, called at 9:30  
 a.m. on Tuesday, December 13, 2022.

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ALSO PRESENT:

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Tuesday Morning Session,  
December 13, 2022.

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ALJ SPRAGUE: Good morning. This is day 2, AAUP versus Miami University, Case No. 2022-REP-06-0069. I guess we just should just do an identification. Well -- Yeah, let's just do it anyway.

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

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

MS. MUSKOVITZ: Susannah Muskovitz on behalf of the FAM/AAUP/AFT.

ALJ SPRAGUE: Thank you. And Miss Cunningham is here, the court reporter. Miss Cunningham, identify for the record your voice if you'd like.

COURT REPORTER: This is Cindy Cunningham with Armstrong and Okey.

ALJ SPRAGUE: I think we're ready. Dr. McNay is taking the stand again.

Dr. McNay, I'll remind you you're still under oath and ready for cross.



1 Collective Bargaining Agreement for the University of  
2 Cincinnati, and you would agree with me that it  
3 includes all faculty who have titles of Instructor,  
4 Assistant Professor, Associate Professor, Professor,  
5 Beginning Librarian, Assistant Librarian, Associate  
6 Librarian, Associate Senior Librarian and Senior  
7 Librarian, correct?

8 A. Yes.

9 Q. And excluded from the Bargaining Unit at  
10 the University of Cincinnati are all Visiting  
11 faculty, Visiting faculty and affiliated faculty  
12 whether full or part time, right?

13 A. Right.

14 Q. I'd like to talk about the percentage of  
15 each role that makes up the Bargaining Unit here. So  
16 in the sense of tenure or tenure eligible faculty  
17 member, what percentage does that represent of this  
18 Bargaining Unit at the University of Cincinnati?

19 A. Yeah, I don't have exact numbers, but I'm  
20 assuming around 65 percent.

21 Q. Are tenured or tenure eligible?

22 A. Yes.

23 Q. And then for non-tenure or tenure  
24 eligible but professors, what percentage do those

1 make up of the Bargaining Unit?

2 A. I'd say the rest of the Bargaining Unit  
3 is split between the non-tenure eligible people and  
4 then the -- we have a category that's known as  
5 represented adjunct.

6 Q. So 35 percent of the Bargaining Unit  
7 roughly includes non-tenure eligible, represented  
8 adjunct and the librarians as well?

9 A. Yeah. I'm a little uncertain on those  
10 percentages.

11 Q. Sure, understood. Are librarians  
12 considered faculty members at the University of  
13 Cincinnati?

14 A. Yes, they are.

15 Q. Do they teach courses as part of their  
16 job duties?

17 A. Occasionally.

18 Q. Are they eligible for tenure?

19 A. Yes.

20 Q. How long in the University of  
21 Cincinnati's history have they been considered  
22 faculty members?

23 A. As far as I know from the very beginning,  
24 1975.

1 Q. Is 1975 when the Collective Bargaining  
2 Agreement was first put into place?

3 A. Yes.

4 Q. I believe you testified earlier that this  
5 is a deemed certified unit?

6 A. Yes.

7 Q. And that means it existed prior to Ohio's  
8 public bargaining law under Chapter 4117.

9 A. Yes.

10 Q. Did the University ever argue to SERB  
11 that librarians should not be included in this  
12 Bargaining Unit?

13 A. Not that I'm aware of.

14 Q. Isn't it true that within the Collective  
15 Bargaining Agreement for the University of Cincinnati  
16 that there are different procedures for different  
17 groups of personnel?

18 A. Yes.

19 Q. And that's true for I believe the  
20 University refers to it as reappointment, promotion  
21 and tenure?

22 A. Yes.

23 Q. Let's take a look at that article real  
24 quick, see if I can find it. I bet you can find it

1 before I do. Article 7.

2 MS. MUSKOVITZ: What page?

3 MS. DAY: Begins on Page 22.

4 MS. MUSKOVITZ: Thank you.

5 Q. So if you flip to Page 28,

6 Article 7.5.10.

7 A. Yes.

8 Q. That specifically refers to only tenure  
9 track faculty that are in the College of Medicine,  
10 right?

11 A. That's true.

12 Q. And this, I believe you testified  
13 yesterday that there was this extension of the tenure  
14 timelines for these faculty members?

15 A. Yes.

16 Q. And that does not apply to anybody other  
17 than tenure eligible faculty in the College of  
18 Medicine?

19 A. Yes.

20 Q. What did the other members at the table  
21 do?

22 A. How did they react to this idea?

23 Q. What was their involvement in the process  
24 if they're not subject to this provision?

1           A.    Well, when we negotiated this, I wasn't a  
2 member of the Bargaining Team at that time, but I  
3 know what the concern was, was that we're pretty firm  
4 about the timeline for getting tenure. And for us to  
5 make an exception for this was an important step for  
6 us, but we recognized the unusual situation that the  
7 College of Medicine faculty were under where there's  
8 been this decline for federal funding and they need  
9 these federal funds in order to progress to tenure to  
10 then get promoted after that. And so it was that  
11 understanding of their unique situation that we  
12 addressed with this article.

13           Q.    Were non-tenure eligible faculty members  
14 a part of the Bargaining Team when this was first  
15 negotiated?

16           A.    They have been part of the Bargaining  
17 Team over the years. Whether they were actually part  
18 of this Bargaining Team, I don't know.

19           Q.    So you're not sure what they may have  
20 done with their time when this was being negotiated  
21 on behalf of the tenure eligible faculty in the  
22 College of Medicine?

23           A.    Can you tell me what you mean with their  
24 time, may have done with their time?

1 Q. Sure. If it doesn't apply to them, what  
2 was their role in negotiating this on behalf of a  
3 group of faculty that they are not a part of?

4 A. Well, I think through the union, we're  
5 all part of the same group.

6 Q. But when this was being negotiated --

7 MS. MUSKOVITZ: Let him answer, please.

8 MS. DAY: I just want to make sure we're  
9 keeping on time and I want him to answer the  
10 question.

11 MS. MUSKOVITZ: And I believe he's able  
12 to answer the question.

13 MS. DAY: He can answer on redirect.

14 ALJ SPRAGUE: Did you finish your  
15 response?

16 THE WITNESS: Well, you know, my response  
17 is that we don't see those kind of divisions between  
18 the faculty. If there were non-tenure track people  
19 on this team, they would have understood it the same  
20 way that other people would have understood it, that  
21 is, there's a special circumstance that the College  
22 of Medicine faculty are facing here, and we wanted to  
23 address that as a faculty, all of us as a faculty,  
24 not as individual faculty groups but all of us as a

1 faculty.

2 Q. But you were not at the negotiating table  
3 when this was first negotiated?

4 A. No, I was not. I do believe I was on the  
5 Executive Council then, though, which reviews the  
6 decisions that are made by the bargaining team.

7 Q. Is that after they're bargained?

8 A. Well, during the bargaining, they come to  
9 us for confirmation, and we approve everything the  
10 team does, the Executive Council does, so we would  
11 have approved this.

12 Q. So you're not in the room when you were  
13 on Executive Council?

14 A. No, the only negotiating team I was on  
15 was in 2007.

16 Q. And so then if you look at Article  
17 7.5.16, it's on Page 33, do you see that?

18 A. Yeah, Expedited Appointment or non  
19 tenure-tenure Track Faculty Members.

20 Q. So this only applies to non tenure-tenure  
21 track faculty and no other group of personnel within  
22 the Bargaining Unit?

23 A. That's right.

24 Q. And do librarians have their own

1 reappointment, promotion and tenure process as well?

2 A. What they have is their own criteria.  
3 And because each department determines what is the  
4 criteria for RPT in their department, and so the  
5 librarians have their own criteria, but the process  
6 is the same.

7 Q. Well, they have their own committee,  
8 right?

9 A. Yeah.

10 Q. And that's in Article 7.6.9 on Page 36?

11 A. That's right, yeah.

12 Q. Now, the University of Cincinnati's  
13 Collective Bargaining Agreement does not address  
14 workload, right?

15 A. That's true.

16 Q. But other Collective Bargaining  
17 Agreements in Ohio do address workload?

18 A. Yes. One thing I could add to that, we  
19 believe that the workloads vary so much across the  
20 university, that that ought to be in the hands of the  
21 departments.

22 Q. I'd like to have you look now at the  
23 Union's Exhibit 3.

24 A. Exhibit 3 is back here. The Akron?

1 Q. Yes, the Akron agreement. I'd like to  
2 first start with Article 2, Recognition on unnumbered  
3 Page 1.

4 A. Okay.

5 Q. Recognition for the University of Akron  
6 does not include Visiting faculty, correct?

7 A. That's true.

8 Q. And librarians are included but only  
9 those holding faculty rank?

10 A. Yeah.

11 Q. And librarians who are not faculty would  
12 be excluded here?

13 A. That's what it looks like, yes.

14 Q. Do you know whether this is a deemed or  
15 board-certified unit?

16 A. A board-certified. They are organized  
17 after 1983.

18 Q. I'd like to talk about some of the  
19 various terms and conditions that are included in  
20 this agreement. First, let's look at Article 9, Page  
21 6, Academic Freedom. Now, this applies to those  
22 included in the Bargaining Unit because they teach,  
23 correct?

24 A. Yeah. Well, teach and do research.

1 Q. I'd like you to look at Article 13.

2 A. Could I mention something about this  
3 Article 9?

4 Q. Sure, if you have any personal knowledge.

5 A. Well, the way Academic Freedom is defined  
6 by the AAUP at our chapters is that all the faculty  
7 have academic freedom, and that runs counter to what  
8 I heard the other day where academic freedom was only  
9 for tenured faculty. We don't believe that.

10 Q. Looking at Article 13, it's on Page 25 or  
11 it starts on Page 25. And then if you flip over to  
12 Page 30, the section regarding Tenure, it's correct  
13 that not every person included in this Bargaining  
14 Unit is eligible for tenure, right?

15 A. Yes.

16 Q. And so, in fact, a vast portion of this  
17 Article 13 does not apply to anybody who is not  
18 eligible for tenure?

19 A. Yes, that would be true. I haven't  
20 looked at this close enough to know. They probably  
21 have a review for non tenure-tenure eligible faculty.

22 Q. That might be in a separate section?

23 A. It might be.

24 Q. Were you at the bargaining table at the

1 University of Akron when these term were negotiated?

2 A. I was not.

3 Q. Do you have any idea what the  
4 representation of the Bargaining Team looked like?

5 A. I don't.

6 Q. Do you have any idea how much time was  
7 spent negotiating any portion of this Collective  
8 Bargaining Agreement?

9 A. This particular one was very long. This  
10 is when they went through their -- where they lost  
11 all the faculty lines.

12 Q. I'd like you to look at Page 120 of this  
13 Exhibit 3. It's Article 29.

14 A. Okay.

15 Q. This only applies to non-tenure track  
16 faculty, correct?

17 A. Yes.

18 Q. And it was negotiated separately from the  
19 other positions, and it would not apply to tenured or  
20 tenure eligible faculty or anybody else included in  
21 the Bargaining Unit.

22 A. That would be my understanding, yes.

23 Q. In your opinion, how is it efficient to  
24 bargain with people who aren't subject to this

1 article at the same negotiating table?

2 A. I'm not sure about efficiency, but I  
3 think in terms of fairness, it's the only way to go.

4 Q. But what do you think about efficiency?

5 A. Well, I would say there's hardly anything  
6 efficient about any University, so to hold us to that  
7 standard in our contract seems unreasonable.

8 Q. Okay. Are you aware that efficiency of  
9 operations is an aspect that SERB looks at when  
10 reviewing the appropriateness of an appropriate  
11 Bargaining Unit?

12 A. I understand that would be a concern.

13 Q. I'd like you to look at Article 15 which  
14 is on Page 62 or at least the portion I'd like to  
15 discuss is on Page 62.

16 A. Retrenchment.

17 Q. This covers the order of layoffs or  
18 separation from employment in the event of a mass  
19 reduction, correct?

20 A. Right.

21 Q. If you look at section 6, subsection B,  
22 it says that non-tenure faculty would be released  
23 before any tenured faculty, right?

24 Let me direct your attention to

1 subsection C in the last partial paragraph on the  
2 page. It says: If further reductions are necessary,  
3 Bargaining Unit faculty will be released starting  
4 with the lowest numbered category in section 6(B),  
5 and so that would mean that the order of layoff would  
6 be Assistant Professors of Practice and Instruction,  
7 Assistant Professors and Associate Professors of  
8 Practice and Instruction, Untenured Associate  
9 Professors and Professors of Practice/Instruction,  
10 then Untenured Professors, then Tenured Associate  
11 Professors, then Tenured Professors and then what  
12 Akron refers to as Distinguished Professors, right?

13 A. Yes, but I think if you go on to the next  
14 paragraph, there are all these additional criteria  
15 that are going to be used in that decision.

16 Q. Sure, but assuming that those are met,  
17 that's the order it would operate, correct?

18 A. Well, these would maybe swap those  
19 numbers around, that sequence.

20 Q. How so?

21 A. Well, suppose you're considering the  
22 impact of the academic program. This was a real  
23 problem during this whole process because the  
24 university had a very careless manner, often

1 eliminated all of the full-time faculty in a  
2 department and you ended up with departments that  
3 were full of adjuncts, and that's no way to run a  
4 university if you're interested in quality.

5 Q. But Dr. McNay, wouldn't you agree with me  
6 that assuming there was no negative impact on any  
7 particular academic program, that this order in  
8 section 6(B) is the operating order of the layoffs in  
9 a situation that would fall under this article?

10 A. As long as it met this criteria on the  
11 next page, I would agree with that.

12 Q. So then assuming that the criteria in  
13 section C and on Page 63, assuming those criteria are  
14 met, isn't it the case that a non-tenure faculty  
15 member that had been in Akron for let's say 20 years  
16 would be released from employment before a newly  
17 tenured professor?

18 A. It could happen that way, but it would  
19 have to be the strategic importance of each academic  
20 program in the University. One of the reasons that's  
21 in there is so the University can't do what they did  
22 do was eliminate the full-time faculty in the  
23 department so it was left without any full-time  
24 faculty.

1 Q. Sure, but you would agree with me earlier  
2 that if these criteria in section C were met, this is  
3 the order that would apply?

4 A. Well, sure, but I just think that's  
5 really unlikely to actually happen because of the  
6 need to meet these other criteria.

7 Q. But it is possible?

8 A. It is possible, but without this in the  
9 contract, we would have to depend on the good sense  
10 of the administration to not do what you're  
11 suggesting the union would do which is just lop off  
12 the non-tenured faculty.

13 Q. Is there an inherent conflict of  
14 interest, though, between tenured and non-tenured  
15 faculty regarding the order of layoffs here?

16 A. Oh, there is. And you can see how hard  
17 that was for the chapter. Remember what they did  
18 in Akron, is the union decided instead of doing this  
19 just knocking off the non-tenured faculty first, they  
20 negotiated about who's going to lose their job  
21 because the union was concerned about preserving  
22 programs.

23 Q. But in the end in terms of order,  
24 assuming that the qualifications in section C were

1 met, tenured professors have priority over  
2 non-tenured professors?

3 A. Yes, I would agree with that.

4 Q. Let's look at Article -- excuse me,  
5 Exhibit 4.

6 A. Bowling Green?

7 Q. Yes. And this, based on the effective  
8 dates on the page, this is not currently the current  
9 Bargaining Agreement in effect at Bowling Green,  
10 right?

11 A. That's right.

12 Q. Let's look at Recognition here for  
13 Bowling Green. It is Article 2 on Page 6.

14 ALJ SPRAGUE: Miss Day, why are we  
15 looking at this?

16 MS. DAY: I am through the testimony  
17 showing the differences around the state. I believe  
18 the union is making the argument that this works in  
19 other public universities, and I am trying to show  
20 through the testimony that it does not have to be the  
21 same in every university.

22 ALJ SPRAGUE: I understand that, but as  
23 far as this particular one?

24 MS. DAY: As this particular one?

1 ALJ SPRAGUE: This one has expired.

2 MS. MUSKOVITZ: Well, unless it's been  
3 renegotiated, and I can tell you from all my years of  
4 experience, it takes a very long time to renegotiate  
5 labor contracts, I believe this is in effect.

6 Even though it expired last summer,  
7 they're currently involved in collective bargaining  
8 negotiations. As far as I know, they have not yet  
9 ratified a subsequent labor contract. There's no  
10 subsequent labor contract on the SERB website, and I  
11 believe that makes that current under law. That goes  
12 with all of the labor contracts that we included in  
13 our materials.

14 ALJ SPRAGUE: Well, the likelihood is  
15 that it did. What it makes current under law if it's  
16 either the current contract or has status quo ante.  
17 So whether it's filed on the SERB website doesn't  
18 make it current or not, although it does make it  
19 compliant or not, at least for the parties. So we  
20 don't have a reason to think this is not current? In  
21 effect is probably a better term.

22 MS. DAY: Correct, your Honor. I believe  
23 what Miss Muskovitz -- what we were discussing at the  
24 end of the day yesterday, I believe you were going to

1 do some additional research to see if there were any  
2 substantive changes. And to the extent there were no  
3 substantive changes, this language would be ripe for  
4 questioning.

5 MS. MUSKOVITZ: It's common -- I agree  
6 with that, and I also believe that it is common in  
7 negotiating these labor contracts, that the parties  
8 enter into agreements which extend the duration of  
9 the Collective Bargaining Agreement until a new labor  
10 contract is ratified. That's what happens in these  
11 cases commonly.

12 ALJ SPRAGUE: Over a year?

13 MS. MUSKOVITZ: Not necessarily a year.  
14 It's just for the term of the contract. Because  
15 you've got a contract -- many of these contracts have  
16 a duration that captures the academic --

17 ALJ SPRAGUE: I --

18 MS. MUSKOVITZ: -- let me just finish,  
19 that captures the academic year. And so you have a  
20 fall semester that starts before the new contract is  
21 ratified, and you have to determine things like  
22 whether it's workload or assignments or tenure issues  
23 because those all come in the fall.

24 And so the parties through necessity

1 extend the labor contract into the next academic  
2 year, and if you look at the duration clauses in many  
3 of these contracts, you'll notice that they actually  
4 capture that issue. So if they don't apply until the  
5 second academic year, the contract is in effect  
6 exactly for that reason.

7 ALJ SPRAGUE: Okay. That's all fine. I  
8 just want to know if it's in effect or not.

9 MS. MUSKOVITZ: I believe the labor  
10 contracts that we have tried to put into evidence and  
11 we intend to put into evidence are as current as  
12 we're able to obtain.

13 ALJ SPRAGUE: Okay. At this point in  
14 time, we don't have a good reason to think this  
15 contract is not still in effect; can we agree on  
16 that?

17 MS. DAY: I believe so, but I think that  
18 was with the caveat of Miss Muskovitz was going to do  
19 some additional digging to see if there was anything  
20 to define that, and so on behalf of the University --

21 ALJ SPRAGUE: I don't know that she found  
22 anything to the contrary, so let's proceed, how about  
23 that.

24 MS. DAY: Understood.

1           Q.     (By Ms. Day) Dr. McNay, we were talking  
2 about the Bowling Green Collective Bargaining  
3 Agreement looking at Article 2 on Page 6 regarding  
4 Recognition. So here this unit includes all  
5 full-time faculty and that includes librarians who  
6 hold faculty rank, right?

7           A.     Yes.

8           Q.     Presumably it would exclude librarians  
9 who do not hold faculty rank?

10          A.     Right.

11          Q.     And Visiting faculty are also excluded  
12 here?

13          A.     Yes.

14          Q.     And then it includes what Bowling Green  
15 refers to as QRF faculty who are non-tenurable; is  
16 that right? Let me help you out.

17          A.     No. 6 here.

18          Q.     No. 6 here, yep, Qualified Rank Faculty,  
19 QRF. And then if we turn to Page 35 of this  
20 agreement, this is Article 14 on Appointment,  
21 Reappointment, Tenure and Promotion. If we look at  
22 Section 2.3.1.1 on Page 35.

23          A.     2.3.1.1.

24          Q.     It says that Qualified Ranked Faculty or

1 QRF faculty do not have the right to request tenure  
2 review, right?

3 A. That's what it says, yes. It's -- You  
4 know, one of the problems we get into when we are  
5 comparing universities is that each university seems  
6 to have different names for different types of  
7 faculty.

8 For example, at our place we don't really  
9 have a category for Visiting Professors, but we have  
10 representative adjuncts which I think is the  
11 equivalent, so I just wanted to point that out. So  
12 we don't have a title like this at UC.

13 Q. Looking at this Article 14 a little bit  
14 further regarding Appointment, Reappointment, Tenure  
15 and Promotion, this also includes different  
16 procedures for the different categories of faculty  
17 members, right?

18 A. Article 14? Okay, yeah. Further  
19 efforts? Is that where you are at the bottom of Page  
20 87?

21 Q. No, Article 14, it begins on Page 32.

22 A. Okay, Academic Rank?

23 Q. Yes. This article includes different  
24 provisions, different ranks and description for the

1 various faculty roles within the Bargaining Unit,  
2 right?

3 A. Right.

4 Q. And that includes different initial hire  
5 provisions?

6 A. Right.

7 Q. And there's sections on tenured  
8 appointments, QRF appointments. There's really  
9 just -- the tenure track faculty has its own section,  
10 Qualified Rank Faculty has another section, and  
11 really there are just multiple processes here under  
12 Article 14 that varies from faculty type to faculty  
13 type?

14 A. That's true.

15 Q. I'd like you to look at Article 15 on  
16 Page 69.

17 ALJ SPRAGUE: Give me just a second.

18 Okay.

19 Q. Article 15 covers Academic  
20 Reconfiguration and Retrenchment. So I'd like you to  
21 turn to Page 73 and section 5.3, Order of  
22 Retrenchment.

23 ALJ SPRAGUE: One more time.

24 MS. DAY: 5.3, it's on Page 73.

1           Q.    And so Dr. McNay, would you agree with  
2 me, similar to the Akron Collective Bargaining  
3 Agreement, there is an order in which a layoff would  
4 occur as long as certain provisions, and these are  
5 identified here in section 5.4 on Page 74, as long as  
6 those provisions and considerations are met, there is  
7 an order in which layoffs will occur?

8           A.    Yes.  You know, one thing I'm thinking  
9 about in the context of this is I believe in previous  
10 testimony that Miami officials said that as far as  
11 she knows, they've never let go a tenured faculty  
12 member.  So that would indicate to me that somewhere  
13 in Miami's policies must be this assumption that they  
14 also have a ranking category like this.

15          Q.    Do you know if Miami has ever had a  
16 layoff?

17          A.    I don't know.

18          Q.    If the qualifications and considerations  
19 in 5.4 are all met, isn't it the case that a new  
20 hired tenure track faculty member would be retained  
21 before a long-term non-tenure faculty member under  
22 the Bowling Green agreement?

23          A.    As long as these concerns are met, I  
24 think that would be true.

1 Q. Doesn't this present conflicts between  
2 the groups during negotiations?

3 A. Certainly not during negotiations, but if  
4 the retrenchment were to actually happen, then there  
5 would be conflicts.

6 Q. You don't think that these groups were in  
7 conflict or in negotiation about I'll go first during  
8 a layoff?

9 A. Well, often when you negotiate a  
10 contract, you agree to things that you're not  
11 particularly happy about, and I think this would  
12 probably be a case of that, but I think anybody who  
13 gets into a university in a non-tenure track position  
14 knows the meaning of that, right, that they can be  
15 let go a lot easier than a tenured faculty member  
16 can, and this is regardless of whether there's a  
17 union in on it.

18 Q. You don't think they would advocate to be  
19 let go based on some other criteria?

20 A. I think one of the reasons there's all  
21 these criteria here is to make sure that they do have  
22 some other standing.

23 Q. Do you think they -- well, strike that.  
24 Do you know how long it took to negotiate this

1 Article 5 regarding retrenchment?

2 A. I am not certain.

3 Q. Were you at the bargaining table on  
4 behalf of either side in this Bowling Green  
5 negotiation?

6 A. No, I was not.

7 Q. I'd like you to turn to Article (sic) 5.  
8 MS. MUSKOVITZ: What page?

9 Q. We will start with the very first page of  
10 the exhibit.

11 A. Still Bowling Green?

12 Q. No, Article (sic) 5 should be Central  
13 State University.

14 MS. MUSKOVITZ: You mean Union Exhibit 5?

15 Q. Yes, I'm so sorry, Union Exhibit 5.

16 A. What do we want in here?

17 Q. First wanted to note the dates on the  
18 page. This agreement ended on August 31st, 2020,  
19 correct?

20 A. Yes.

21 Q. Then I'd like you to look at a  
22 Recognition article which here is Article 3 on Page  
23 1.

24 ALJ SPRAGUE: Now, this one....

1 MS. DAY: I can move on if you would rule  
2 that neither party can present this, admit it or have  
3 any testimony regarding it.

4 MS. MUSKOVITZ: And I would be proffering  
5 it to the record for purposes of the Board decision  
6 if that is ruled. I mean, I think they're  
7 self-authenticating.

8 ALJ SPRAGUE: Well, that may be, but I'm  
9 not sure they're relevant. This looks like it's  
10 pretty far back. Do we have a reason -- you don't  
11 have a reason to think it's been extended?

12 MS. MUSKOVITZ: I have not found any  
13 SERB -- any board decisions that modify the  
14 Bargaining Unit which has to go through the Board on  
15 Central State.

16 ALJ SPRAGUE: Yeah, it's possible we're  
17 in status quo ante. I've seen longer periods of  
18 time.

19 MS. MUSKOVITZ: Oh, I've seen many longer  
20 periods of time, believe me.

21 ALJ SPRAGUE: It is what it is.

22 MS. MUSKOVITZ: It took us three years at  
23 Wright State.

24 ALJ SPRAGUE: So that's perhaps not

1 optimal, but it does happen with some frequency, so  
2 still no reason to think it's not in effect?

3 MS. MUSKOVITZ: Well, I don't have any  
4 reason to believe that the Recognition Clause has  
5 been modified. I can't speak to some of the language  
6 inside, but I don't have any reason to believe that  
7 the Recognition Clause of any of these labor  
8 contracts has been modified.

9 ALJ SPRAGUE: All right. To the extent  
10 it's going to have weight, I'll allow it.

11 MS. DAY: I will for all of the parties'  
12 benefit just limit my questioning here to the  
13 Recognition Clause.

14 ALJ SPRAGUE: Okay.

15 Q. Dr. McNay, looking at Article 3 on  
16 Recognition, this Bargaining Unit says it includes  
17 librarians who are faculty, correct?

18 A. Yes.

19 Q. It would not include librarians who are  
20 not faculty?

21 A. As far as I can tell, I think that's  
22 right.

23 Q. And it would also exclude Visiting  
24 faculty?

1           A.    Yes, however they define those.

2           Q.    Okay.  I'd like to have you look at Union  
3 Exhibit --

4           A.    I'm sorry, I see they bar athletic  
5 coaches.  We'd love to have athletic coaches.  With a  
6 \$7 million salary, that would be pretty hefty dues.

7           Q.    I'd like to have you look at Union  
8 Exhibit 7, and I'll have you start on Page 1, Article  
9 1 regarding Recognition -- First, which university  
10 does this pertain to?

11          A.    It is Cleveland State.

12          Q.    All right.  This Bargaining Unit does not  
13 include librarians, correct?

14          A.    I'm just looking here.  Does it say here?  
15 Am I missing something?  I don't see librarians  
16 mentioned here, but they might include them as  
17 faculty which we do.

18          Q.    I'd like to have you look at Union's  
19 Exhibit 1, the last page of that exhibit.  And I  
20 believe this is a chart that was created by  
21 Miss Muskovitz summarizing who is included or  
22 excluded from each unit, and here Cleveland State  
23 does not include librarians, correct?

24          A.    They're certainly not listed there, no.

1 Q. Do you have any reason to believe that  
2 chart is inaccurate?

3 A. I don't.

4 Q. Flipping back to Exhibit 7 and still  
5 looking at the Recognition Clause on Page 1.

6 A. Okay.

7 Q. Visiting faculty are excluded from this  
8 Bargaining Unit, correct?

9 A. Yes.

10 Q. I'd like to have you look at Article 12  
11 which is on Page -- begins on Page 20 regarding  
12 Faculty Appointment, Promotion and Tenure. And as  
13 you flip through this article, there are various  
14 procedures for different types of faculty members.  
15 12.2 is College Lecturer Teaching Appointments. 12.3  
16 is Professor of Practice Teaching Appointments. 12.5  
17 is Research and Clinical Faculty Appointments,  
18 et cetera, Tenure Track, Tenured Appointments. So  
19 there are various procedures that would apply to the  
20 various types of faculty included in this unit,  
21 correct?

22 A. Yes.

23 Q. I'd like to have you look at Article 20  
24 which is on -- begins on Page 62 regarding

1 professional leaves. And if we look at section 20.2  
2 on Page 63 regarding eligibility, these professional  
3 leaves only apply to persons who have tenure; is that  
4 accurate?

5 A. I'd imagine that's true.

6 Q. Isn't that what it says in 20.2(A)?

7 A. Must have tenure as of the effective  
8 date, yes, it does.

9 Q. I'd like to have you look at Union's  
10 Exhibit 9 now.

11 A. Kent State?

12 Q. Yes. And what is this Bargaining Unit  
13 covering?

14 A. It's the tenure track group of faculty.

15 Q. And so this only includes tenured and  
16 tenure track faculty and no other faculty, correct?

17 A. I believe that's true.

18 Q. And to the extent librarians are  
19 included, they are faculty in the university library  
20 as defined in the Recognition Clause, correct?

21 A. Yes.

22 Q. And excluded are non-tenure track  
23 faculty, part-time faculty, adjunct faculty,  
24 temporary faculty, Visiting faculty, as well as

1 administrative and professional contract employees?

2 A. Yes.

3 Q. Look at Union's Exhibit 10.

4 A. It says non-tenure track.

5 Q. This is also Kent State University,  
6 right?

7 A. Yes.

8 Q. So here faculty members are split between  
9 two different bargaining unions, right?

10 A. That's right. Well, they work closely  
11 together and then often whatever the tenure track  
12 unit gets, the non-tenure track gets.

13 Q. But in a separate unit and a separate  
14 negotiation?

15 A. Yes.

16 Q. And looking at the Recognition Clause  
17 which is Article 2 on Page 5, subsection A, about  
18 two-thirds of the way down, it reads: The University  
19 and the Association mutually agree that current  
20 full-time, non-tenure track faculty positions in the  
21 university libraries are eligible for inclusion in  
22 the Bargaining Unit, correct?

23 A. Yes.

24 Q. So otherwise unless they were a faculty

1 position within the university libraries, librarians  
2 would not be subject to inclusion in this bargaining  
3 agreement?

4 A. Yes.

5 Q. And this agreement also excludes Visiting  
6 Professors, right?

7 A. Yes.

8 Q. So looking at Article 10 of this  
9 agreement --

10 A. Well, on No. 7 it says adjunct, Visiting  
11 and part-time faculty, and Visiting faculty member is  
12 most typically is a faculty member from another  
13 institution employed by the university. Well, yeah,  
14 they're just temporary people according to the  
15 footnote there. All right.

16 Q. Looking at Article 10 which is on Page --  
17 that's wrong, sorry. Strike that. I'm going to have  
18 you look at Exhibit 11 which is in the next binder.

19 A. Shawnee State?

20 Q. Yes. Did you have a chance to turn to  
21 Page 12, Article 5. The Bargaining Unit here at  
22 Shawnee State does not include librarians, correct?

23 A. Where's it say that?

24 Q. I direct your attention to Union Exhibit

1 1.

2 A. Oh, all right, if it's there, I trust it.

3 Q. Fair enough to say for any future  
4 questioning, that you would agree with  
5 Miss Muskovitz's portrayal in the chart on Union  
6 Exhibit 1?

7 A. Yes.

8 Q. And this Recognition Clause for Shawnee  
9 State does not include Visiting Professors or  
10 Visiting faculty, correct?

11 A. Yes.

12 Q. I'd like you to look now at Exhibit --  
13 excuse me, Article 10 within this agreement which is  
14 on Page 24. This is regarding full-time instructors,  
15 non-tenure track. So this entire article only  
16 applies to non-tenure track faculty, right?

17 A. It appears that's true, yes.

18 Q. If we turn to Page 27, article 11,  
19 promotion and tenure, this article would only apply  
20 to tenured and tenured track faculty members, right?

21 A. Yes.

22 Q. Article 12, which starts on Page 47  
23 regarding workload, if you look at Section 2(A),  
24 paragraphs 1 and 4, different workloads apply to

1 different types of faculty member included in this  
2 unit, correct?

3 A. Yes.

4 Q. And then if I have you look at Article  
5 22, it begins on Page 128, specifically I draw your  
6 attention to Page 131, a section on Page 131, section  
7 B towards the top of the page, and like in the other  
8 contracts we've discussed, this is the order of  
9 layoff and who has priority over other faculty  
10 members, right?

11 A. Right.

12 Q. If you look at Union's Exhibit 12.

13 A. Toledo?

14 Q. Yes, Toledo, and who is included in this  
15 Bargaining Unit's Recognition Clause?

16 A. Both tenured and tenure track full-time,  
17 all College of Nursing tenured, tenure track,  
18 non-tenure eligible. Excluded are faculty in the  
19 College of Law, College of Medicine and Life  
20 Sciences, temporary faculty, deans, chairs endowed  
21 chairs, lecturers, part-time faculty,  
22 superannuates -- which I'm not sure what that is --  
23 and all managerial and supervisor employees and all  
24 other employees.

1 Q. So other than persons in the college of  
2 nursing, this Collective Bargaining Agreement only  
3 includes tenured and tenured track faculty, right?

4 A. That's the way it appears.

5 Q. There are no librarians in this unit?

6 A. They don't mention it.

7 Q. There's no Visiting faculty in this unit?

8 A. It doesn't appear to be.

9 Q. I'll have you look at Union's Exhibit 13.

10 A. The non-tenure track unit.

11 Q. This is for non-tenure track faculty at  
12 the University of Toledo, correct?

13 A. Yes.

14 Q. So here tenured and tenure track faculty  
15 members are not included?

16 A. Yes.

17 Q. And also excluded are Visiting  
18 appointments of three years or less?

19 A. Yes.

20 Q. What about librarians, are they included?

21 A. I don't see them listed here anywhere and  
22 I'll trust the chart we have.

23 Q. Fair enough. I'd like to have you look  
24 at Union's Exhibit 15.

1           A.    Wright State?

2           Q.    Yes, and the Recognition Clause is on  
3 Page 2, Article 2. And this Bargaining Unit does not  
4 include librarians, correct?

5           A.    Doesn't appear to.

6           Q.    But it does include full-time tenured and  
7 tenure track faculty, as well as senior lecturers,  
8 lecturers, instructors, clinical assistant  
9 professors, clinical instructors and Visiting  
10 faculty?

11          A.    Right.

12          Q.    I'd like to have you look at Article 11  
13 which begins on Page 25.

14                MS. MUSKOVITZ: Let the record show that  
15 it's 11T, not 11N.

16          Q.    So Dr. McNay, this is Article T11 which  
17 only applies to tenured and tenure eligible faculty,  
18 right?

19          A.    Yes.

20          Q.    And this is regarding their annual  
21 evaluation?

22          A.    (Nods head.)

23          Q.    You have to speak for the record.

24          A.    Yes.

1 Q. Thank you. I'm going to have you turn to  
2 Page 35, it's Article N11.

3 A. Annual Evaluations.

4 Q. So this is also on annual evaluations,  
5 correct?

6 A. Yes.

7 Q. But this time it applied to non-tenure  
8 eligible faculty and not to tenured or tenure track  
9 faculty?

10 A. That's what it appears to be, yes.

11 Q. I'll have you look at Article T13 which  
12 begins on Page 45. This is an article on Promotion  
13 and Tenure, and it only applies to tenured and senior  
14 eligible faculty, right?

15 A. Yes.

16 Q. And if I have you turn to Page 67,  
17 Article N13, Appointment and Promotion, this only  
18 applies to non-tenure eligible faculty, right?

19 A. Yes.

20 Q. I'll have you turn to Article T15 which  
21 is on Page 80 regarding Termination and Unpaid  
22 Suspension, and again, this article only applies to  
23 tenured and tenure eligible faculty, correct?

24 A. Yes.

1 Q. I'll have you to turn to Page 83, Article  
2 N15. This is Termination of Appointment or  
3 Suspension Without Pay only Applying to Non-tenure  
4 Eligible Appointments?

5 A. Yes. Can I ask you what you're trying to  
6 demonstrate here?

7 Q. You do not get to ask me questions today,  
8 Dr. McNay. I'll have you turn to Page 94, Article  
9 T17, Retrenchment. This only applies to tenured and  
10 tenure eligible faculty, right?

11 A. Yes.

12 Q. Page 98, Article N17.

13 A. Yes.

14 Q. This is a separate Retrenchment provision  
15 for non-tenure eligible faculty?

16 A. Yes.

17 Q. If you look at Article 26 -- excuse me,  
18 T29 on Page 132 regarding Professional Development  
19 Leave. These Professional Development Leaves only  
20 apply to tenured and tenure eligible faculty, right?

21 A. That's what it appears to be.

22 Q. And if I have you look at Page 137,  
23 Article N29 regarding Pedagogical Development Course  
24 Releases, this would only apply to non-tenure

1 eligible faculty members.

2 A. Yes.

3 Q. I'd like to have you look at Union  
4 Exhibit 16. Which University does this apply to?

5 A. Youngstown State.

6 Q. Okay. So this Recognition Clause,  
7 Article 2 on Page 2 does not include librarians,  
8 correct?

9 A. Yes.

10 Q. So based on a number of these Collective  
11 Bargaining Agreements, it's true that some public  
12 universities in the State of Ohio separate faculty  
13 members into different Collective Bargaining  
14 Agreements?

15 A. That's true.

16 Q. There's no indication that does not work  
17 at Kent State, right?

18 A. As far as I can tell.

19 Q. There's no indication it doesn't work at  
20 Toledo?

21 A. No.

22 Q. Dr. McNay, as you are aware, I worked you  
23 through a number of differences across a number of  
24 different Collective Bargaining Agreements, if there

1 are so many differences in these Collective  
2 Bargaining Agreements, why is it efficient to sit  
3 down with all groups at a table and negotiate various  
4 terms and conditions of employment?

5 A. Well, I think the differences that you  
6 see only reflect the differences that exist in our  
7 universities. As we've discussed, the titles are  
8 different, the titles often don't mean the same  
9 thing, but this isn't the union's issue, it's the  
10 University's issue.

11 Q. Dr. McNay, how is that efficient for the  
12 University?

13 A. I think while it -- I agree it's a  
14 concern that the board needs to consider efficiency  
15 but they also need to consider fairness, and this  
16 complexity you see in the contracts is addressing  
17 fairness.

18 MS. DAY: No further questions.

19 - - -

20 REDIRECT EXAMINATION

21 By Ms. Muskovitz:

22 Q. You've been at the bargaining table, have  
23 you not, Dr. McNay?

24 A. I have.

1           Q.    Is it more efficient or less efficient to  
2 negotiate five contracts than to negotiate one  
3 contract?

4           A.    It's better to negotiate one.

5           Q.    Why is that efficient?

6           A.    Because you only have to have one session  
7 of negotiating, you only have to meet with the other  
8 side a handful of times most of the time, and it's  
9 efficient that way.

10          Q.    If you know with the various -- with the  
11 ten universities in Ohio that have contracts with  
12 their faculty, does the will of the faculty, the  
13 interest of the faculty, the goal, the will of the  
14 faculty, is that a factor or should that be a factor?

15          A.    It should be a big factor.

16          Q.    What's the will of the faculty at Miami  
17 if you know?

18          A.    I know from the organizing that I've been  
19 close to over the last couple of years, that the  
20 faculty want to unionize, they want to do this  
21 because they all have more control over their work  
22 life. They'll have more control over the direction  
23 of the University.

24          Q.    Is it the will of the faculty at Miami to

1 have one Collective Bargaining Agreement?

2 A. Yes, it is.

3 Q. And do you know why they feel it's in  
4 their interests to do so?

5 A. Well, if you have one Bargaining Unit in  
6 a University like Miami, the Bargaining Unit will be  
7 large enough to actually have influence.

8 Q. What happens if you have five silos?

9 A. Well, five silos, nobody can advocate for  
10 anybody. And what you end up doing is just being at  
11 the mercy of a handful of administrators.

12 Q. If you look at Tab 17 in the binder in  
13 front of you, do you see on Page 1 how the first  
14 certification from SERB at Wright State in 1998 was  
15 only tenure and tenure track? I'm looking at Page 1  
16 of 10.

17 A. Yes.

18 Q. If you look at Page 3 of 10, do you see a  
19 second Bargaining Unit of only non-tenure track and  
20 Visiting faculty at Wright State and that was in  
21 2012?

22 A. I do.

23 Q. That was 14 years later?

24 A. Uh-huh.

1 Q. And if you look at Page 7 of 10, do you  
2 see how both parties considered it to be better to  
3 merge those two Bargaining Units to a single  
4 Bargaining Unit that included the tenure/tenure  
5 track, the non-tenure track and the visitors under  
6 one umbrella?

7 A. I see that. That would be more  
8 efficient, I guess.

9 Q. And both parties after years of  
10 negotiating two contracts collectively decided that  
11 it made more sense to bargain one contract?

12 A. Yes.

13 Q. If you go back in the other binder, I'm  
14 going to start at the back to Tab 10 which was the  
15 continue Kent State contract.

16 A. Tab 10?

17 Q. Yes. I'm going to ask you to go to Page  
18 6.

19 A. To Page 6.

20 Q. Do you see on the bottom of footnote 3  
21 that even though visitors are excluded, after one  
22 year they're included in the Bargaining Unit?

23 A. Yes, I do see that.

24 Q. So it's only their first year that

1 they're excluded, correct?

2 A. That's correct.

3 Q. Let's go backwards to Tab 7, that's the  
4 Cleveland State contract, and I'd like to direct you  
5 to Page 27, section 12.4 -- I'm sorry, yeah, section  
6 12.4. Do you see that even though visitors are  
7 excluded, their terms and conditions are still  
8 negotiated under this labor contract and many aspects  
9 of their employment is controlled?

10 A. Yes, I see that.

11 Q. And so even though they may not have a  
12 seat at the table, their terms and conditions are  
13 negotiated around them by others, right?

14 A. Right.

15 Q. Do you see that in other labor contracts  
16 where a Bargaining Unit concerned with its work  
17 jurisdiction is controlling the terms and conditions  
18 of employment of those not being represented under  
19 that contract?

20 A. It's possible to have a great deal of  
21 influence on the people who aren't represented on  
22 their work life.

23 Q. Do you agree that the best way for people  
24 to be protected is to be covered under the same labor

1 contract?

2 A. Yes.

3 Q. On that same contract, if you turn to  
4 Page 65, and I direct your attention to section 20.5.  
5 Do you see that the non-tenure track faculty members  
6 at Cleveland State were able to negotiate for the  
7 first time in this labor contract leaves of absence?

8 A. I see that.

9 Q. I'd like you to turn to the Recognition  
10 Clause of this same contract, specifically Page 1.

11 A. Okay.

12 Q. Do you see that 50 percent language in  
13 Section 1.2 where as long as 50 percent or more of  
14 your work is faculty work, you're included;  
15 otherwise, you're excluded?

16 A. Yes.

17 Q. If you go back to Central State which is  
18 Tab 5 and you look at Page 2 under the Recognition  
19 Clause and specifically section 3.3(B), do you see  
20 that same 50 percent language?

21 A. Where under 3.3?

22 Q. B.

23 A. On B, yes, I do.

24 Q. So any full-time faculty for teaching or

1 professional library work or assigned research  
2 duties, if they're not at least 50 percent, they're  
3 excluded, but if your library work, your research or  
4 your teaching are at least 50 percent, you're  
5 included in the Bargaining Unit?

6 A. I see that.

7 Q. And, in fact, at your University in  
8 Cincinnati you have that 65 percent threshold; do you  
9 not?

10 A. Yes, we do.

11 Q. How does that work? I mean, how does  
12 that 65 percent threshold work in Cincinnati?

13 A. Well, it's mostly determined by the chair  
14 of the departments and the chair determines how much  
15 of this individual's work actually applies to the  
16 65 percent. With people who are primarily teachers,  
17 the more they teach, if they teach enough to reach  
18 that 65 percent level, then they're a member of the  
19 Bargaining Unit. They become one of our  
20 Representative Adjuncts.

21 MS. MUSKOVITZ: I have no further  
22 questions.

23 ALJ SPRAGUE: Thank you.

24 MS. DAY: Briefly on recross.

- - -

RE CROSS-EXAMINATION

By Ms. Day:

Q. Dr. McNay, how many times have you represented the union at the bargaining table?

A. One time.

Q. Have you ever worked at Wright State?

A. I've not.

Q. Have you ever worked at Cleveland State?

A. No.

Q. Miss Muskovitz was just walking you through Central State and Cleveland State regarding inclusion of persons who as part of their job duties teach or research at least 50 percent of the time. Do you know whether Cleveland State or Central State ever disputed inclusion of those persons in the Bargaining Unit or if they agreed to inclusion?

A. I'm not aware of any dispute about that language.

Q. Regarding Exhibit 7, which is the Collective Bargaining Agreement for Cleveland State, you testified that Visiting faculty are not included in the Recognition Clause, but their terms and conditions are covered in the Collective Bargaining

1 Agreement, right?

2 A. Yes.

3 Q. So Visiting faculty have no say in their  
4 own terms and conditions of employment at Cleveland  
5 State, right?

6 A. That would be true, but just like it is  
7 everywhere else that are nonunion, they don't have  
8 any say either.

9 Q. But here the difference is other persons  
10 are deciding the terms and conditions of their  
11 employment in the Bargaining Unit.

12 A. Yes, that's right, but again, without the  
13 union, that would be done anyway.

14 Q. You were also testifying that five -- if  
15 there were five separate silos for Miami University,  
16 that in your opinion you don't think that groups  
17 could advocate for themselves. Why do you say that?

18 A. Well, in that case, all the power really  
19 lies in the hands of the administration and the  
20 administration will do what it wants.

21 Q. You don't think that faculty members who  
22 are not tenure at Kent State can't bargain on their  
23 own behalf?

24 A. Individually they can go and do this, but

1 you know, it's that old saying that united we  
2 bargain, divided we beg.

3 Q. The same thing at Toledo, you don't think  
4 that the non-tenure or even the tenured faculty can  
5 bargain on their own behalf?

6 A. They can go talk to people, but, again,  
7 without the contract, that's what it is, it's a  
8 discussion.

9 Q. But they have a contract.

10 A. Well, if they have a contract, then they  
11 can -- if they're in the Bargaining Unit, they can  
12 work through the Bargaining Unit to get what they  
13 want but let me give you an example of this.

14 At UC about a decade ago, we discovered  
15 at the regional campuses that we were paid less than  
16 the other regional campuses in Ohio. The  
17 administration liked this situation. So what  
18 happened in that situation is that we went -- we  
19 worked through the union. And we were outnumbered,  
20 it's a very small proportion of UC's Bargaining Unit  
21 is actually at the regionals.

22 And what we were able to do, because the  
23 other faculty advocated for us and we pushed this  
24 through in the contract, where over the next four

1 contracts we got extra money that nobody else at the  
2 University got, only us. And over four contracts,  
3 maybe four contracts, we got an extra 19-and-a-half  
4 percent pay increase that nobody else got and that's  
5 because they advocated for us through the union, they  
6 listened to us.

7 So even though we're a minority within  
8 the union, the union advocated for us, and that's why  
9 a union is so valuable. If we had just complained  
10 about this on our own to the administration, nothing  
11 would have happened.

12 Q. How do you know that?

13 A. Well, because we complained about our  
14 salary for years and nothing happened.

15 Q. Do you know what was considered by  
16 administration?

17 A. Pardon?

18 Q. Do you know what was considered by  
19 administration?

20 A. What they considered doing about this?

21 Q. Yes.

22 A. I know what they did do.

23 Q. What did they consider, though, is my  
24 question?

1           A.    Well, I don't know.  I wasn't in on those  
2    conversations.  What I do know is the only time they  
3    moved was when we were able to force them through the  
4    contract to do this.

5           Q.    Do you have any reason to believe that  
6    faculty members at Kent State can't advocate on their  
7    own behalf?

8           A.    Any individual can advocate on their own  
9    benefit.

10          Q.    Do you have any reason to believe that  
11    faculty members at Toledo cannot advocate on their  
12    own behalf?

13          A.    No, anybody can advocate on their own  
14    benefit.

15          Q.    Do you think it might take more time to  
16    sit down and negotiate with five different groups of  
17    faculty members and other professionals than it would  
18    to sit down with one group of faculty?

19          A.    I think the efficient way would be to  
20    have everybody in the same union and then you can  
21    negotiate one time.

22          Q.    That's not my question.  Do you think it  
23    might take more time to sit down with five different  
24    groups of persons to negotiate one contract?

1           A.     Certainly.

2           MS. DAY:   No further questions.

3           MS. MUSKOVITZ:  No redirect.  Thank you,  
4  Dr. McNay.

5           MS. DAY:   Thank you.

6           MS. MUSKOVITZ:  Union calls  
7  Dr. Whitesell.

8           ALJ SPRAGUE:  Let me swear you in at this  
9  time.  Please raise your right hand.

10                   (Witness placed under oath.)

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

13           THE WITNESS:  Anne Whitesell,  
14  W-H-I-T-E-S-E-L-L.

15           MS. MUSKOVITZ:  Miss Muskovitz.

16                                 - - -

17                                 ANNE WHITESELL, Ph.D  
18  being first duly sworn, as prescribed by law, was  
19  examined and testified as follows:

20                                 DIRECT EXAMINATION

21  By Ms. Muskovitz:

22           Q.     What do you teach?

23           A.     Political Science at Miami University.

24           Q.     How long have you been at Miami?

1 A. This is my third year.

2 Q. What's your rank?

3 A. I'm an Assistant Professor.

4 Q. So I want to ask you some questions in  
5 the small white binder about Union Exhibit 22, 23 and  
6 24. I'd like you to look at those. So let's start  
7 with Union Exhibit 22. Can you explain this chart  
8 and in doing so explain the spreadsheet under Union  
9 23?

10 A. Sure.

11 MS. SQUILLANTE: Objection. Lack of  
12 foundation.

13 MS. MUSKOVITZ: I don't even know what  
14 your objection's about. I haven't even started.

15 MS. SQUILLANTE: I don't think you've  
16 established that she has personal knowledge of this  
17 exhibit.

18 MS. MUSKOVITZ: Maybe if you listen to  
19 her testimony, you'll see the foundation.

20 A. Okay. So I guess as background, I'm on  
21 the Research Committee for FAM, so I helped create  
22 these charts. So the first chart at the top, that's  
23 the employer chart, that's what Miami supplied to us.  
24 And so that's just copied over from what Miami did.

1           The second chart, that's the employer  
2 chart with coding errors corrected, so the research  
3 team, what we did was we went through the spreadsheet  
4 that Miami provided with all of the Visiting faculty.

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

7           THE WITNESS: Sure.

8           ALJ SPRAGUE: When you say the second  
9 chart, are you talking about an exhibit?

10          THE WITNESS: Yes, that's the second  
11 chart on Exhibit 22. So we went through and  
12 corrected for coding errors, and I can explain those  
13 coding errors in more detail if you want, but those  
14 changes that we made, they don't really change the  
15 percentages, just some small changes both in terms of  
16 the total number of Visiting faculty in the years  
17 2018 through 2022, and then the number of Visiting  
18 faculty returned for the following year which then  
19 changed the return percentages, but again, the  
20 changes in the percentages are very minor.

21           There's just a few cases where we found  
22 either people who had like two years that were coded  
23 as their original appointment year or they were  
24 Assistant Professors or some other small things.

1           The third chart, so the union chart on  
2 Exhibit 22, that was when we considered the people  
3 that were employed in other roles and counted those  
4 as returning, so calculating a return percentage  
5 using the number of Visiting faculty who returned the  
6 next year either as Visiting faculty or as TCPL or as  
7 tenure track faculty.

8           Q.    So if you look at Tab 23, Union Exhibit  
9 23, and there's a black binder in front of you, if  
10 you would also turn at the same time to Employer 17,  
11 do you see Employer 17?

12           A.    Yep.

13           Q.    And, in fact, Employer 16, correct?

14           A.    Yes.

15           Q.    Did I provide those two spreadsheets to  
16 you from the Employer?

17           A.    Correct, yes.

18           Q.    So where do the names come from in Union  
19 23?

20           A.    Those names were provided by the  
21 employer.

22           Q.    Those are the same names other than what  
23 might have been added or subtracted in Employer 17?

24           A.    Correct.

1 Q. Okay. So looking at Union 23, explain  
2 the color coding and the methodology.

3 A. Sure. So if we start with the -- we had  
4 trouble with this yesterday, the green, which we kind  
5 of classified as coding errors. These were people  
6 that in the Exhibit 17 were -- had two original  
7 appointments years.

8 So in their spreadsheet, they were  
9 original appointment years, so we changed that so it  
10 said they were employed the prior year as a Visiting  
11 when it should have been they were the prior year  
12 Visiting.

13 Q. So how can you -- You're saying they had  
14 been coded as original twice?

15 A. Right.

16 Q. How does that affect the statistics if  
17 you're coded original twice?

18 A. Well, because you would have been  
19 retained if you -- If you were coding them as having  
20 two original appointments, then you're not counting  
21 them as retained, but coming back in consecutive  
22 years, they would have been retained.

23 Q. Okay. So then the next color which I  
24 would call sort of dark orange, where it says

1 Employer Error Added, what's that?

2 A. Yeah, so those are cases that we added.  
3 Let me see if I can find an example.

4 Q. There's one on No. 17. There's only one  
5 or two.

6 A. Yeah. So these were people that when we  
7 went back and looked through, we had a couple  
8 different sources when we were looking through for  
9 people's titles. We looked at Buckeye Institute data  
10 which is publicly available data about state employee  
11 salaries, so we used that to find out who was  
12 employed by Miami.

13 And taking that, we looked at who was  
14 classified as an Instructor or Visiting Professor in  
15 that. And so I think Tammy Allen is one of those  
16 cases where she was classified as an Instructor in  
17 that case, so we added her. And I think that was  
18 true of the other cases as well. Both of those  
19 people were classified as Instructors.

20 Q. There's sort of a peach colored one that  
21 says Removed. Can you explain that?

22 A. Right. Yeah, so for the Removed --

23 Q. 34.

24 A. 34, okay. Yes, so those were people that

1 when we looked up, again, either the Buckeye data, we  
2 also looked at back in the course catalog or the kind  
3 of course list for Miami and looked at what people  
4 were teaching as far back as we could and looked at  
5 how many courses people were teaching and matched  
6 that up to see kind if they were teaching full time  
7 or not.

8 So these were people that were Assistant  
9 Professors, either from the Buckeye data -- I think  
10 Mary Badgett is again coded in the Buckeye data as an  
11 Assistant Professor, and then I know we double  
12 checked these as well, and like went to their CVs and  
13 double checked and they were coded as Assistant  
14 Professors.

15 Q. So if you go back to Union Exhibit 22,  
16 those three corrections don't change the numbers very  
17 much; do you agree with that?

18 A. Yeah, they're pretty much....

19 Q. So the more significant is the category  
20 Retained As Faculty, I think the peach colored we  
21 called it which is a much more significant number.  
22 So I want to talk about who are these people that we  
23 coded as Retained As Faculty?

24 A. Right. So these are people who were

1 Visiting at Miami and then they moved into either a  
2 tenure track position or a TCPL position.

3 Q. Why does FAM consider them to have been  
4 retained as faculty?

5 A. Because they're still faculty. I mean,  
6 they're doing --

7 Q. It sounds like a stupid question.

8 A. They're doing the same work. In many  
9 cases, they're teaching the exact same classes,  
10 they're in the same departments and so yeah, we  
11 consider that retention.

12 ALJ SPRAGUE: Can we a clarification,  
13 moved from what to what?

14 A. They moved from a Visiting position to  
15 tenure track or a TCPL.

16 Q. So they're still faculty, correct?

17 A. Correct.

18 Q. They're still full time?

19 A. Uh-huh.

20 Q. And in most cases or all cases they're  
21 still in the same department?

22 A. Right.

23 Q. In many cases, they're teaching the same  
24 classes?

1 A. Yes.

2 Q. And they're doing the same work?

3 A. Yes.

4 Q. And if you go back to the chart on Union  
5 22, does that explain the difference in the  
6 percentages on the right side of the union chart?

7 A. Right. That's why those percentages are  
8 different.

9 Q. And if we were only looking at 2021, so  
10 from the end of the -- in the spring of 2021 to the  
11 fall of 2021, which is what the Hearing Officer has  
12 asked us to look at, even by the University's  
13 numbers, do we still hit the 60 percent threshold?

14 A. Yes.

15 Q. Now, if you turn to Tab 24, can you  
16 explain this document?

17 A. Yes. So Tab 24, these are -- it's not an  
18 exhaustive list, but these are examples of faculty  
19 who moved from Visiting to either TCPL... yeah, I  
20 think all these are TCPL, and, again, they're not  
21 exhaustive, there are some other people that we don't  
22 have on this list, but just to demonstrate that  
23 people often move from Visiting to TCPL.

24 Q. And I know it's not exhaustive, it's just

1 anecdotal, but from this list under Union Exhibit 24,  
 2 are these individuals working as either Instructors  
 3 or visitors for more than five years?

4 A. Yes.

5 Q. And I think you were here when there was  
 6 some testimony that the administration can certainly  
 7 waive its own internal rules on that?

8 A. Yes.

9 Q. So these are all examples, just examples  
 10 of when the administration felt it appropriate to  
 11 waive their own rules?

12 A. Right.

13 MS. MUSKOVITZ: I have no further  
 14 questions.

15 ALJ SPRAGUE: Cross?

16 MS. SQUILLANTE: Yes.

17 - - -

18 CROSS-EXAMINATION

19 By MS. SQUILLANTE:

20 Q. Hi, Dr. Whitesell. My name is Sarah  
 21 Squillante, and I represent Miami University, and I'm  
 22 going to be asking you some questions.

23 Miss Muskovitz just asked you some  
 24 questions about Union Exhibit 24. You still have

1 that opened?

2 A. Yep.

3 Q. And this exhibit represents some, but you  
4 said it's not exhaustive, some of the folks who were  
5 a VAP or an Instructor and then they later became a  
6 TCPL?

7 A. Uh-huh.

8 Q. And these are also folks for whom they  
9 served five years or more as a VAP 1 Instructor?

10 A. Correct.

11 Q. Do you have any personal knowledge of the  
12 circumstances of each of these folks that the  
13 administration might have considered in permitting  
14 them to serve as five years or longer as a VAP?

15 A. No.

16 Q. Dr. Whitesell, you testified earlier  
17 about some of the sources that you used to I believe  
18 review the University's Exhibit 17 and record some  
19 differences from your perspective in Union's Exhibit  
20 23; is that correct?

21 A. Yes.

22 Q. You referenced the Buckeye Institute  
23 data. Were there any other sources for the data that  
24 you used other than the Buckeye Institute data?

1           A.    The Buckeye Institute data, again, we  
2    used the course list from Miami, so we can go back  
3    and look at who was teaching previous in previous  
4    semesters and how many courses they were teaching,  
5    and then for individuals, we did searches to find  
6    their CVs or any other evidence we had that -- their  
7    bios basically.

8           Q.    You also testified, turning back to Union  
9    Exhibit 24 if you could, that for these folks who  
10   were once VAPs or Instructors and later became TCPLs,  
11   as TCPLs they remained a part of faculty?

12          A.    (Nods head.)

13                MS. MUSKOVITZ:  You have to answer  
14   verbally for the court reporter.

15          A.    Yes, yes.

16          Q.    You would agree with me they have a  
17   different title when they became a TCPL versus when  
18   they were a VAP or an Instructor?

19          A.    Yes.

20          Q.    You'd agree that they have different  
21   workload expectations as a TCPL than they did as an  
22   instructor or a VAP?

23          A.    It depends on how you define workload.

24          Q.    You'll agree with me that they are

1 evaluated on different criteria as a TCPL than they  
2 were as an Instructor or Visiting faculty?

3 A. I'm neither a Visiting nor TCPL, so I'm  
4 not too familiar with how those two are evaluated.

5 Q. I think you also testified that in most  
6 or all of these cases, that they taught the same  
7 courses once they became a TCPL as they did when they  
8 were a VAP or an Instructor, correct?

9 A. Yes.

10 Q. Do you have personal knowledge that each  
11 of these -- for each of these folks, every course  
12 that they taught as an Instructor or a VAP, they then  
13 taught as a TCPL?

14 A. No.

15 Q. If you could turn, Dr. Whitesell, back to  
16 Union Exhibit 23 and Line No. -- just as an example  
17 on Line No. 388, Brandi Neal, Brandi is coded as  
18 green.

19 A. Right.

20 Q. Do you know whether Brandi is  
21 considered -- or I'm sorry, was considered a calendar  
22 year VAP or a fiscal year VAP?

23 A. I'm not sure.

24 Q. Dr. Whitesell, you testified that you are

1 on the tenure track at Miami?

2 A. Yes.

3 Q. Do you know whether Visiting faculty or  
4 Instructors have service or scholarship obligations?

5 A. I know several Visiting Instructors that  
6 do have service obligations and do complete research.

7 Q. Do you know if they're required to  
8 complete research?

9 A. I know if they want to keep their jobs,  
10 they do, yeah.

11 Q. Do you know whether all of the Visiting  
12 faculty and instructors complete research?

13 A. No.

14 MS. SQUILLANTE: Nothing further.

15 MS. MUSKOVITZ: No further questions,  
16 Dr. Whitesell.

17 ALJ SPRAGUE: Just a quick question just  
18 for background here. Dr. Whitesell, I'm guessing you  
19 have a doctorate in something.

20 THE WITNESS: I do.

21 ALJ SPRAGUE: Is that Political Science?

22 THE WITNESS: Political Science and  
23 Women's Studies.

24 ALJ SPRAGUE: We can refer to you as

1 doctor. Is that -- is that two separate disciplines  
2 or like a combination?

3 THE WITNESS: It's a dual Ph.D.

4 ALJ SPRAGUE: Okay. Thank you very much.  
5 Miss Muskovitz, just for the ones coming up, if  
6 anyone has a doctorate, just let me know so we can  
7 give them the proper honorific.

8 MS. MUSKOVITZ: Will do so. Union calls  
9 Dr. Cathy Wagner.

10 ALJ SPRAGUE: Please raise your right  
11 hand.

12 (Witness placed under oath.)

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

15 THE WITNESS: Catherine Ann Wagner. Last  
16 name is W-A-G-N-E-R.

17 ALJ SPRAGUE: Dr. Wagner, would you  
18 rather be in the record Catherine, Cathy, something  
19 else?

20 THE WITNESS: Cathy is good.

21 ALJ SPRAGUE: All right, thank you.

22 - - -

23 CATHERINE A. WAGNER, Ph.D  
24 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 By Ms. Muskovitz:

4 Q. Dr. Wagner, do you have a Ph.D?

5 A. Yes.

6 Q. And in what field?

7 A. English.

8 Q. You're employed at Miami?

9 A. That's correct.

10 Q. And what's your rank?

11 A. I'm a professor, full professor.

12 Q. And how long have you been at Miami?

13 A. Since 2006.

14 Q. I'd like to ask you about the change in  
15 the number of TCPLs at Miami to tenure, tenure track.  
16 Are you familiar with those ratios?

17 A. Yes.

18 Q. So first of all, the ratios that are set  
19 show what number to what number?

20 A. Right now they're different ratios  
21 depending on the Division and they range from about  
22 20 to 29 percent.

23 Q. But what are they measuring? When you  
24 say 22 to 29, what to what?

1           A.    Right.  So the total, that ratio isn't  
2    about the total number of faculty overall, it's a  
3    ratio of TCPL to the tenure, tenured and tenure track  
4    faculty.  So there might be more full-time faculty  
5    that are not included in that group.

6                    But what that number measures, and there  
7    are many, but what that number measures is the total  
8    number -- you take the total number of tenured and  
9    tenure tracked faculty, and then you take a  
10   percentage, let's say 20 percent of that, and that is  
11   -- that number represents the limit of TCPL that can  
12   be working at Miami.

13           Q.    Prior to 2005, if you know, what was the  
14    ratio?

15           A.    So at some point, there were none, and  
16    the category of Lecturer was established, I believe.  
17    In 2005, my understanding is that it was five  
18    percent.

19           Q.    So originally there were none?

20           A.    At some point there were none.

21           Q.    And so --

22           A.    At that time, there were 70 some percent  
23    of the faculty, 79 percent in 2010, as late as 2010.  
24    So I don't know how many -- what the ratio -- how

1 many tenure track faculty overall there were in '05.

2 Q. So in 2010, the ratio was increased to  
3 what, if you know?

4 A. It was increased to 20 percent.

5 Q. Then in 2018, it was increased to what?

6 A. To 25 percent.

7 Q. And if you look in the small white binder  
8 at the back, there's colored letter tabs, and I'd  
9 like you to turn to Joint Exhibit C.

10 A. Yes.

11 Q. Can you identify, is this a policy of the  
12 University?

13 A. That's right.

14 Q. If you know, did this policy have to go  
15 through the University Senate?

16 A. Yes.

17 Q. And so can you explain the percentages on  
18 the first page under the category where it says  
19 Limitation on Number of Lecturers and Teaching  
20 Faculty. That phrase refers to TCPL faculty,  
21 correct?

22 A. Yes.

23 Q. What do these ratios represent?

24 A. So as I said, so these are percentages of

1 the TCPL that are permitted to be employed at Miami,  
2 and they're divided up by divisions so, for example,  
3 in the College of Arts and Science, the faculty --  
4 the faculty and the Dean, according to their  
5 governance, established that the percentage of TCPL  
6 that would be permitted is 23 percent.

7 And once again, that's percentage. They  
8 take the total number of faculty of tenure line  
9 faculty, take 23 percent of that, that yields a  
10 number, and that's the number of TCPL that are  
11 permitted to be employed and cast.

12 Q. And so these six categories, are these  
13 colleges within the University?

14 A. That's right.

15 Q. And so for the College of Arts and  
16 Science, hypothetically if there were 100 tenure or  
17 tenure track faculty, they could employ how many  
18 TCPLs?

19 A. 23.

20 Q. And these are numbers that are  
21 established through the faculty Senate?

22 A. Senate. So the way it works now is that  
23 the divisions through their governance establish the  
24 number, the percentage, and then the Senate approves

1 it.

2 Q. Okay. Let me bring you back to Tab 25,  
3 Union Exhibit 25. Can you identify that document?

4 A. Teaching Load for Faculty at Miami  
5 University, yes.

6 Q. I will tell you this is a demonstrative  
7 exhibit that I created, but I wonder if you can --  
8 obviously I got the numbers from you --

9 A. Yes.

10 Q. -- can you explain what this shows?

11 A. So these numbers are available on the  
12 websites for the different colleges -- for Oxford,  
13 for Academic Affairs at Oxford and the regional  
14 campuses, and they establish the typical workload for  
15 the different ranks and categories of faculty, the  
16 teaching workload.

17 Q. So these are current teaching workload  
18 limits at Miami University?

19 A. That's right, the course teaching  
20 workload.

21 Q. Do you see any conflicts if there was a  
22 Collective Bargaining Agreement that encompassed all  
23 of these categories in addressing issues such as  
24 teaching load?

1           A.    No.

2           Q.    Let me ask you about Tab 26, Union  
3 Exhibit 26.  Can you explain this document?

4           A.    Right.  So I helped to make this document  
5 with the research team.  I actually was wondering  
6 because we were talking about this issue of the  
7 Visiting people being moved into other categories,  
8 and there are some folks in my own department, let's  
9 see, Amanda Stevens and also Adam Strantz and some  
10 other folks I know that I was curious about  
11 whether -- I knew they had transitioned recently from  
12 doing one role, Visiting, into another role.  And so  
13 I looked up on the course list to see what they were  
14 teaching before they were changed to a different role  
15 and what they were teaching after.

16          Q.    So looking at Amanda Stevens on Page 17  
17 of this document, the page numbers are in the upper  
18 right-hand corner.

19          A.    Yes.

20          Q.    Looking at -- actually, this is my Page  
21 16 in the upper right-hand corner -- what were you --  
22 what did you find out about Amanda Stevens with  
23 respect to the classes that she was assigned at  
24 Miami?

1           A.    She's doing the same work.  We still  
2           needed her to do the same work.  And when she -- when  
3           we were able to hire her as a TCPL, we continued to  
4           need her to do the same work.

5           Q.    So, for example, if you look at the -- it  
6           says F2018-2019, what does F stand for?

7           A.    Fall.

8           Q.    Below it, it says S2018-2019, what does S  
9           stand for?

10          A.    Spring.

11          Q.    Those are the semesters?

12          A.    Uh-huh.

13          Q.    Do you see under fall 2018-2019, it has  
14          ENG 313, what is that?

15          A.    English 313, I believe it's the business  
16          writing class.

17          Q.    So that's a particular class that's in  
18          the catalog?

19          A.    That's right.

20          Q.    And if I look at the TCPL in the fall of  
21          2022, she's teaching four classes?

22          A.    Uh-huh.

23          Q.    And you have to say yes or no for the  
24          court reporter.

1           A.    Yes, yes.

2           Q.    I see three of her four classes are  
3 English 313, correct?

4           A.    That's right.

5           Q.    So going on to the next page, Adam  
6 Strantz, what did you find with respect to his  
7 teaching both as a Visitor and then later as an  
8 Assistant Professor? I assume that's tenure track?

9           A.    That's right, he went from being a  
10 Visitor to being an Assistant Professor.

11          Q.    What did you learn about what classes he  
12 was teaching when he transitioned from being a  
13 Visitor to being an Assistant Professor?

14          A.    He's teaching the same classes pretty  
15 much.

16          Q.    And if you went through every one of  
17 these pages in Union 26 all the way to Page 27, would  
18 the same be true?

19          A.    Yes. And those two, Ran Zhang and  
20 Geoffrey Zoeckler, are pretty striking examples of  
21 it.

22          Q.    What page is that?

23          A.    Ran Zhang is on Page 26.

24          Q.    Last name Z-H-A-N-G?

1           A.    Uh-huh.

2           Q.    First name R-A-N?

3           A.    That's right, Ran Zhang, excuse me.

4           Q.    That's for the court reporter.  What do  
5 you find from I assume it would be Dr. Zhang because  
6 that faculty member was hired as an Assistant  
7 Professor?

8           A.    Uh-huh.

9           Q.    So why is that striking to you?

10          A.    Because if you look at what Ran Zhang was  
11 teaching --

12                   ALJ SPRAGUE:  Hang on a second.

13                   MS. MUSKOVITZ:  Page 26.

14                   ALJ SPRAGUE:  There it is, sorry.  It was  
15 stuck together.

16          A.    So clearly the Department of Electrical  
17 and Computer Engineering needed Ran Zhang to teach, I  
18 don't know what it is, but engineering and  
19 computer -- Electrical and Computer Engineering 303  
20 and needed Ron to teach it both before they were  
21 changed into an Assistant Professor and after.

22          Q.    So under the administration's  
23 calculations, this would be -- this faculty member  
24 would have been considered someone who was not

1 retained, right?

2 A. That's right.

3 Q. And why are we disputing -- Why do we  
4 consider him to be retained rather than not retained?

5 A. Because there con- -- first of all,  
6 they're continuing on as a faculty member, so they  
7 came back to campus and continued to teach in the  
8 next semester. And even though their title changed,  
9 they were continuing to do very similar work and, in  
10 fact, for the teaching course load the exact same  
11 work.

12 Q. In order for this individual to be hired  
13 as an Assistant Professor, what does that tell you  
14 about the research he was doing as a Visitor?

15 A. It shows that Ran must have been research  
16 active and, in fact, when you hire VAPs, we certainly  
17 consider their research activity. When we hire them,  
18 I served on those search committees.

19 Q. How many times have you served on search  
20 committees for visitors?

21 A. I chaired a Visiting search committee a  
22 couple years ago only once.

23 Q. And tell me how the research of those  
24 candidates what's evaluated.

1           A.    We went through their CVs.  We looked at  
2    their letters.  We interviewed them.  We spent a lot  
3    of time asking about their research because they're  
4    going to be in the front line talking to students,  
5    and we want them to be able to be at the front of  
6    their field, and we want them to know their  
7    discipline really well, so we asked them a lot of  
8    questions about their research.

9           Q.    And what does CV stand for?

10          A.    Curriculum vitae.

11          Q.    Most academics or all academics have CVs?

12          A.    Yes.

13          Q.    From your experience, you've been at  
14    Miami 16 years, I've heard the argument that these  
15    visitors are hired at the last minute to plug holes  
16    when somebody might unexpectedly leave.  Is that  
17    accurate?

18          A.    No.

19          Q.    What is more -- Why not?

20          A.    There are -- There's practice and then  
21    there's title, right.  So the way that we are  
22    labeling people at Miami when we are talking about  
23    the Visitor category, is that we're calling them --  
24    we're considering them temporary for the purpose of

1 title, but when you look at what they -- the role  
2 they're actually serving, they're teaching the same  
3 courses year upon year that we need to have taught  
4 year upon year.

5           There are chairs who -- Chairs in  
6 departments need to hire people for permanent needs  
7 and they do not have the what we call the lines, the  
8 positions that are given to them by the  
9 administration in order to fill those permanent  
10 needs, so they hire Visiting people in order to fill  
11 those permanent needs.

12           And then they often hire them with the  
13 hope, and that hope is conveyed to the visitors that  
14 they really want to hire them on as a TCPL or as an  
15 Assistant Professor, and clearly they often have  
16 their research chops to be hired and because we hire  
17 them on, we move them into the other category.

18           Q.    Can you explain what is a per credit  
19 faculty member?

20           A.    That is what is called an adjunct a lot  
21 of the time at the other places.  It's a part-time  
22 faculty member who's paid course by course.

23           Q.    In your department, if there's a hole to  
24 be filled, generally what type of person fills that

1 hole? Is it a Visitor a per credit faculty member?

2 A. We might -- We would probably hire a per  
3 credit hour faculty member if we couldn't fill it by  
4 somebody maybe doing an overload or something like  
5 that. We try to avoid hiring per credit hour faculty  
6 members.

7 Q. For the next academic year, the year that  
8 starts in the fall of 2023, August of 2023, when is  
9 that catalog -- when are the courses assigned for the  
10 fall semester a year from now?

11 A. Early in the spring.

12 Q. And if you know, are the Visiting faculty  
13 members assigned courses now for the fall semester of  
14 2023?

15 A. Yes. If we didn't have people staffing  
16 those courses and know who they were, it would be  
17 quite chaotic.

18 Q. Is that normal across the University that  
19 even now, meaning January, February, whatever, the  
20 visitors are already assigned courses for the fall  
21 semester of 2023?

22 A. That's right.

23 Q. And in your experience is there an  
24 expectation -- not a guarantee but an expectation of

1 continued employment among the visitors at Miami the  
2 way they've been treated?

3 A. According to practice, yes.

4 Q. So in the employer's -- in one of the  
5 Employer's briefs, let me read you a line from the  
6 Employer's brief where they said Visiting faculty are  
7 so named because Miami considers them temporary  
8 employees who fill instructional staffing needs at  
9 any given time. Is that accurate? Is that an  
10 accurate description of what happens at Miami  
11 University?

12 A. No. Perhaps for a few but for the most,  
13 not.

14 Q. For most of the visitors, it's not?

15 A. That's right.

16 Q. And in another section of the Employer's  
17 brief, they provided an analogy. I'd like to read  
18 this analogy to you. Again, I'm looking at Page 5 of  
19 the Employer's brief on visitors. An Employer who  
20 provides --

21 ALJ SPRAGUE: Miss Muskovitz, just for  
22 identification since we had a couple briefs, is it  
23 possible to give me the full title or the date that  
24 that was filed with SERB?

1 MS. MUSKOVITZ: Yes, this was the brief  
2 filed I believe on December 5th, 2022 by the Employer  
3 and it's entitled Brief on Behalf of Miami University  
4 Regarding Exclusion of Visiting faculty based on  
5 Status as Seasonal/Casual Employees.

6 ALJ SPRAGUE: Thank you.

7 MS. MUSKOVITZ: And I correct that, it  
8 was submitted on December 2nd, 2022.

9 Q. (By Ms. Muskovitz) So on Page 5 it says:  
10 Consider the following analogy: An employer who  
11 provides lawn care products might hire a large amount  
12 of seasonal stock employees during its spring busy  
13 season to keep up with workload needs.

14 If one such seasonal stock employee after  
15 conclusion of their temporary spring employment  
16 ended, applied and was selected for a year round  
17 permanent position as a truck driver, this does not  
18 mean the temporary stock position is not seasonal.

19 Does that analogy fit with the Visiting  
20 faculty at Miami University?

21 A. No.

22 Q. Why not?

23 A. Because the lawnmower and the truck  
24 driver are doing different work. The Visiting people

1 who move on to different roles or different titles  
2 are doing very similar work.

3 Q. If you look at Union Exhibit 27 in the  
4 binder in front of you, this is not an exhaustive  
5 list, but can you explain what this document  
6 identifies?

7 A. Yeah. We on the Research Committee did a  
8 little crowd sourcing to try to figure out what  
9 courses at the University were taught by multiple  
10 types of faculty. The idea was that there -- that  
11 you could potentially -- I think the -- that Miami  
12 might wish to make an argument that faculty of  
13 different categories weren't doing similar work, that  
14 the work was different, as in the lawnmower and the  
15 truck driver analogy.

16 But, in fact, what this shows, and it's  
17 not exhaustive at all, there's many more examples of  
18 this, it shows that faculty teaching Bio 121, that's  
19 taught by tenured faculty, it's taught by tenure  
20 track faculty, it's taught by TCPL, it's taught by  
21 VAPs.

22 Q. That's a pretty extensive list under  
23 Union Exhibit 27, correct?

24 A. That's right.

1 Q. If you know, is there times when there  
2 might be more than one section of a particular class  
3 and one section is taught by a tenured faculty and  
4 one section's taught by a TCPL and one section is  
5 taught by a Visiting faculty member?

6 A. Absolutely. In my department right now,  
7 I'm in the creative writing program, English 226 is  
8 being taught by tenured, tenure track, Visiting and  
9 graduate students as well actually.

10 Q. Different sections of the same course?

11 A. Yes, all at the same time.

12 Q. And with respect to teaching that course,  
13 that's really the same work with respect to that  
14 course?

15 A. It's identical.

16 Q. Let me ask you about governance. Who's a  
17 member of the University Senate?

18 A. On the Senate there are Senators who  
19 represent the different departments, and those might  
20 be tenured or tenure track faculty or TCPL. Then  
21 there are a small number of administrators who serve  
22 who are appointed roles. There are students. I  
23 think that's it.

24 Q. What about librarians?

1 A. Oh, yes, of course librarians.

2 Q. So they're all members of the University  
3 Senate?

4 A. Yes.

5 Q. What is the Faculty Assembly?

6 A. The Faculty Assembly is a body of the  
7 faculty at Miami. It includes tenured and tenure  
8 track faculty, librarians and TCPLs.

9 Q. What types of decisions are passed by the  
10 Faculty Assembly? For example, like curriculum, is  
11 that passed by the University Senate or Faculty  
12 Assembly or both?

13 A. Curriculum goes through University  
14 Senate.

15 Q. If curriculum decisions are made in the  
16 University Senate, they apply to everyone in the  
17 University?

18 A. They apply to all the teaching folks at  
19 the University, yeah.

20 Q. Independent of --

21 A. That's right.

22 Q. I mean, if there were five Senates doing  
23 five different decisions on curriculum, would that be  
24 more efficient or less efficient?

1 A. It would be a lot less efficient.

2 Q. I just heard it would be a nightmare.

3 A. It would be a nightmare.

4 Q. What about five different -- even three  
5 different faculty Senates passing rules on the same  
6 issues but that apply to different members of the  
7 faculty on issues of curriculum or a policy?

8 A. It would create a big headache.

9 Q. Was there a faculty member in your  
10 department that went from a Visiting faculty member  
11 to a TCPL to a tenure track?

12 A. There is.

13 Q. When that --

14 A. That person is actually tenured now.

15 Q. That person is tenured and started off as  
16 a Visitor?

17 A. That's right.

18 Q. When that faculty member was a Visitor,  
19 were they doing scholarship?

20 A. Yes, they published two books while they  
21 were a Visitor.

22 Q. What about as a TCPL, did that faculty  
23 member continue to do scholarship?

24 A. Yes, they did.

1 Q. Was that faculty member pretty much doing  
2 very similar work independent of title?

3 A. Yes.

4 Q. So --

5 A. Including service, quite a lot of it.

6 Q. Including service under all three titles?

7 A. Yes.

8 Q. Do you think there's a community of  
9 interest between the Visiting faculty, the  
10 instructors, the TCPLs, the tenure track, the tenured  
11 and the librarians?

12 A. Very much so. We're all front line  
13 learning/teaching professionals.

14 Q. What would happen to the clout of the  
15 union if you were in five silos?

16 A. It would be significantly reduced.

17 Q. Let me ask you to look at Union Exhibit  
18 28. Can you explain what that is.

19 A. Yes, this is from the governance  
20 documents of the different divisions of Miami  
21 University.

22 Q. And on the left, it lists the various  
23 colleges of the University?

24 A. Yes.

1 Q. And in the middle column, it talks about  
2 voting rights and then on the right, committees.

3 ALJ SPRAGUE: Wait a second. What  
4 Exhibit is it?

5 MS. MUSKOVITZ: 28.

6 MS. DAY: I'm just going to object for  
7 lack of foundation. There's no testimony so far as  
8 to any knowledge about this document.

9 MS. MUSKOVITZ: Good question.

10 Q. (By Ms. Muskovitz) Tell me about the  
11 knowledge you have of Union Exhibit 28.

12 A. Yeah, as part of Research Committee, I  
13 participated in going and looking up these different  
14 documents which are in different places depending on  
15 the college, might be on a canvas site, might be on  
16 the website. So yes, I participated in putting this  
17 document together.

18 Q. And have you reviewed the document?

19 A. Yes.

20 Q. And have you found it to be accurate?

21 A. As far as I know, it's accurate.

22 Q. So explain to me what it represents.

23 A. So it tells you -- in the middle column  
24 it tells you about the voting rights for the

1 different categories of faculty in the division. And  
2 on the right-hand side, it tells you about  
3 eligibility and membership for committees in that  
4 division.

5 Q. And so are there -- I see tenure track,  
6 TCPL, all kinds of titles listed in this document,  
7 correct?

8 A. Yes.

9 Q. Again, in terms of the community of  
10 interest among these various categories, whatever  
11 title they happen to have in any given year, how  
12 difficult would it be for those individuals to secure  
13 their rights if they were in five different silos?

14 A. I think it would be difficult.

15 Q. I'd like you to look at Union Exhibits 29  
16 to 32 --

17 ALJ SPRAGUE: Rights for... is that  
18 different than the other rights you just referenced a  
19 couple minutes ago? You talked about five silos.  
20 Was there any category different about this document?

21 MS. MUSKOVITZ: Can you say that again  
22 because I'm not following you.

23 ALJ SPRAGUE: You asked the witness a  
24 couple minutes ago about five silos and the

1 University Senate and also some other stuff about --  
2 I guess that was more about the University Senate. I  
3 guess the point I understand you keep making is if  
4 those are split into five groups theoretically, that  
5 the Union's alleging their bargaining power would be  
6 diminished, but is there something specific regarding  
7 this document that it references?

8 Q. The governance that is laid out in Union  
9 Exhibit 28, you know, are from the -- I believe from  
10 the governance documents of each individual college;  
11 is that correct?

12 A. They show a good deal of participation on  
13 the part of non-tenure track faculty and  
14 enfranchisement on the part of non-tenure track  
15 faculty in the governance of each division.

16 Q. As an example, on the first one in the  
17 College of Arts and Science, under Voting Rights, it  
18 includes librarians, TCPL, tenured faculty, tenure  
19 track faculty all have voting rights, correct?

20 A. Librarians aren't in the College of Arts  
21 and Science, but yes, TCPL can serve on committees  
22 and they participate in voting and cast. The School  
23 of Creative Arts actually has -- this isn't specified  
24 in all of them, but the School of Creative Arts

1 specifies that Visiting people, Instructors can vote.

2 Q. So within the college, those decisions  
3 are made?

4 A. Yes, they're made by the faculty  
5 according to the terms of governance at the college.

6 Q. Okay. Which goes to their franchisement?

7 A. That's right.

8 MS. MUSKOVITZ: Does that answer your  
9 question?

10 ALJ SPRAGUE: Yes, thank you.

11 Q. (By Ms. Muskovitz) So going to Union  
12 Exhibit -- the policies under Union Exhibit 29 to 32,  
13 these are all policies at the University?

14 A. That's right.

15 Q. They're publicly available, I believe, on  
16 the University website?

17 A. Yes.

18 Q. So can you explain -- just explain to me  
19 briefly what are these policies?

20 A. These are important University level  
21 committees that make essential decisions about our  
22 curriculum, about promotion and tenure, et cetera.  
23 And their membership is established -- their  
24 composition is established here, and you can see who

1 the current members are.

2 Q. So, for example, in the Liberal Education  
3 Council, this shows who the members are?

4 A. That's right.

5 Q. And so by title, who is involved with the  
6 Liberal Education Council?

7 A. There's an array of tenured and  
8 non-tenure track faculty here. So, for example, if  
9 you look at the third page of the Liberal Education  
10 Council committee, the membership includes Tracy  
11 Haynes who is a TCPL in Bio, also John Charles Duffy  
12 who is a TCPL in comparative religion. Doesn't show  
13 their titles here, but those are ones I happen to  
14 know about.

15 So what that shows is that the varying --  
16 the extremely important committees at the University  
17 that make decisions for the entire University are  
18 equally participated in by TCPL.

19 Q. And so what does the Liberal Education  
20 Council address?

21 A. The Liberal Education Council develops  
22 the major curriculum that all students share at Miami  
23 University. They develop design for a curriculum  
24 that will take students through a liberal arts

1 education. So it's the things they would need to  
2 take in advance of getting started with their  
3 specific majors.

4 Q. If there was a Liberal Education Council  
5 that was only involving tenure and tenure track and a  
6 separate one that only involved TCPL faculty members,  
7 would that make any sense at all?

8 A. It would make no sense.

9 Q. Why not?

10 A. Well, first of all, the courses being  
11 taught are taught by multiple categories of faculty,  
12 so it wouldn't make sense to have a Bio 101 taught by  
13 one group and another Bio 101 taught by another  
14 group. But even more importantly, we would lose --  
15 if the committees didn't include multiple categories  
16 of faculty, you would lose the perspective of the  
17 faculty teaching the courses and you need to have  
18 that.

19 Q. So currently the University has made a  
20 decision in conjunction with all the faculty that all  
21 of these voices should be heard within the Liberal  
22 Education Council; is that fair?

23 A. That's right. The Executive Committee of  
24 Senate is who makes the decisions about who -- The

1 Provost serves on that committee, an array of elected  
2 people from Senate, and the Secretary of Senate who's  
3 the Associate Provost who we heard from yesterday,  
4 those folks make the decisions on who serves on these  
5 committees and contact them and tell them about how  
6 it works and end up appointing them -- Senate reviews  
7 these suggestions for those committees, then approves  
8 them.

9 So there's a process for considering and  
10 identifying the people who will be good for these  
11 committees, and then that goes through -- that goes  
12 through the committee that the provost serves on and  
13 other upper level administrators, as well as elected  
14 people from Senate.

15 Q. Are librarians eligible to be on the  
16 Executive Committee of the University Senate?

17 A. Yes.

18 Q. Are TCPL faculty eligible to be on the  
19 Executive Committee of University Senate?

20 A. Last year we had a TCPL as the chair of  
21 the Executive Committee of Senate, and next year we  
22 will as well, so yes.

23 Q. So not only are they on it, but they're  
24 in....

1           A.    They're in leadership positions on that  
2 committee, yeah.

3           Q.    Okay.  If you look at Union Exhibit 30,  
4 what policy is this or what committee is this?

5           A.    The Department Planning and Improvement  
6 Process Committee, this was -- I know this committee  
7 is the Academic Program Review Committee whose name  
8 was recently changed.

9           Q.    If I look at the bottom on Page 4, it  
10 says:  Eight tenure, tenure track or TCPL members, at  
11 least one of whom shall be a member of the University  
12 Senate.  Do you see that?

13          A.    Yes.

14          MS. DAY:  Your Honor, I'm going to object  
15 to this exhibit to the extent it's not full.  The  
16 first page says Page 2 of 6.  We have no idea what's  
17 on Page 1.

18          MS. MUSKOVITZ:  I believe it starts on  
19 Page 6 -- I'm sorry, on Page 4 and the rest are just  
20 indexes.

21          MS. DAY:  I would dispute that we don't  
22 know that information because it's not presented to  
23 us.

24          MS. MUSKOVITZ:  I believe it starts on

1 Page 4. The witness can answer that.

2 ALJ SPRAGUE: Do you know what's on Page  
3 1?

4 MS. MUSKOVITZ: Pardon? I think it was a  
5 blank page when I looked at the PDF.

6 THE WITNESS: Yeah, I've looked at this  
7 web page multiple times, and the committees of Senate  
8 on the web page are all set up so there's a left-hand  
9 menu of all the different committees.

10 And then the major committee thing starts  
11 on the -- The committee at hand starts in the main  
12 part of the page. And what you see on Page 4 is  
13 that -- or Page 3 of the PDF, I believe, and Page 4  
14 according to the numbering at the bottom right.

15 MS. DAY: We don't know that.

16 MS. MUSKOVITZ: The witness knows that.  
17 May I continue?

18 ALJ SPRAGUE: Yes.

19 MS. MUSKOVITZ: Thank you.

20 Q. (By Ms. Muskovitz) So can you tell me  
21 about this committee, the Department Planning and  
22 Improvement Process Committee, what does it do?

23 A. Its role is to review the academic  
24 programs at Miami University so that's the majors,

1 the departments that the design of majors, the  
2 programs that include the faculty who teach in those  
3 programs and to look at those programs and to analyze  
4 and assess whether they're doing a good job and to  
5 make suggestions about how to improve what they do.

6 Q. Could this committee function if it was  
7 excluding or if there were two committees, one only  
8 for TCPL faculty and one for tenure track and tenure  
9 track faculty?

10 A. No, and it wouldn't function well if it  
11 were excluding a major category of faculty at Miami  
12 either.

13 Q. Tell me about the committee under Union  
14 31, the Athletic Policy Committee.

15 MS. DAY: And your Honor, I would just  
16 object for the record again that this policy does not  
17 include all of the pages.

18 MS. MUSKOVITZ: I believe it does. I  
19 think it's my PDF copies. May I continue?

20 ALJ SPRAGUE: Let's just figure this out  
21 real quick. So there's an index, right?

22 THE WITNESS: That's right.

23 ALJ SPRAGUE: And then so this one's on  
24 Page 4, that Athletic Policy Committee.

1                   THE WITNESS: Just like the other one,  
2                   yes, because it's the same list of committees that  
3                   are here.

4                   ALJ SPRAGUE: So if we go back to Exhibit  
5                   30, there's an index on 2 and 3, and again it's like  
6                   Page 4 with that same....

7                   THE WITNESS: It says same ones at the  
8                   top as you see, yeah.

9                   A. So all three people were on the same  
10                  committee, all right. Is that kind of the set-up  
11                  then?

12                  THE WITNESS: That's right. They would  
13                  all look identical to that.

14                  ALJ SPRAGUE: Okay. Well, at least it  
15                  seems to be an internal consistency. Please proceed.

16                  MS. DAY: I understand.

17                  Q. (By Ms. Muskovitz) So looking at I  
18                  believe the Athletic Policy Committee, do you know  
19                  what in general that committee does and who's on that  
20                  committee?

21                  A. I don't know that much about this  
22                  committee to be honest, but I have reviewed the  
23                  list of -- I'm not involved with athletic policy as  
24                  an English Professor very much.

1           Q.    Let me move on to Exhibit 32, and I  
2 believe this is the Faculty Welfare Committee.

3           A.    That's right.

4           Q.    What can you tell me about the Faculty  
5 Welfare Committee?

6           A.    The Faculty Welfare Committee I do know  
7 something about.  It does -- It was actually  
8 established some years ago with the encouragement of  
9 a former AAUP chapter at Miami, and its work is to  
10 assess how everything -- anything and everything that  
11 might affect how the faculty are supported at Miami,  
12 how they're -- whether their compensation is fair,  
13 these kinds of things.

14                    So in recent years, they have done a lot  
15 of work working on TCPL promotion points.  They  
16 developed those that you've heard about that mirrored  
17 the tenured faculty promotion points.  They also  
18 worked on -- They had a sub committee called the  
19 Faculty Composition Committee that did a lot of work  
20 assessing the welfare and needs and fairness for TCPL  
21 and Visiting Assistant Professors as well.

22           Q.    Is there a new name for the Academic  
23 Program Review Committee?

24           A.    Yes, that's the one we looked at in

1 Exhibit... was it 30, I believe?

2 Q. Is that Union Exhibit 30?

3 A. Union Exhibit 30, it says Department  
4 Planning and Improvement Process Committee, that's  
5 the new name. The old name is Academic Program  
6 Review Committee.

7 Q. So I'm looking at the letter that was  
8 filed by the administration that's dated June 24th,  
9 2022.

10 ALJ SPRAGUE: Hang on a second. I've  
11 just got to put that back in. So currently it's the  
12 Academic Improvement Committee?

13 THE WITNESS: No, the new name is  
14 Department Planning and Improvement Process  
15 Committee. The old name is Academic Program Review  
16 Committee. I think the change is very recent.

17 Q. (By Ms. Muskovitz) I'm looking at the  
18 June 24th, 2022 letter to SERB from the  
19 administration's outside counsel, and it says that  
20 the TCPL are restricted from participating in the  
21 Academic Program Review Committee. Is that true?

22 A. No. It's manifestly not true because you  
23 can see on Page 5 that Tracy Haynes, who's a TCPL in  
24 Biology, is the Senate liaison on that committee.

1           Q.    So for any argument that's been raised,  
2 just their participation or the ability of TCPLs to  
3 participate in governance of the University, do you  
4 dispute their -- that's a very awkward question. Let  
5 me start that question over.

6           The administration has been arguing that  
7 TCPLs are really excluded from the governance of the  
8 University and serving on certain committees and  
9 don't really currently have voice, and that's one of  
10 the big distinctions between their role and the role  
11 of tenure and tenure track faculty at the University.  
12 Do you think that position is accurate or not  
13 accurate?

14           MS. DAY:  Objection as to the point that  
15 it mischaracterizes the University's position here.

16           Q.    I'll just read you the sentence in  
17 response to that.  Again, this is from the June 24,  
18 2022 letter:  TCPLs are more limited than tenure and  
19 tenure track faculty with respect to their  
20 involvement in faculty governance.

21           So in response to that representation  
22 made by the administration's outside counsel, what is  
23 your knowledge of the involvement of other faculty  
24 groups and governance at Miami University?

1           A.    It's robust and it happens regularly that  
2 TCPLs are deeply involved. I don't know how the  
3 University would function if we got rid of the TCPL  
4 role in faculty governance. They serve on Senate.  
5 They are part of the Faculty Assembly. They serve on  
6 the most important committees at the University. I  
7 believe there's one on the Executive Council, the  
8 President's Executive Council right now.

9           There's also -- They're leaders of Senate  
10 at Executive Committee which sets the agenda for  
11 Senate. So, yeah, they're all over the place in  
12 governance. They play an absolutely necessary role  
13 in governance at Miami.

14          Q.    So you were here listening to the  
15 administration witnesses yesterday; is that correct?

16          A.    Yes.

17          Q.    And there's been this argument that  
18 somehow the librarians, their interests would not be  
19 represented by one faculty Bargaining Unit or the  
20 TCPLs would not be represented by one faculty  
21 Bargaining Unit because the tenured faculty like you  
22 would basically throw them under the bus.

23                So I want to know from your experience in  
24 organizing the faculty at Miami, can you explain to

1 the Hearing Officer the positions of the various  
2 groups that the union's trying to represent?

3 MS. DAY: Objection to the question to  
4 the extent it is argumentative.

5 MS. MUSKOVITZ: I don't think it's  
6 argumentative at all. That's their --

7 MS. DAY: I do not --

8 MS. MUSKOVITZ: Let me finish. Their  
9 witnesses are claiming I think paternalistically but  
10 claiming that all these other groups can't make their  
11 own decisions and that the tenure and the tenure  
12 track people will hurt them, will misrepresent them,  
13 will have them be laid off first, that will sock them  
14 with bad working conditions, and the faculty  
15 themselves dispute that.

16 MS. DAY: While I appreciate  
17 Miss Muskovitz's testimony right now, there is an  
18 absolute mischaracterization. No one testified  
19 yesterday as to throwing anyone under the bus.

20 MS. MUSKOVITZ: I disagree.

21 ALJ SPRAGUE: Let me go through all that.  
22 We can spend all day on this, okay. Miss Muskovitz,  
23 let's try to strip out the argumentative language  
24 from an objection, but having said that, I think it's

1 not inaccurate that perhaps some of the testimony  
2 offered on direct yesterday could be gleaned with  
3 that import, obviously not all of it to any degree  
4 but perhaps some. Having said that then, I think you  
5 can answer that question, so overruled.

6 A. Okay. So there's -- any group that you  
7 put together is going to have elements in it that are  
8 fewer in number than other groups. You're always  
9 going to have minorities. But in a union, you  
10 need -- and this has been true during organizing,  
11 that you need to understand the members'  
12 perspectives, everyone's perspective.

13 And you need to do that so you can come  
14 up with a shared set of interests that you can  
15 negotiate on the basis of. And if you don't do that,  
16 it's really counterproductive for the union because  
17 the union needs everyone's support in order to make  
18 it -- to have the collective power that it needs in  
19 order to negotiate with a much stronger force.

20 The union puts it on an equal footing in  
21 the negotiating table that otherwise none of those  
22 faculty have, whether or not they're the majority or  
23 the minority. So if you take away the union, you  
24 actually get rid of the opportunity for those

1 minoritized faculty to have a seat at the table. So  
2 they have less power than they would.

3 The problem is going to always exist in a  
4 union for a minority of faculty and a majority of  
5 faculty to try to figure out what is their shared  
6 interests. That's going to be the case. But the two  
7 things are also the case. One is that those  
8 minoritized faculty otherwise would have no voice at  
9 all, would have no seat at the table.

10 And the other is that the union needs  
11 everybody on board and needs to really understand  
12 what the issues are for all of the membership in  
13 order for it to do a good job. If you start to have  
14 a situation where you're, sorry to quote this, but  
15 throwing people under the bus, you're not going to  
16 have the collective solidarity that you need in order  
17 to have negotiating power.

18 ALJ SPRAGUE: Thank you. Just so we  
19 understand, I don't think that actual -- I totally  
20 understand your distilling yesterday's testimony,  
21 although just to be clear, I don't think the words  
22 throwing under the bus were used.

23 THE WITNESS: No, they were not.

24 Q. (By Ms. Muskovitz) But in your organizing

1 efforts just from talking to the faculty members at  
 2 Miami, do the librarians want to be in the same unit  
 3 as you?

4 A. Yes.

5 Q. Do the TCPL want to be in the same unit  
 6 as you?

7 A. Yes.

8 Q. Do the visitors want to be in the same  
 9 unit as you?

10 A. Yes.

11 Q. Do these dual appointment folks who have  
 12 at least half their work is faculty work, do they  
 13 want to be in the same unit as you?

14 A. Yes.

15 Q. And do you want to be in the same unit  
 16 with all of those co-workers, those other faculty  
 17 members?

18 A. Very much so.

19 MS. MUSKOVITZ: I have no further  
 20 questions.

21 ALJ SPRAGUE: Let's go off for a moment.

22 (Off the record.)

23 (At 11:50 a lunch recess was taken until  
 24 12:40.)

1 ALJ SPRAGUE: We are back on the record  
 2 after the lunch and recess. Miss Day, you have  
 3 cross?

4 MS. DAY: Yes, thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Day:

8 Q. Dr. Wagner, as you may have heard earlier  
 9 today, my name is Jourdan Day and I'm counsel on  
 10 behalf of the University and I have some questions  
 11 for you today. Have you ever been in an  
 12 administrative role at the University of Miami?

13 A. At Miami University?

14 Q. Excuse me, yes, at Miami University?

15 A. Yes. I'm sorry, I'm sorry, no, I have  
 16 not.

17 Q. Have you held any administrative role at  
 18 any other public university?

19 A. No.

20 Q. You're familiar with the --

21 A. Could I? I just want to make sure. I  
 22 directed a program, so, but not an executive  
 23 administrative role.

24 Q. Have you ever held a position as a chair,

1 a dean, a provost?

2 A. No, Program Director is all.

3 Q. You're aware of the petition for the  
4 union here and the proposed unit, correct?

5 A. Yes.

6 Q. So as you know, there are I think we've  
7 been referring to five categories of personnel:  
8 Tenured and tenure track faculty, TCPL faculty, VAPs  
9 and Instructors faculty, librarians and then persons  
10 who hold multiple appointments.

11 A. Uh-huh.

12 Q. Can you help me, do you know what rough  
13 percentage breakdown those numbers would constitute  
14 or how many people in general there are in each of  
15 those categories? Let's start with the tenured and  
16 tenure track folks. What's your understanding of how  
17 many persons that includes?

18 A. Usually it's in the mid 450s to lower  
19 500s. I think right now it's around 490 something,  
20 but yeah, right around there.

21 Q. And roughly how many TCPLs does the unit  
22 include?

23 A. That would be probably because it's ten  
24 percent, 20 to 30 percent. It's probably... let me

1 see. I don't know, I want to say about 65 or  
2 something like that.

3 Q. In the entire unit?

4 A. Yes.

5 Q. How many VAPs and Instructors does that  
6 include?

7 A. Oh, in the unit or among the TCPL?

8 Q. In the unit.

9 A. I think they're about 160 now.

10 Q. How many librarians?

11 A. I think there are only about 30 or  
12 something like that.

13 Q. How many persons in multiple  
14 appointments?

15 A. Probably far fewer, maybe -- I'm not  
16 sure. And that's -- you know, we don't actually have  
17 the data on that to be quite sure who would -- we  
18 don't know because we only see their position titles.  
19 We don't know their actual roles necessarily and the  
20 breakdown of their duties, but I'm going to say  
21 probably 15, 20.

22 Q. And Dr. Wagner, I will tell you on the  
23 position itself, the rough estimate number of people  
24 in the total proposed unit is slightly over 1,000

1 persons, so it sounds like numbers might be slightly  
2 off if we're looking at 500 tenured and tenure track  
3 faculty, 65 TCPLs, 165 --

4 A. Oh, I think I got the TCPL number wrong  
5 obviously, yeah, because that's going to be closer to  
6 a couple of -- maybe I think it's going to be under  
7 150, but somewhere in there.

8 Q. Just wanted to get a rough idea, okay.

9 ALJ SPRAGUE: So we're amending that  
10 number?

11 A. Yes, please, yeah. And I'm terrible at  
12 mental arithmetic, really, really terrible, but it's  
13 going to be about 20 to -- 20 to 30 percent of that  
14 figure for the tenured line.

15 Q. Do you think there are more VAPs and  
16 Instructors than TCPL in the proposed unit?

17 A. It depends on the year but yes.

18 Q. I want to have you look at Joint Exhibit  
19 C. It's in the smallest white binder, and towards  
20 the back there are some letter tabs.

21 A. Yep.

22 Q. Sorry, Joint Exhibit C.

23 A. Thank you.

24 Q. This is the policy that applies to TCPLs,

1 correct?

2 A. Uh-huh.

3 Q. On this first page, there are six I think  
4 you said divisions and they are abbreviated here?

5 A. Uh-huh.

6 Q. Can you identify what those are for those  
7 of us who do not know.

8 A. Sure, College of Arts and Science is CAS.  
9 CCA is College of Creative Arts. EHS --

10 ALJ SPRAGUE: Okay. Just a little  
11 slower.

12 THE WITNESS: EHS is Education, Health  
13 and Society. CEC is Computer -- I get this one a  
14 little mixed up, but it's College of Engineering and  
15 Computing, I believe. The FSB is the Farmers School  
16 of Business. And the last one is the College of  
17 Liberal Arts and Applied Sciences, CLAAS.

18 Q. Great. Thank you for that. I just want  
19 to make sure I understood your testimony from  
20 earlier. I believe you were talking roughly -- you  
21 were talking about the number of TCPL in the College  
22 of Arts and Sciences. And right now this policy caps  
23 the number of TCPL at 23 percent of tenured and  
24 tenure eligible faculty, correct?

1           A.    That's right.

2           Q.    So I'm not the greatest at math, that's  
3 why I'm an attorney, but if there were 100 tenured or  
4 tenure track faculty in the College of Arts and  
5 Sciences, then that would be capped at 23 TCPL?

6           A.    That's right.

7           Q.    Could the number of TCPL be a subject of  
8 collective bargaining?

9           A.    I think that pretty much anything can be  
10 a subject of collective bargaining, so yes.

11          Q.    Do you think that there might be  
12 conflicting interest between groups in the proposed  
13 units about the number of TCPL faculty in any given  
14 division?

15          A.    There might be a need for discussion  
16 about it, absolutely, yeah. Really it would be  
17 really important for everyone to understand all the  
18 different groups in the unit to understand their  
19 mutual interests and then where their interests might  
20 diverge, absolutely, and then in order to develop a  
21 shared set of interests that we could negotiate  
22 around.

23          Q.    Do you think that there may -- if there  
24 were to be an increase in the number of TCPL faculty

1 in any given division, do you think that that could  
2 adversely impact the number of tenured and tenure  
3 track faculty?

4 A. No, because the way we run the formula,  
5 the number of tenured and tenure line faculty would  
6 absolutely have to increase if we increase the number  
7 of TCPL.

8 Q. Would it be impossible to increase the  
9 number of TCPL without increasing the tenured and  
10 tenure track faculty?

11 A. The way we do the formula now, yes.

12 Q. Are you guaranteed to do it the way you  
13 do now if you had a Collective Bargaining Agreement?

14 A. I don't believe we're guaranteed to do it  
15 the way we do it now, no.

16 Q. I'm going to have you look at the Union's  
17 Exhibit 25 which is in the same binder that you're  
18 in. This document is covering teaching load for the  
19 various faculty roles at the University?

20 A. It's covering course load, yes. So  
21 teaching load doesn't -- sometimes has additional  
22 things besides course load.

23 Q. Just for identification for the record,  
24 does the top title say this is covering teaching

1 load?

2 A. It says teaching load, yes.

3 Q. Isn't it possible that tenured and tenure  
4 track faculty might bargain for a smaller workload in  
5 the process of collective bargaining?

6 A. That tenured and tenure track people  
7 would?

8 Q. Yes.

9 A. It's possible.

10 Q. Isn't it possible that TCPL faculty would  
11 bargain for lower course workload as part of the  
12 collective bargaining process?

13 A. Yes.

14 Q. Don't those interests conflict?

15 A. Well, we would need to figure that out  
16 before we went to the negotiating table. So we would  
17 have a process for doing that where we would have a  
18 bargaining survey. We would talk to every --  
19 Departments would talk mutually about their needs.  
20 We would interview faculty to find out about their  
21 needs. And then we would meet and try to figure out  
22 what we would want to advocate for.

23 So I'm just thinking about the testimony  
24 that John McNay made before where he was explaining

1 that regional faculty members at UC were able to,  
2 even though they were a minority, they were able to  
3 negotiate for -- or they were represented by the  
4 union and everyone supported them in negotiating for  
5 a special arrangement for inequities that needed  
6 corrected.

7 So my anticipation would be that in that  
8 process of interviewing, doing the bargaining survey,  
9 et cetera, inequities might be identified. And if  
10 they were identified, then those would be the things  
11 that we would probably seek to negotiate on.

12 So at the moment, for example, tenured  
13 faculty tend to teach -- except on the regionals --  
14 tend to teach less courses than TCPL. So if the TCPL  
15 were concerned about that and felt that they wanted  
16 to have a different teaching load, we could certainly  
17 talk about that and figure it out.

18 So, yeah, I think -- I don't think that  
19 the way to put it is conflict. I think the way to  
20 put it is that we work together to establish mutual  
21 interests and try to figure out the best outcome for  
22 the educational mission of the University and for the  
23 faculty welfare.

24 Q. For example, if TCPL -- just to use the

1 last example that you were using, if TCPL were to  
2 express a desire for a lower teaching load, a lower  
3 course load, who would pick up those courses if they  
4 were to strongly advocate for and obtain that in  
5 collective bargaining?

6 A. So that question implies that the union  
7 would have control over the number of courses offered  
8 at the University and the fact that they need to be  
9 staffed, and it leaves out the administrative role in  
10 that negotiation.

11 So my assumption is if the union came  
12 forward and said, "We want to have everybody teach  
13 two courses fewer per semester," the University would  
14 then say, "We can't have that because not enough  
15 courses would be covered." And we would look at  
16 their data and we'd be like, "Huh, we can see that.  
17 Let's come to some arrangement in between" because  
18 it's a negotiation.

19 Q. I'd like to have you look at Exhibit 26.  
20 And so correct me if I'm wrong, but my understanding  
21 from your testimony earlier is that these are persons  
22 who were in a Visiting Assistant Professor or  
23 Instructor role and then have since held a different  
24 faculty role at the University?

1           A.    It's a small list of them, yes.  You can  
2    see that it goes from A to C, then from R to Z  
3    because we started at the end and at the beginning  
4    and we left out everybody in the middle.

5           Q.    Understood.  So this is a representation  
6    of --

7           A.    It's an anecdotal representation of  
8    certain faculty who shifted classification.

9           Q.    Do you know how each of these persons got  
10   their faculty role after being a VAP?

11          A.    That would depend.  They would have -- In  
12   certain cases, depending on when it was, they might  
13   have been --

14          Q.    Sorry, I just want to cut you off  
15   briefly.  I just want to know about your personal  
16   knowledge.  Do you know personally know how each of  
17   these persons went from being a VAP to being another  
18   title?

19          A.    No, I don't know about all of them.

20          Q.    Do you know about any of them?

21          A.    I definitely know about Amanda Stevens  
22   and I also know about Julie Alexander.

23          Q.    I'll star these, Amanda Stevens and Julie  
24   Alexander.  Amanda Stevens, what is her current

1 title?

2 A. She's a TCPL.

3 Q. How did she obtain that position?

4 A. She went through a search in the English  
5 Department.

6 Q. And Julie Alexander, what's her current  
7 title?

8 A. TCPL.

9 Q. How did she obtain her TCPL position?

10 A. So I know Julie Alexander, but I don't  
11 actually know what the conditions were under which  
12 she obtained the TCPL. I know what it was and when  
13 she did.

14 Q. I understand. Earlier when you were  
15 testifying about persons who had transitioned from a  
16 VAP to either a TCPL or a tenure eligible faculty  
17 person, I believe you said that they're teaching  
18 obligations tended to not change, correct?

19 A. (Nods head.)

20 Q. Sorry, verbal for the record.

21 A. Yes, they tend to be similar.

22 Q. What about their scholarship and service,  
23 did that change?

24 A. In some cases, it may have changed, and

1 in some cases, it does not change very much.

2 Q. Which cases are you referring to when you  
3 said it changed?

4 A. So I'm thinking of... Let's see, there  
5 are some people that we looked up who seemed to be  
6 teaching somewhat different courses, and actually I  
7 don't know. I can't think of anyone whose service  
8 and research changed, I actually can't. I can think  
9 of a lot of people whose service did not change and  
10 teaching did not change, like my colleague Jody  
11 Bates, for example.

12 Q. Did you ever review Jody Bates'  
13 performance when she was a Visiting Assistant  
14 Professor?

15 A. It's a man.

16 Q. Sorry.

17 A. I did not review it, but -- actually, of  
18 course I did because I'm on the Promotion and Tenure  
19 Committee for the department, so we review their  
20 annual reports and we review their third year reviews  
21 and we review their Promotion and Tenure thesis, so  
22 yes.

23 Q. You reviewed --

24 A. Jody Bates.

1 Q. Is it Dr. Bates?

2 A. Yes.

3 Q. You reviewed Dr. Bates' performance when  
4 he was a Visiting Assistant Professor?

5 A. No, I did not.

6 ALJ SPRAGUE: Can we back up real quick.  
7 Jody is -- can you spell it?

8 THE WITNESS: Jody is J-O-D-Y.

9 Q. (By Ms. Day) Do you know what the job  
10 expectations are for Visiting Assistant Professors  
11 and Instructors?

12 A. Are you talking about -- just to be  
13 clear, are you talking about practice or are you  
14 talking about position, position assignments?

15 Q. So what I'm referring to is, and I think  
16 we heard through the testimony yesterday and today,  
17 there tends to be three buckets that are considered  
18 for various faculty roles. There's instruction,  
19 there's scholarship and there's service. And the  
20 testimony so far has shown that some faculty have  
21 responsibility for all of those, and some do not.

22 So regarding the Visiting Assistant  
23 Professors and Instructors, do you know what their  
24 work expectations are regarding let's start with

1 instruction. Do they have an obligation to instruct  
2 on behalf of the University?

3 A. Yes.

4 Q. Do they have an obligation to engage in  
5 scholarship on behalf of the University?

6 A. Again, I want to see whether you're  
7 talking about practice or policy.

8 Q. So you're going to have to help me out  
9 because I don't know the distinction between those  
10 two.

11 A. So under policy, VAPs do not have an  
12 expectation to do research. And under policy, they  
13 don't have an expectation to do service. In  
14 practice, they're hired often with the expectation  
15 that their job may lead to a change in  
16 categorization. They're also hired on the basis of  
17 their research. They continue that research.  
18 They're often involved in working with other faculty  
19 members on their research.

20 For service, if we didn't have VAPs doing  
21 service at Miami and you heard the testimony on the  
22 decline in the number of tenure track faculty, right.  
23 Those are the ones who are doing research, service  
24 and instruction by policy, right.

1           So in 2010, Provost Skillings in the  
2     Senate meeting said that when we were talking about  
3     increasing the TCPL cap, he said the number of  
4     percentage of tenure track faculty out of the  
5     full-time faculty was 79 percent then. Now it's far  
6     below that, it's just over half. That's in only 12  
7     years.

8           So you can imagine that there's a lot of  
9     service given that we have even more students than we  
10    had then. There's a lot of service that needs to be  
11    done that is no longer being done by the tenure track  
12    faculty. And that the increase, which is  
13    significant, in the number of TCPL who are also  
14    responsible for service won't be enough for that big  
15    drop.

16          So there's a lot of VAPs who are doing  
17    service and, in fact, they're on an annual contract  
18    as you know. So it's implicit for those faculty that  
19    if they didn't pitch in, they would be less likely to  
20    be renewed. The people who pitch in become valued by  
21    their departments and end up often being the ones who  
22    are -- that gives them a better chance at sticking  
23    around.

24          So that imperative creates a strong -- it

1 creates a strong, strong, strong encouragement for  
2 those faculty to participate in service, and they do.  
3 They do it in a lot of departments. They do it to a  
4 great degree.

5 Q. Dr. Wagner, do you know whether Visiting  
6 Assistant Professors or Instructors are evaluated  
7 based on their scholarship and research?

8 A. I'm again going to ask you are you  
9 talking about practice or are you talking about  
10 policy?

11 Q. Let me ask you another question. Have  
12 you ever done a formal performance evaluation for a  
13 Visiting Assistant Professor?

14 A. I have not.

15 ALJ SPRAGUE: Just for the record  
16 earlier, you mentioned Provost Skillings. Is that  
17 how it sounds?

18 THE WITNESS: Yes, S-K-I-L-L-I-N-G-S,  
19 former Provost Skillings. He was an Interim Provost.

20 Q. (By Ms. Day) Dr. Wagner, have you ever  
21 done a formal performance evaluation for a TCPL  
22 faculty member?

23 A. I participate on the Promotion and Tenure  
24 Committee in the English Department and that reviews

1 the cases of TCPL in the English Department.

2 Q. Does that include their annual reviews?

3 A. Yes.

4 Q. Does it include all of their annual  
5 reviews?

6 A. I am not sure. I know that we review  
7 their third -- we review -- I'm not sure, yeah.

8 Q. Let me ask it in this way: Are you  
9 reviewing the review that is performed by someone  
10 else?

11 A. No, the way that it works is that the  
12 faculty put together a sort of dossier on their  
13 year's activity and then that dossier goes forward to  
14 the committee.

15 Q. Isn't it also true that in addition to  
16 the dossier, though, that there's just an annual  
17 review that's done by either the department chair or  
18 the dean?

19 A. I believe that the chair uses that  
20 dossier to decide on their merit --

21 Q. You don't think -- Sorry to cut you off,  
22 you don't think that there's an additional annual  
23 review in that third year for a TCPL?

24 A. There's a sort of layered review where

1 the P&T Committee does it, the chair does it, then  
2 there's a dean level review and a provost level  
3 review. It's all on the same document, I believe.

4 Q. Sticking with Union's Exhibit 26, I'd  
5 like you to turn to Page 4. The page numbers are at  
6 the top.

7 A. Yes.

8 Q. This is regarding Julie Alexander, right?

9 A. Uh-huh.

10 Q. Now, earlier you testified that to your  
11 knowledge these faculty were teaching the same  
12 courses after they transitioned into their new role  
13 as either TCPL faculty or tenured and tenure track  
14 faculty?

15 A. Right.

16 Q. But that's not true for I'm assuming  
17 Dr. Alexander?

18 A. It seems to be true.

19 Q. Where do you see that Dr. Alexander  
20 previously taught Business 284 as a VAP?

21 A. Well, that's an exception to the -- These  
22 faculty aren't necessarily teaching exactly the same  
23 courses, but they're teaching very similar courses.  
24 Julie Alexander is responsible for teaching in the

1 first year Integrated Core which is -- The reason why  
2 it says no courses reported there, is that in the  
3 first year Integrated Core and Business, they have  
4 their own set of courses that those students take.  
5 They don't put those courses onto the course list, so  
6 I don't have access to review them.

7           They -- And that's because of scheduling.  
8 They just tell those students which courses they're  
9 in. They don't get to sign up for them. So that's a  
10 eight credit sequence, and Julie teaches in that.  
11 They pretty much -- It gets offered -- I think at  
12 this point it gets offered every spring. I think at  
13 some point it was being offered every fall.

14           Anyway, Julie teaches in that sequence,  
15 and so she's teaching -- you can see that she taught  
16 it in fall 2018, fall 2019 and then she's teaching in  
17 it for several semesters in the fall and the spring.

18           Q. But to your knowledge and based on this  
19 document, she did not teach Business 284 when she was  
20 employed as a VAP?

21           A. No.

22           Q. And she didn't teach any 200 level  
23 courses when she was a VAP?

24           A. No, but she taught 300 level courses

1 which are more advanced than 200 level courses.

2 Q. Who decides when and whether to hire a  
3 VAP?

4 A. So the practice differs a little bit by  
5 department. The chair can hire a VAP, but a lot of  
6 time, and in my department, there's always -- pretty  
7 much always at this point there's a search, a  
8 national search that's done.

9 Q. Who decides whether a search is needed?

10 A. So the way that -- It's the same way that  
11 the searches are -- there needs to be approval from  
12 the Dean. There needs to be a line available, a line  
13 of money available. So there needs to be  
14 confirmation that that funding is available.

15 Sometimes there can be a hire listed, and  
16 then it will turn out the funding no longer exists  
17 and then that search will not happen but, yeah,  
18 there's a -- that funding needs to become available.  
19 Then there's -- But the departments discuss their  
20 hiring needs and then there's a decision made about  
21 appealing to the Dean about getting a position, let's  
22 say, a tenure track position in I don't know what....

23 Q. I just want you to focus on VAPs right  
24 now.

1           A.    Okay, right, I will.  I'll get there.  So  
2   if a tenure line is appropriate, we would say like to  
3   have somebody who would be doing research or who  
4   would be doing the kind of work that would be able to  
5   teach the large number of courses that our TCPLs  
6   teach and also have a research profile, we would ask  
7   for those positions.  Those positions may not become  
8   available and then we would ask for a VAP.

9           Q.    Does the ultimate decision whether to  
10   hire a VAP rest with the dean of each division?

11          A.    I believe for all lines, the final  
12   decision rests with the Provost.

13          Q.    What division are you in?

14          A.    The College of Arts and Science.

15          Q.    I assume based on your testimony about  
16   TCPL numbers earlier, have you ever personally ever  
17   made the decision as to whether to hire a VAP or not?

18          A.    No, that's not part of my job.

19          Q.    You testified that VAPs are assigned  
20   courses in the spring of the prior year, correct?

21          A.    Yes.

22          Q.    How do you know that?

23          A.    Well, because we put together the  
24   teaching schedule.  In my particular cohort, there's

1 two VAPs right now. We have a little document where  
2 we -- a spreadsheet where we look at the courses that  
3 are available and we sort of toggle people up with  
4 the different courses that might be right for them to  
5 teach for that semester. We talk it over in a  
6 committee meeting.

7 That information gets sent to the  
8 Associate Chair for scheduling who then figures out  
9 whether what we've put forward will work, switches  
10 things around a little bit and that's how it's done.  
11 That process has already happened, I believe. We've  
12 already had that discussion.

13 Q. So the two VAPs that are currently in the  
14 College of Arts and Science you know will come back  
15 in the fall?

16 A. The expectation is that they'll come  
17 back, yeah.

18 Q. That's your expectation, right?

19 A. Uh-huh. We need them.

20 Q. Do you know the process in the other  
21 divisions at Miami?

22 A. No.

23 Q. Earlier you were testifying about  
24 University Senate and who participates. VAPs don't

1 participate and are not eligible to vote on  
2 University Senate matters, correct?

3 A. That's correct.

4 Q. Regarding any committees or subcommittees  
5 in University Senate, are there any restrictions as  
6 to certain groups of faculty and what roles they may  
7 or may not display?

8 A. In some cases, very few cases, for  
9 example, for Promotion and Tenure Committees, those  
10 committees tend to not have -- you always have to  
11 have the people on that committee who were of a  
12 higher rank than the people they're evaluating. So  
13 if you're evaluating Assistant Professors, you would  
14 have no Assistant Professors on that committee.

15 Q. Isn't it true that the TCPL cannot vote  
16 on matters of promotion and tenure?

17 A. I don't think that's correct because they  
18 would be -- they would be able to vote on one  
19 another's cases I think.

20 Q. I'm going to direct your attention to  
21 Respondent's Exhibit 1 in the black binder. The  
22 first few are letters. If you flip past those,  
23 you'll find a set of the numbered tabs and we're  
24 looking for Tab No. 1.

1           A.    Yes.  Okay.

2           Q.    There you go.  And I'm going to direct  
3 your attention to underneath the subheading  
4 Departmental Evaluation.

5                   ALJ SPRAGUE:  Can you hang on just a  
6 second.

7                   MS. DAY:  Of course.

8           Q.    So looking at the subheading Departmental  
9 Evaluation, isn't it true that that last sentence in  
10 that first paragraph says:  Lecturers, clinical and  
11 teaching faculty may not vote in matters involving  
12 the promotion and/or tenure of faculty in tenure  
13 eligible ranks?

14           A.    That's correct.  This document covers the  
15 tenure and promotion process, and there are some that  
16 tenure isn't applicable to all forms of promotion, so  
17 they do serve on some promotion.  They do work on  
18 some promotion committees and vote on some, but they  
19 would not do that for tenure eligible people.

20           Q.    Are there any other committees or  
21 subcommittees within University Senate in which TCPLs  
22 are not entitled to participate or vote?

23           A.    I think there's one or two, and one of  
24 them is the Awards and Recognition Committee,

1 something like that.

2 Q. The other one, can you recall what the  
3 name of it is?

4 A. I cannot recall it at the moment.

5 Q. What about faculty rights and  
6 responsibilities, is that under University Senate?

7 A. That's another one, yeah. I think it's a  
8 committee of Faculty Assembly.

9 Q. That was going to be my follow-up  
10 question. Are VAPs allowed to participate in faculty  
11 assembly?

12 A. No, they're not part of the Assembly by  
13 definition.

14 Q. Regarding librarians, is there any  
15 restriction on their participation in Faculty  
16 Assembly?

17 A. No.

18 Q. Is there any restriction on their  
19 participation in University Senate?

20 A. No.

21 Q. They can vote on tenure and promotion for  
22 tenure eligible faculty members?

23 A. Senate doesn't do that.

24 Q. Where do promotion and tenure committees

1 lie within the University?

2 A. They lie in each department, and then  
3 there's a college level committee in each division,  
4 and then there's a committee at University level as  
5 well, so it's not connected to Senate.

6 Q. At the University level, can librarians  
7 serve and vote on promotion and tenure for tenure  
8 eligible faculty members?

9 A. No.

10 Q. Can TCPL at the University level serve on  
11 and vote on tenure eligible promotion and tenure  
12 matters?

13 A. No, you can only ever vote on promotion  
14 cases for people who are in your rank or below.  
15 That's true for tenure track people as well.

16 Q. Do librarians serve on the Faculty Rights  
17 and Responsibility Committee?

18 A. I do not believe so, but I'm not sure.

19 Q. Earlier you were testifying about various  
20 faculty members. I think your words were teaching on  
21 the front line or on the front line of teaching.  
22 Does that ring a bell?

23 A. Yes.

24 Q. How often do librarians teach on the

1 front line?

2 A. Very frequently.

3 Q. How many librarians at any given time are  
4 teaching?

5 A. So once again I'll refer back to John  
6 McNay's testimony. He said that librarians come to  
7 visit his class once a semester, each class, and if  
8 you think about it, there's -- we have librarians who  
9 are in all the different cognate areas. So my  
10 librarian is Mark Dahlquist who's a humanities  
11 librarian, so he does English studies stuff.

12 So Mark Dahlquist, he might come once a  
13 semester to one class, but he's going to all the  
14 other classes potentially as well, and many faculty  
15 would be calling on him to come and visit their  
16 classes which could take if you think about it quite  
17 a bit of time.

18 Q. How often do librarians teach a full  
19 course?

20 A. They don't do it -- I don't know  
21 actually. That's not a question I can answer.

22 Q. Fair enough. In the small white binder,  
23 I'd like you to you look at Exhibit 29. This is the  
24 Liberal Education Council policy that we were

1 discussing earlier. Are any VAPs included as members  
2 of the Liberal Education Council?

3 A. No.

4 Q. Are any librarians included as members of  
5 the Liberal Education Council?

6 A. Not that I know of.

7 Q. I'd like you to look at Exhibit --

8 A. Oh, they -- they are. There's an  
9 ex officio, it says so right here, ex officio library  
10 representative, yes.

11 Q. But they don't vote, right?

12 A. No.

13 Q. I'd like you to turn to Exhibit 30. This  
14 is the Department Planning and Improvement Process  
15 Committee. Are any VAPs on this committee?

16 A. No.

17 Q. Are any librarians on this committee?

18 A. Not that I know of.

19 Q. I'd like you to turn to Exhibit 32. This  
20 is the one that's sideways.

21 A. Okay.

22 Q. Are VAPs part of the Faculty Welfare  
23 Committee?

24 A. Unfortunately not.

1 Q. And are librarians part of the Faculty  
2 Welfare Committee?

3 A. I don't believe so.

4 Q. Not the faculty warfare committee.  
5 That's a whole different beast.

6 A. No.

7 Q. Dr. Wagner, have you ever been a member  
8 of a union?

9 A. No.

10 Q. Have you ever been a member of management  
11 negotiating with a union?

12 A. No.

13 Q. Have you ever negotiated a Collective  
14 Bargaining Agreement on behalf of any party?

15 A. No.

16 Q. You testified earlier regarding the  
17 groups of faculty and other persons in the proposed  
18 Bargaining Unit here that they want to be in the same  
19 unit. Have you talked to all 500 or so tenured and  
20 tenure track faculty to know their interests?

21 A. We've talked to the vast majority of  
22 them, and I did not do it myself, but I probably  
23 talked to a hundred myself. We have a large  
24 organizing committee that did one on ones with the

1 vast majority of faculty. We wouldn't have come  
2 forward to decide to become a union if we hadn't done  
3 that because we wouldn't have been certain of  
4 winning. So we waited for that cause it's a long,  
5 arduous process.

6 So we spoke to all those faculty, had  
7 long conversations and were able to establish that  
8 the vast majority of the ones we talked to wanted to  
9 unionize. And that's also how we got to know their  
10 specific needs and interests and were able to come up  
11 with our mission that is representing the shared  
12 interests of those faculties.

13 So yeah, we have records, notes on those  
14 conversations that are confidential, but we had to  
15 keep them and establish those conversations and  
16 decide what we -- whether we thought folks were ready  
17 to vote for a union in order to move through this  
18 process.

19 Q. But you personally you said testified  
20 that you spoke to roughly a hundred or so tenured and  
21 tenure track faculty?

22 A. No, no, no.

23 Q. How many did you personally speak to?

24 A. No, no, the correction is that I did talk

1 to about 100, but it was tenured, tenure track,  
2 TCPLs, VAPs, other librarians, other categories.

3 Q. So you did not personally speak to all  
4 tenured and tenure track faculty regarding their  
5 interests in the union or not?

6 A. No.

7 Q. You did not speak to all TCPL faculty  
8 regarding their interest in the union or not?

9 A. No, but I have access to the records of  
10 the notes where we did that. I'm president of the  
11 chapter.

12 Q. You did not speak to all Visiting  
13 Assistant Professors and Instructors about their  
14 interest in being in the unit or not?

15 A. I did not speak to all of them, but I do  
16 know the numbers on their commitment.

17 Q. You did not speak to all librarians  
18 regarding their interest in the union or not?

19 A. No, but, once again, I know there's super  
20 majority support there.

21 Q. You did not speak to all persons who hold  
22 multiple appointments regarding their interest in the  
23 union or not?

24 A. No, but I'm aware of their support.

1 MS. DAY: One second, your Honor. No  
2 further questions.

3 - - -

4 REDIRECT EXAMINATION

5 By Ms. Muskovitz:

6 Q. Dr. Wagner, was there a time during Covid  
7 when the University non-renewed a significant number  
8 of Visiting faculty and instructors?

9 A. Yes, we heard about that over spring  
10 break of 2020.

11 Q. And what was the reaction to the  
12 University community to that decision?

13 A. It was horror and dismay. We saw during  
14 the pandemic when people -- a lot of our colleagues  
15 losing their jobs in a situation where we didn't know  
16 what was going to happen to them, losing their jobs  
17 and their insurance, their wherewithal during the  
18 pandemic, and it was very scary to see that happen to  
19 our close colleagues.

20 The other thing that happened was that we  
21 all -- that people remaining had their teaching loads  
22 go up because those people were needed to teach  
23 classes, and so during the pandemic, when our  
24 workloads were already increased by remote teaching,

1 we also saw our workloads increase in a way that made  
2 it very difficult for us to serve students  
3 adequately, also at a time when the University was  
4 financially doing pretty well, so there was a lot of  
5 dismay.

6           And faculty -- That is when the decision  
7 was made to unionize. It was made in the wake of an  
8 effort to -- One thing that was going on there was no  
9 discussion about this enormous decision that was  
10 going to affect the educational mission so  
11 drastically and affect so many faculty at the  
12 University, there was no discussion about it in  
13 Senate or there was no Faculty Assembly meeting.  
14 There was silence. There was just a unilateral  
15 decision made.

16           And so my colleague Elena Albarran and a  
17 number of other tenure line faculty got together and  
18 wrote a petition to the University to ask that the  
19 administration consult and meet with faculty and have  
20 a conversation about alternatives to this drastic  
21 decision.

22           One of the things that we said in the  
23 letter was that we would be willing to have pay cuts,  
24 graduated pay cuts, progressive pay cuts among the

1 faculty, among the tenure track faculty in order to  
2 preserve not just our workloads but people's living.

3 And 800 people, the majority of them  
4 faculty, signed that petition, and we got no response  
5 from the administration. They went ahead with the  
6 cuts. There was never a discussion, a consultation  
7 with faculty about that decision.

8 Q. If there had been a collective bargaining  
9 relationship in place at that time, would you have  
10 had a more effective voice?

11 A. Absolutely. There would have been an  
12 opportunity to come to the table and talk before a  
13 massive decision like that was made. At other  
14 schools, you know, during the pandemic there were a  
15 lot of decisions to be made, right. People didn't  
16 know what was going to happen in terms of state  
17 funding, in terms of the next year, et cetera.

18 So at Bowling Green, I remember talking  
19 to colleagues at Bowling Green who have a union, and  
20 they also faced cuts of their non-tenure track  
21 faculty, and they were able to make arrangements for  
22 those faculty so they would be able to return, so if  
23 that position were to open back up, they would be  
24 able to come right back.

1           They were able to negotiate for severance  
2 pay for their faculty and some other things as well  
3 that made that decision more tolerable for those  
4 faculty, and they also were able to negotiate the  
5 number of faculty who were laid off way, way down.  
6 That happened a lot of places.

7           There was another faculty group that I  
8 know about at the University of Oregon that the union  
9 was able to say to the administration, "Okay, we see  
10 that there is a crisis happening here, we do not know  
11 the outcome of this crisis, but we do have some  
12 reserves here, we're willing to say, okay, if we need  
13 to make faculty cuts, that may be reasonable, but  
14 let's wait until this cycle has passed, and we'll  
15 make an agreement that draws out the level of budget  
16 crisis that we might enter; if we lose this much, we  
17 lose this much; here's what we'll do in terms of  
18 retrenchment. And if none of that comes to pass,  
19 then we won't lose any faculty."

20           That was the agreement that the  
21 administration and the union made, and they did not  
22 end up losing any faculty. So the difference between  
23 how unions handled -- at union universities handled  
24 the pandemic versus others was so striking. We were

1 among the first to do a layoff and it was an ugly  
2 one. The decision was made remarkably quickly.

3 Q. And without any input from any of the  
4 groups that you were seeking to organize?

5 A. That's right.

6 MS. MUSKOVITZ: No further questions.

7 ALJ SPRAGUE: Thank you.

8 MS. DAY: Briefly.

9 - - -

10 RE-CROSS-EXAMINATION

11 By Ms. Day:

12 Q. Dr. Wagner, isn't there an inherent  
13 conflict between groups in the proposed unit here as  
14 it regards retrenchment?

15 A. So if we -- if we look at the context in  
16 which contracts are made, then it's clear that there  
17 are some groups who are more precarious than other  
18 groups. That fact is not the union's decision, it's  
19 the University or the employer's decision, right.

20 So it's the University that sets up the  
21 ranks where some faculty are more precarious than  
22 others. When a union contract develops retrenchment  
23 language, what they're doing is working within that  
24 set of constraints with a party that's at the other

1 side of the table who's going to say, you know, we  
2 have these categories, right.

3 They're probably not reasonably going to  
4 say, "Oh, union, okay, we'll make everybody tenure  
5 track," right. They're going to insist that they  
6 preserve at least some of the categories they have  
7 set up. It's a negotiation. Things can change over  
8 time.

9 But the fact is when a retrenchment  
10 contract is made, it's not the union saying we want  
11 to have some faculty being more precarious than other  
12 faculty. It's the union saying we're doing our best  
13 to mitigate precarity within the context in which we  
14 find ourselves.

15 Q. You heard Dr. McNay's testimony earlier  
16 that a number, a few, Collective Bargaining  
17 Agreements in Ohio have an order in which layoffs  
18 would occur under a retrenchment policy, right?

19 A. Yeah, it's exactly what I'm describing.

20 Q. Sure. And that does, for lack of a  
21 better word, prioritize certain groups of faculty  
22 over others, doesn't it?

23 A. If you're in a negotiation situation and  
24 you say to the administration, "Hey, we want to swap

1 our -- just for example, we want to swap our VAPs and  
2 our tenure line faculty so you will protect the VAPs  
3 more than the tenure track faculty," given the  
4 research grants and so forth that they probably have  
5 invested in the tenure track faculty, it's really  
6 hard to imagine that they would accept that.

7 I would -- If I were at the negotiating  
8 table, I would want to argue for limiting that  
9 precarity as much as possible and for expanding the  
10 tenure track as a way to protect those other faculty.  
11 So those are porous groups right. So yeah, it's not  
12 about -- I don't think that it can be characterized  
13 as a conflict of interest when you look at that  
14 larger context.

15 Q. You don't think that a Visiting Assistant  
16 Professor who may be laid off prior to a tenured  
17 professor, you don't think that there's a conflict of  
18 interest there?

19 A. So if that Visiting Assistant Professor  
20 were in a tenured -- I think they could probably  
21 imagine themselves in a tenured/tenure track position  
22 and would like to be in that position, and if the  
23 union is working to reduce their precarity so that  
24 they might be able to redefine their position as a

1 less precarious one, I think they would probably  
2 recognize that that was the union's aim and  
3 understand what was going on. You're not going to  
4 achieve everything in one contract.

5 Q. So your testimony is you think a VAP  
6 would be okay with being earlier in the layoff  
7 process knowing that he or she some day become a  
8 tenured professor?

9 A. Nobody is okay with being laid off and no  
10 tenure track faculty member or anybody in the union  
11 would be happy with that situation.

12 Q. Right, but there have to be conflicts  
13 there, right, because there has to be an order at  
14 some point?

15 A. I don't think it is characterizable in  
16 terms of conflict.

17 Q. How would you describe it?

18 A. It's a messed up situation is how I would  
19 describe it.

20 MS. DAY: No further cross.

21 - - -

22 FURTHER REDIRECT EXAMINATION

23 By Ms. Muskovitz:

24 Q. Dr. Wagner, if you know, in pretty much

1 every labor contract in the United States, there's  
 2 seniority layoffs; are you aware of that?

3 A. Yes.

4 Q. So by their definition, that's the kind  
 5 of conflict that they're talking about?

6 A. That's right.

7 MS. MUSKOVITZ: No further questions.

8 MS. DAY: No further questions.

9 MS. MUSKOVITZ: Thank you, Dr. Wagner.

10 ALJ SPRAGUE: Thank you.

11 MS. MUSKOVITZ: Union calls Ginny Boehme.

12 MS. DAY: Your Honor, I would request a  
 13 brief instruction regarding members of the audience  
 14 not whispering support or reproach of any witness  
 15 during their testimony.

16 (Off the record.)

17 ALJ SPRAGUE: We're back on. Dr. Boehme  
 18 has taken the stand.

19 MS. BOEHME: Not doctor.

20 ALJ SPRAGUE: Not doctor, okay.

21 Miss Boehme, please raise your right hand.

22 (Witness placed under oath.)

23 ALJ SPRAGUE: Please state your full name  
 24 for the record spelling your last name.

1 THE WITNESS: I go by Ginny, but my full  
2 legal name is Mary Virginia Boehme, B-O-E-H-M-E.

3 ALJ SPRAGUE: And Miss Boehme, your  
4 counsel indicated that Ginny is okay for referring --

5 THE WITNESS: Yes, that's fine.

6 ALJ SPRAGUE: Any way you want it. Okay.  
7 Miss Muskovitz.

8 - - -

9 MARY VIRGINIA BOEHME

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

12 DIRECT EXAMINATION

13 By Ms. Muskovitz:

14 Q. Miss Boehme, are you a librarian?

15 A. I am.

16 Q. And where do you work?

17 A. I work at Miami University on the Oxford  
18 campus.

19 Q. How long have you been at Miami?

20 A. A little over five years. I started in  
21 September 2017.

22 Q. What is your rank?

23 A. Currently it is Assistant Librarian.

24 Q. Are you up for promotion right now?

1           A.    Yes.

2           Q.    To what rank?

3           A.    A promotion to Associate.

4           Q.    For the librarians or people in your  
5 field, what is considered a terminal degree?

6           A.    The Master's in Library Information  
7 Studies.  It's also -- There's also several degrees  
8 under that sort of accreditation.  There's a Master  
9 in Science and Library Information Studies.  There's  
10 a Master of Science and Information.  There's several  
11 different degrees that fall under that category, but  
12 they are all Master's degrees, they're all from an  
13 accredited school of library instruction, library  
14 studies, and they are all the terminal degrees for  
15 librarians.

16          Q.    You hold one of those terminal degrees?

17          A.    Yes, I have a Master in Library and  
18 Information Studies.

19          Q.    Now, within the library system at Miami,  
20 I think there's different departments?

21          A.    Correct.

22          Q.    What department are you in?

23          A.    I am in the Advise and Instruct  
24 Department within the University Library System.

1 Q. What does that mean?

2 A. That means I'm a reference and  
3 instruction librarian. I do teaching. I do research  
4 consultations. I am in a public services position.  
5 I interface directly with faculty, students and staff  
6 to help fulfill the education mission of the  
7 University.

8 Q. You've heard a number of individuals  
9 refer to three buckets for faculty. What are the  
10 three buckets for librarians at Miami. They are very  
11 similar. In some cases, they're identical. Instead  
12 of teaching as a primary focus, teaching and advising  
13 really, we have what we call the Primary Professional  
14 Responsibilities, PPR for short.

15 They differ slightly among the various  
16 positions we have. For example, my PPR document that  
17 was created for me by my department head, my  
18 supervisor, and approved by the library  
19 administration and I assume by the Provost as well  
20 has five categories.

21 Teaching and instruction is one.  
22 Reference and research or something to that effect is  
23 the second one. Engagement and outreach is the  
24 third. Collection, development and management is the

1 fourth, and advancement is the fifth. Those are the  
2 primary job responsibilities that I have as part of  
3 my position. Others in different --

4 ALJ SPRAGUE: Can you give those one more  
5 time.

6 THE WITNESS: Sorry, yes.

7 ALJ SPRAGUE: There's instruction,  
8 reference and --

9 THE WITNESS: Research support for lack  
10 of a better term.

11 ALJ SPRAGUE: Okay.

12 THE WITNESS: Engagement and outreach.

13 ALJ SPRAGUE: Okay.

14 THE WITNESS: Collection, development and  
15 management advancement.

16 ALJ SPRAGUE: Okay.

17 THE WITNESS: There are others in the  
18 library system, other librarians who have slightly  
19 different. So, for example, librarians in our  
20 Special Collections and University Archives might  
21 have exhibit curation and creation, Curation and  
22 creation as part of their PPR.

23 There may be some that have -- I'm  
24 trying to think of what some of the other categories

1 are because I'm not as personally familiar with some  
2 of those documents, but the essential part of it is  
3 that they're slightly different for our jobs, but  
4 they are all core to our position, every single one  
5 of them.

6 And it is that PPR, those PPR  
7 categories, is our analog to the teaching and  
8 advising full-time faculty have as part of their  
9 primary job responsibilities. We also -- sorry.

10 Q. Approximately how many librarians are  
11 there at Miami?

12 A. I would say roughly 30, 35 that would be  
13 covered by the proposed Bargaining Unit.

14 Q. Do each one of them have a PPR?

15 A. To my knowledge, yes.

16 Q. Is that a written document?

17 A. Yes.

18 Q. Okay. Go on.

19 A. That's the first bucket. The third  
20 bucket -- or sorry, the second bucket is service,  
21 just like faculty. And the third bucket is  
22 scholarship and creative activity, just like faculty.

23 Q. What kind of work does service involve  
24 with librarians?

1           A.    It is a variety of things.  When we write  
2 and submit our annual reports, we have to categorize  
3 on the service that we have done.  It takes the form  
4 of service to the library system, so serving on  
5 internal library committees, task forces, groups,  
6 et cetera.

7                    There is service to the University, so  
8 that would be service on a University Senate  
9 Committee, for example.  For me, it's also service on  
10 the Animal Care and Welfare Committee.  Those kinds  
11 of external to the libraries but internal to Miami  
12 committees and similar work, that would be service to  
13 the University.

14                   We also have several professional  
15 organizations that many of us are members of at the  
16 regional, state and national level.  Work for those  
17 organizations would also be considered service for  
18 us.  If we do work with the community, that would  
19 also be considered service.

20                   One of my colleagues, she's the Arts and  
21 Humanities Librarian, she has an art degree, she  
22 served on the Public Arts Commission of Oxford as  
23 part of her -- one of her service activities for her  
24 annual report.  So it takes various forms of service,

1 but most of it is committee work.

2 Q. And do some of the committee work involve  
3 work on committees that involve other -- the faculty  
4 of other ranks?

5 A. Absolutely it does, yes. For example,  
6 one of the committees I currently serve on is a  
7 University Senate committee. Oh, boy, it's got a  
8 long time. It's the All University Faculty Committee  
9 for the Evaluation of Administrators, AUFCEA, I think  
10 that is correct. It's massive. It's a mouthful.  
11 That's a University Senate committee.

12 Any member of the Faculty Assembly is  
13 eligible to be elected to it. I am the elected  
14 representative to the libraries to that committee. I  
15 serve with six or seven other members of the  
16 University from each of the other divisions.

17 Q. And what kind of administrators does your  
18 committee evaluate?

19 A. Provosts, Academic Deans, graduate  
20 school, Dean of Graduate School, Dean of the  
21 Libraries and potentially one or two others. I don't  
22 remember the full list, but it's Provost and Academic  
23 Deans or thereabouts, people of those ranks.

24 Q. So this committee evaluates the Provosts?

1 A. Yes.

2 Q. And you're on the committee?

3 A. Yes.

4 Q. And are these Deans that do not oversee  
5 the library?

6 A. Some of them are, yes.

7 Q. Cause the libraries have one Dean who I  
8 think testified yesterday, correct?

9 A. Correct.

10 Q. How many -- Does each college have their  
11 own Dean?

12 A. To my knowledge, yes. And I think there  
13 are a couple of other Deans, like the Dean for the  
14 graduate school, I think that is a Dean level  
15 appointment, for example.

16 Q. So there's more Deans than colleges?

17 A. Yes.

18 Q. Are there Assistant Deans or Associate  
19 Deans, I should say?

20 A. There are. They are not evaluated by  
21 this committee.

22 Q. So you're evaluating the Deans.

23 A. Yes.

24 Q. So let's say there's seven Deans, six

1 colleges and a Graduate Dean is seven and the library  
2 would be eight?

3 A. Thereabouts, yes.

4 Q. So you're involved in evaluating all of  
5 the other Deans even though they do not oversee the  
6 library?

7 A. Correct.

8 Q. And obviously in evaluating the Provost?

9 A. Correct.

10 Q. If you would turn in the small white  
11 binder to Union Exhibit 20, I'd like you to identify  
12 that document.

13 A. Apologies for all the acronyms. This is  
14 the ACRL, Joint Statement on Faculty Status of  
15 College and University Librarians. ACRL is the  
16 Association of College and Research Libraries. It is  
17 the national organization for academic librarians.  
18 It's a branch of the probably more well known  
19 American Library Association that is specific to  
20 people in my position, higher education librarians.

21 Q. And are you familiar with this joint  
22 statement?

23 A. Yes, I am.

24 Q. And --

1 ALJ SPRAGUE: Hang on a second. Too many  
2 binders. There we go.

3 MS. MUSKOVITZ: Do you have it?

4 ALJ SPRAGUE: Yeah. Tell me what ACRL  
5 is.

6 THE WITNESS: Association of College and  
7 Research Libraries.

8 Q. (By Ms. Muskovitz) At the top of the  
9 joint statement in italics, it talks about who the  
10 statement was prepared by, by organization and who it  
11 was approved by and who it was affirmed by. Do you  
12 see that?

13 A. Yes, I do.

14 Q. So I'm not asking you to read that  
15 paragraph, we can all read that paragraph, but in  
16 general, I mean, there's -- you know, the Association  
17 of American Colleges and Universities were involved,  
18 as well as the AAUP, correct?

19 A. Well, I think the AAC became the AAUP --  
20 or no, I'm sorry, I'm answering incorrectly. Yes,  
21 you are correct, Association of American Colleges and  
22 the American Association of University Professors.

23 Q. And it shows that it was also approved by  
24 the ACRL Board of Directors and reaffirmed by the

1 ACRL Board of Directors for the 2012 and 2018?

2 A. Correct.

3 Q. We can all read this, but can you in your  
4 own words explain what the joint statement is  
5 supporting.

6 A. The joint statement was crafted by  
7 academic librarians, university faculty members to  
8 essentially outline that librarian work is faculty  
9 work. The work that we do constitutes faculty work.

10 And librarians as -- sorry, let me look  
11 at... top of Page 2, the function of the librarian as  
12 participant in the processes of teaching, research  
13 and service, those three buckets, is the essential  
14 criterion of faculty status. The work that we do is  
15 faculty work. We are core members of educational  
16 mission of the institution. That is what this  
17 document is affirming.

18 Q. There's been, I guess, a point made by  
19 the administration in this case about some  
20 universities have -- confer faculty status on  
21 librarians and some do not. Does that distinction --  
22 First of all, who makes that distinction?

23 A. The University administration.

24 Q. And does that have anything at all --

1 does that in any way affect your job duties or  
2 responsibilities at Miami?

3 MS. DAY: Objection. No personal  
4 knowledge of what decisions of other universities  
5 are.

6 MS. MUSKOVITZ: That wasn't my question.

7 A. Can you repeat the question, please.

8 Q. Yeah. I mean, at Miami, does that  
9 distinction make any difference between what the job  
10 duties and responsibilities are of librarians?

11 ALJ SPRAGUE: That distinction being  
12 whether or not somebody's on the faculty?

13 Q. No, whether or not they technically call  
14 the librarians to have faculty status or not in  
15 Miami -- at Miami?

16 A. I would argue that we are treated as  
17 faculty typically just in practice, particularly when  
18 it is convenient for the administration to treat us  
19 like that.

20 Q. Do the librarians at Miami want to be  
21 part of a Bargaining Unit that includes tenure,  
22 tenure track, TCPLs, Visiting faculty and  
23 Instructors?

24 A. Yes.

1 Q. Why?

2 A. Because when it is inconvenient to the  
3 administration, we are second class citizens. We are  
4 exploited very frequently for our workload, and we do  
5 not currently feel that we have an appropriate voice  
6 in the governance and direction of the University.

7 Q. And of the 30 or 35 librarians at Miami,  
8 have you spoken to most of them?

9 A. Yes.

10 Q. Is that the position of most of the  
11 librarians at Miami?

12 A. Yes.

13 Q. In what kind of numbers? Is it a  
14 majority?

15 A. An extreme majority. Of the 30 to 35  
16 librarians that would be covered under this  
17 Bargaining Unit, in addition to some who would not be  
18 covered by the Bargaining Unit, I have spoken to I  
19 think all but three of those 30 to 35 people. The  
20 vast majority, I would say 90 percent, of them are  
21 fully in support of this.

22 I think based on my understanding, my  
23 knowledge of the outreach and organization efforts of  
24 FAM, which I have been involved in, the libraries

1 have the highest ratio of support of any academic  
2 division on campus.

3 Q. And is that support for a union or is  
4 that support for a union that encompasses these other  
5 ranks?

6 A. The latter. We want to be involved with  
7 FAM, with the rest of our faculty colleagues.

8 Q. So you heard the testimony of your Dean  
9 thinking that you would actually not be better off,  
10 you'd be better off being carved out and being in  
11 your own little group. Is that the sense of the  
12 librarians at Miami?

13 A. I don't think so, no. I would argue we  
14 would be better off and I think I would have full  
15 agreement that we would be better off having the  
16 clout and power and backing of the rest of the  
17 faculty together as part of one Bargaining Unit.

18 Q. If you look in the binder in front of  
19 you, Union Exhibit 21, can you identify this  
20 document?

21 A. Yes. This is -- It's titled 2021 Library  
22 Publications, accomplishments, promotions, grants.  
23 It is a compilation of the scholarship awards and  
24 recognitions that librarians and library staff

1 received in the calendar year 2021.

2 Q. Is this something that's put together  
3 pretty much every calendar year?

4 A. As far as I know, yes.

5 Q. Is that put together by administration?

6 A. As far as I know, yes.

7 Q. Did I ask you to bold certain names?

8 A. You did.

9 Q. And what names did you bold?

10 A. I bolded all of the names in this  
11 document who would be members of the Bargaining Unit  
12 as far as I can tell. I additionally underlined a  
13 handful of names who are non-librarian faculty  
14 colleagues that we collaborate with.

15 Q. So let me start -- So the first category  
16 is promotions. These are three individuals who have  
17 been promoted?

18 A. Correct.

19 Q. And that's only in the 2021 calendar  
20 year?

21 A. Yes, with Jesse Long, the first name  
22 there, it says 2022, she went up for a promotion  
23 during 2021. So her numbers are still a little bit  
24 different.

1 Q. Looking at the University of National  
2 Service Leadership, that's one of the buckets --

3 A. Yes.

4 Q. -- this is the service and leadership....

5 A. This is a smattering of the service,  
6 University of National Service, that we have done.

7 Q. Okay. So, for example, it list you as  
8 being a member of the All University Faculty  
9 Committee for the Evaluation of Administrators?

10 A. Correct.

11 Q. There's I see awards and recognitions and  
12 then publications. How strong is the need to do  
13 scholarship among librarians at Miami?

14 A. Well, it's a required part of our jobs,  
15 so fairly strong.

16 Q. Is it required to be promoted from an  
17 Assistant to an Associate?

18 A. Absolutely.

19 Q. Is it required to be promoted from an  
20 Associate to a Principal?

21 A. Absolutely.

22 Q. And this talks about book chapters, books  
23 and journal articles, correct?

24 A. Correct.

1 Q. So I'm looking at Page 3. There's a name  
2 that's underlined. Can you explain why is that name  
3 underlined?

4 A. There are two names underlined, Danker,  
5 Armstrong. I apologize if I'm mispronouncing those  
6 names. Those are two faculty collaborators on that  
7 publication, Miami University Faculty Collaborators.  
8 I do not have direct knowledge of this. This is as  
9 best I could tell based on my research. There are  
10 others I do have more direct knowledge of that I  
11 could better speak to.

12 Q. Can you do that?

13 A. Yes.

14 Q. Let me keep going. If you look at grants  
15 awarded, what kind of grants do librarians obtain?

16 A. There are several grants that we are  
17 eligible to obtain. Many of these listed are  
18 internal to either the libraries or Miami University.  
19 There are several grants, however, as you can see  
20 Page 5, Hoffman, Makarowski, 2021, that is a --  
21 essentially it's a federal grant that was distributed  
22 through the State Library of Ohio, that's my  
23 understanding, of the LSTA, Library Science... I  
24 don't remember the full acronym for that one, but

1 essentially it's federal funds that go to libraries  
2 that apply for them or the people that apply for them  
3 and are awarded them. That's an example of an  
4 external grant that we receive.

5 Q. It listed Presentations, Posters and  
6 Webinars beginning on Page 5?

7 A. Yes.

8 Q. This is considered scholarship?

9 A. Correct.

10 Q. I see two names -- three names underlined  
11 on Page 9.

12 A. Yes.

13 Q. Does that establish collaboration with  
14 faculty at Miami that are not librarians?

15 A. Correct.

16 Q. So you were talking about one of the ones  
17 that you had more direct knowledge of.

18 A. Let me find it. Sorry, there's so many  
19 pages of scholarship that we do. Bottom of Page 5.  
20 There is an underlined name, the very, very last  
21 citation, Fernandes, J., she is a faculty member in  
22 the Office of Research for Undergraduates, I think  
23 that is the -- there's so many acronyms.

24 She has been a direct collaborator with

1 several of the librarians, including myself in  
2 previous years. This is a collaboration she did with  
3 student researchers and one of our librarians, a  
4 presentation for the Council on Undergraduate  
5 Research for the credit bearing course that they  
6 taught together. That's just one example of the  
7 collaborations that we do.

8 Q. What is the LARPS system?

9 A. The LARPS system is our version of tenure  
10 and promotion. As a librarian, I think it's Joint  
11 Exhibit F; is that correct?

12 Q. Yes, I believe in the back it's F.

13 A. Yes. Libraries Appointment, Rank and  
14 Promotion System. It is the document that we created  
15 to basically attain faculty status without  
16 necessarily gaining faculty title.

17 Q. So how close does it mirror the tenure  
18 track process at Miami?

19 A. Extremely close. It was modeled directly  
20 after the tenure and promotion process.

21 Q. The probationary period for an Assistant  
22 Librarian, how does that relate to the probationary  
23 period for an Assistant Professor?

24 A. They are identical.

1 Q. Do you have to submit a dossier?

2 A. Correct, yes.

3 Q. Does the Assistant Professor submit a  
4 dossier?

5 A. As far as I know.

6 Q. That's in the sixth year?

7 A. Yes -- Well, fifth year I think,  
8 thereabouts, for review in the sixth year, that's my  
9 understanding.

10 Q. Then there's the equivalent of a  
11 department level committee?

12 A. Yes.

13 Q. There's the equivalent of a chair or  
14 department review?

15 A. Yes.

16 Q. There's an equivalent of a college level  
17 committee?

18 A. Yes -- Well, not committee but college  
19 level review, dean review.

20 Q. So there's a dean review but not a  
21 college committee?

22 A. I would argue that the -- Let me back up.  
23 Our Personnel Committee is the equivalent of a  
24 college committee, college level committee. We don't

1 necessarily have a departmental level committee. Our  
2 only committee that reviews annual reports and  
3 dossiers is made up of librarians from all the  
4 different departments within the libraries. It is  
5 more equivalent to a college level committee.

6 Q. Okay. So that that looks at the dossier?

7 A. Yes.

8 Q. Do they vote and write a letter in  
9 support or against?

10 A. Yes.

11 Q. Then does it go up to the appropriate --  
12 it goes up to the appropriate dean?

13 A. Yes.

14 Q. And that's true in the other colleges?

15 A. As far as I know.

16 Q. And if you know, does it go up to a  
17 University level review?

18 A. It goes up to the Provost directly, yes.

19 Q. And does the Provost make the ultimate  
20 decision?

21 A. I think the Provost makes a  
22 recommendation and then the Board of Trustees/the  
23 President, I'm not sure of the exact order, but the  
24 Board of Trustees has the final vote just like they

1 do for faculty promotion and tenure.

2 Q. Okay. Is there -- If an Assistant  
3 Librarian does not get tenure, is it up or out?

4 A. Yes, it is, we get a terminal year.

5 Q. If an Assistant Professor does not get  
6 tenure, is it up or out?

7 A. Yes, they also get a terminal year.

8 Q. So both get a terminal year?

9 A. Yes.

10 Q. Then they both have to find other  
11 employment?

12 A. Yes.

13 Q. Are you required to be promoted from an  
14 Associate Librarian to a Principal Librarian?

15 A. Not required, no.

16 Q. Is there a timeframe where you can  
17 only -- you have to seek promotion from an Associate  
18 Librarian to a Principal Librarian?

19 A. From Associate to Principal.

20 Q. Are Associate Professors, are they  
21 required to be promoted to Full Professor?

22 A. Not to my knowledge, no.

23 Q. Is there a timeframe for an Associate  
24 Professor to seek promotion to Full Professor?

1 A. Not that I know.

2 Q. Do you agree the two completely mirror  
3 each other?

4 A. Absolutely they do.

5 Q. You're saying that LARPS was designed  
6 directly from the faculty rank promotion process?

7 A. Yes.

8 Q. So whether you technically are faculty  
9 rank or not under LARPS, is that a difference without  
10 a distinction or I guess a distinction without a  
11 difference?

12 A. Yes, it's a completely meaningless  
13 distinction because our system is a faculty system.  
14 It is exactly the same.

15 Q. Your core responsibilities are not  
16 teaching. I think you testified that it's your PPR?

17 A. Uh-huh, correct.

18 Q. But is there some teaching that some of  
19 the librarians do?

20 A. To my knowledge, every single librarian,  
21 at least every new PPR document that has been created  
22 for librarians in the last I want to say five years,  
23 I don't have direct knowledge of this because I'm not  
24 a department head, but based on my conversations with

1 the librarians, every single one of them has some  
 2 level of teaching and training listed in their PPR.  
 3 It is a core function of every librarian regardless  
 4 of whether they do in person instruction, in class  
 5 instruction like my department does.

6 Q. Okay. So that would be a part, again, of  
 7 their Principal Professional Responsibility?

8 A. Primary Professional, but yes, depending  
 9 on your terminology.

10 Q. Right, Primary Professional  
 11 Responsibility.

12 A. Uh-huh.

13 Q. And do you feel that the librarians are  
 14 core members of the academic community at Miami?

15 A. Absolutely. I would love to see how the  
 16 faculty deal if we were to just all leave, how they  
 17 would manage to accurately teach research, no offense  
 18 to any faculty in the room.

19 MS. MUSKOVITZ: I have no further  
 20 questions.

21 ALJ SPRAGUE: Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Day:

1 Q. Miss Boehme, am I pronouncing your name  
2 correctly?

3 A. Yes.

4 Q. The University does not consider  
5 librarians to be faculty members or to hold faculty  
6 rank, right?

7 A. I would like to echo the previous  
8 witness, are we talking in practice or in policy?  
9 Because policy, no; in practice, absolutely.

10 Q. How so? How in practice does the  
11 University consider librarians to be faculty?

12 A. Well, look at our LARPS document. This  
13 is modeled after faculty tenure and promotion. We  
14 have the same categories. We have the same buckets.  
15 We have to do similar research. We have to do  
16 similar scholarship. We are basically faculty as far  
17 as our job responsibilities and retention is  
18 concerned.

19 Q. So you were just testifying about  
20 promotion for librarians and that's covered in the  
21 LARPS, right?

22 A. Yes.

23 Q. If a librarian is not recommended or  
24 approved for promotion, there are appeal procedures

1 for librarians during that process, right?

2 A. As far as I know, but currently, I've  
3 never had to deal with that.

4 Q. Understood. If you could look at the  
5 LARPS document, I'm looking at Page 12 towards the  
6 bottom, subsection E.

7 A. Okay.

8 Q. And that regards appeal of promotion and  
9 continuing contract or promotion decisions, right?

10 A. That's what it says, yes.

11 Q. If you flip the page to Page 13, there's  
12 a sentence there that says the Provost will have an  
13 answer to the candidate no later than 15 working days  
14 following receipt of the appeal, correct?

15 A. Oh, yes, correct.

16 Q. Do you know if the Provost is the last  
17 level of appeal for faculty members who are appealing  
18 any promotion or tenure decisions?

19 A. I don't know.

20 Q. You are classified as unclassified staff,  
21 right?

22 A. Correct.

23 Q. In addition to the LARPS manual,  
24 unclassified staff policies apply to you as a

1 librarian, right?

2 A. Yes.

3 Q. You have a 12-month appointment?

4 A. Yes.

5 Q. And faculty have a nine-month  
6 appointment, right?

7 A. Typically, yes.

8 Q. Do you work over the summer as part of  
9 that 12-month appointment?

10 A. I do. Are you paid additional money for  
11 your typical job duties that you perform over the  
12 summer?

13 MS. MUSKOVITZ: In addition to what?

14 MS. DAY: That's not my question.

15 MS. MUSKOVITZ: In addition to what?  
16 That's like saying is four a big number.

17 MS. DAY: In addition to what is not an  
18 objection form.

19 MS. MUSKOVITZ: In addition to what?

20 MS. DAY: She can ask on redirect?

21 MS. MUSKOVITZ: It's not a redirect. Is  
22 four a big number? Compared to what?

23 ALJ SPRAGUE: Do you want me to do this?

24 MS. MUSKOVITZ: She's on a 12-month

1 salary.

2 ALJ SPRAGUE: Miss Boehme, you work 12  
3 months out of the year?

4 THE WITNESS: Yes.

5 ALJ SPRAGUE: Get time off?

6 THE WITNESS: Yes.

7 ALJ SPRAGUE: Do you typically get paid  
8 for extra for working through the summer?

9 THE WITNESS: No.

10 ALJ SPRAGUE: All right.

11 Q. (By Ms. Day) Do you personally engage in  
12 teaching?

13 A. Yes.

14 Q. What do you teach?

15 A. I teach information literacy, formerly  
16 typically called bibliographic instruction. It's had  
17 a little bit of a name change, a little bit of a  
18 redirect since one of our guiding documents was  
19 changed. That's neither here nor there. That's  
20 primarily what my focus is, teaching information  
21 literacy.

22 I also have in the past taught some  
23 credit bearing classes for the University, those  
24 being -- one of them is the University 101, UNV 101.

1 I think it's called I Am Miami. And I have also been  
2 an Instructor of record for a first year research  
3 experience class UNV 171 and 172.

4 Q. I'll ask you a little bit about those  
5 experiences. Okay, so you said you teach  
6 informational literary as part of your core job  
7 duties?

8 A. Yes.

9 Q. Is that a course or a class?

10 A. Neither.

11 Q. Tell me about it.

12 A. I want to make sure I understand your  
13 course versus class.

14 Q. Fair enough.

15 A. It is typically for librarians, those  
16 sessions, that instruction often happens as part of a  
17 single class session for the faculty. I think we  
18 heard testimony earlier about one of the English  
19 librarians coming in and teaching on a need based --  
20 yeah, need based time consideration. I do a similar  
21 thing.

22 So when a faculty member, particularly  
23 when they have an assigned research project, I will  
24 work with them, they will send me the syllabus, I

1 will very often also help them design that assignment  
2 to have appropriate scaffolding and learning  
3 objectives and all that educational nonsense -- not  
4 nonsense, but you know what I mean.

5 All of that, then I come in to teach a  
6 session to meet that need. And then very likely I  
7 will not come back to that class directly; however,  
8 teaching is more than just talking to students in  
9 front of the class. Teaching is also creating  
10 asynchronous learning objects.

11 It is also having one on one conversation  
12 and consultations. I do all of that. It is also  
13 being we typically call it embedded. So we are  
14 added, for example, to the learning management  
15 system. So the online course content where all the  
16 class material resides, we are added as an Instructor  
17 or similar role so that we can review and evaluate  
18 students' submissions, assignments, kind of check in  
19 on their progress. So it's far more than just I come  
20 in and teach one session. It is throughout the  
21 entire semester. Does that answer your question?

22 Q. It does, thank you. And just a followup,  
23 so you said informational literary, at least the in  
24 classroom portion of that responsibility involves

1 teaching a session. How many sessions in a semester  
2 typically appear in the classroom?

3 A. Well, it differs depending on the  
4 librarian. For me, I am a STEM librarian. I have  
5 departmental responsibilities for five or six  
6 departments -- I have to list them all in my head --  
7 which depending on any given year is between 15 and  
8 18 percent of the 20,000 student body, 20,000 lower  
9 student body.

10 I teach a lot. I would say at least 30  
11 sessions in person every single semester. It would  
12 be more except that I have also worked really, really  
13 hard to transition a lot of that in person  
14 instruction into a synchronous material so I am not  
15 run ragged every single semester.

16 So I present these materials to the  
17 professor, they integrate them into their course. I  
18 make modifications to them every semester as  
19 requested or if needed. And so that is also another  
20 long-term aspect of my teaching.

21 Q. You said that you also have taught credit  
22 bearing courses at Miami.

23 A. Correct.

24 Q. You said University 101, is that like how

1 to be a college student course?

2 A. Yes, it is.

3 Q. We've all taken those. Then you also  
4 have taught like a first year research experience  
5 course?

6 A. Correct.

7 Q. How many credit hours was the University  
8 101 course?

9 A. One.

10 Q. How many credit hours was the first year  
11 research experience course?

12 A. Two.

13 Q. How many times have you taught the  
14 University 101 course?

15 A. Once.

16 Q. How many times have you taught the first  
17 year research experience course?

18 A. I have taught University 171, which is  
19 the first semester of that progression, twice. I  
20 have taught UNV 172, which is the spring semester  
21 version of that course, once, but the second time I  
22 taught that progression, we transitioned to a seminar  
23 format. So it wasn't officially called 172, but I  
24 did teach both semesters both years if that makes

1 sense.

2 Q. I understand. When you taught those  
3 credit bearing courses, were you given additional  
4 compensation for doing so?

5 A. I was not paid as a per credit hour  
6 faculty if that is what you're asking about.

7 Q. Did you receive any additional  
8 compensation beyond your basic salary for teaching  
9 these credit bearing courses?

10 A. I received to my knowledge an extremely  
11 modest amount increase in our professional  
12 developmental allocation. Most of us who teach 101  
13 and 171 received that increase to our professional  
14 defense. They're only accessible for that academic  
15 year. And so I would not necessarily call it a  
16 compensation, although -- well, at least a  
17 substantial compensation, and it is definitely not  
18 comparable to many of my colleagues who do teach  
19 through credit hour classes as per credit hour  
20 faculty teach or receive.

21 Q. Let me make sure I'm understanding your  
22 testimony. The compensation that you receive for  
23 those credit bearing classes was only increase in  
24 your funds in your professional development

1 allocation or was that in addition to some other --

2 A. Only.

3 Q. Only in your fund?

4 A. Only. I would also like to point out  
5 that that is not the norm and is not exclusive.

6 There are two librarians in the University or at the  
7 University Libraries who are teaching credit bearing  
8 classes who are receiving zero additional  
9 compensation. They are not being paid as a per  
10 credit hour faculty. They are not receiving  
11 professional development funds. It is essentially  
12 part of their job that they teach these courses.

13 Q. Who are those librarians?

14 A. Nathaniel Floyd, F-L-O-Y-D, and  
15 Jacqueline Spraetz, S-P-R-A-E-T-Z.

16 Q. S-P-R --

17 THE WITNESS: -- A-E-T-Z.

18 Q. Do you know whether teaching those  
19 courses are part of those individual's PRR?

20 A. PPR?

21 Q. PPR, sorry.

22 A. I don't know if their document was  
23 modified to reflect that. In practice, yes, it is  
24 part of their PPR. As part of formal policy, I don't

1 know.

2 Q. Does each librarians' PPR differ?

3 A. Yes. Well....

4 Q. In some ways at least?

5 A. My understanding is that each -- It can  
6 differ. From my knowledge, all the librarians in my  
7 department, in the Advise and Instruct Department,  
8 all have identical PPR. Some of the librarians in  
9 some of the other departments may have slightly  
10 different PPR, but the substantive portions are  
11 identical. They may have one or two different  
12 sections.

13 I'm thinking in particular of some of our  
14 librarians in Special Collections and University  
15 Archives. I don't know the specifics, but I do know  
16 that they different numbers of PPR categories.

17 Q. Have you personally seen any other  
18 librarians' PPRs?

19 A. Yes

20 Q. Just making sure you're testifying from  
21 your own knowledge.

22 A. Yes, it is my knowledge.

23 Q. How many would you guess you've seen?

24 A. At least five, not including my own.

1 Q. How many total librarians currently are  
2 there at Miami?

3 A. 32, 35'ish that would be covered under  
4 the Bargaining Unit.

5 Q. Understood. So that's 30 to 35, not  
6 including any administrative or other --

7 A. Correct.

8 Q. -- librarians?

9 A. Correct.

10 Q. Do you personally perform performance  
11 evaluations for anybody who might be included in the  
12 Bargaining Unit here?

13 A. I do not because I do not have  
14 appropriate rank.

15 Q. You receive a performance evaluation  
16 every year, right?

17 A. Yes.

18 Q. Do you know who performs that for you?

19 A. So the annual review that I do that I  
20 have done goes at the very, very -- well, for every  
21 assistant librarian goes at minimum to our department  
22 head. My understanding is that for the -- maybe not  
23 for the first year but at least for the second year,  
24 it also goes to our Personnel Committee, our Library

1 Personnel Committee.

2 So it's entirely possible the first year  
3 report also goes. I don't remember. Every review  
4 after that, third, fourth, fifth and continuing is  
5 reviewed by both our department heads, our direct  
6 supervisors, and for probationary librarians, it is  
7 also reviewed by the dean of the libraries and the  
8 Provost.

9 Q. I'd like you to turn to the Union's  
10 Exhibit 20 which is in the small white binder. Do  
11 you know whether anyone at Miami was involved in  
12 writing this?

13 A. I don't know.

14 Q. I'd like you to turn to Exhibit 21. I  
15 think I heard in your testimony on direct examination  
16 that students on occasion do also get involved in  
17 research?

18 A. Yes.

19 Q. And they may be published alongside  
20 anyone who publishes, right?

21 A. Yes.

22 Q. Can they publish on their own, students?

23 A. As far as I know, yes. There are several  
24 undergraduate focused research journals.

1           Q.    Regarding the LARPS document manual, do  
2 you know what was involved in the creation of that  
3 document?

4           A.    15 years, thereabouts, lots of back and  
5 forth.  So 1987, the Board of Trustees  
6 disenfranchised all the librarians -- well, virtually  
7 all the librarians.

8           Q.    What does that mean?

9           A.    Our ranks were primarily those of  
10 Instructor.  We had positional rank except for -- We  
11 had positional rank.  And only those who had Ph.Ds or  
12 were administrators had the rank of Assistant,  
13 Associate or Principal Librarian.

14                    The vast majority of us were classified  
15 as Instructors.  In fact, we currently still have one  
16 librarian who was not grandfathered into the LARPS  
17 document and still carries that title of Instructor.  
18 Everyone has since been transitioned over.

19                    They voted to not allow instructors to be  
20 part of Faculty Assembly, they disenfranchised all of  
21 us.  The librarians began working towards trying to  
22 gain faculty status.

23           Q.    Let me give you a pause real quick.  How  
24 do you know this information?  Were you at the

1 University at the time?

2 A. I was not at the University at the time.  
3 I and some of my colleagues did hours of research in  
4 the University archives pouring over all of the  
5 documents related to this.

6 So the University libraries then began  
7 trying to craft this LARPS document, Joint Exhibit F.  
8 It was -- The earliest I could find it was up for  
9 review by an administrator, it was up for review by  
10 the Provost in 1991. If you look at the create a  
11 date on the first page, created 2003. That's a lot.  
12 That's a lot of time that was passed.

13 It went back and forth several times. I  
14 languished in the administrative offices. Their  
15 correspondence basically indicated they did not want  
16 us to have faculty status because we would then be  
17 enfranchised. We would have voting power.

18 They may have to increase our salary.  
19 They would have to afford us governance. They would  
20 have to afford us respect commensurate to faculty.  
21 They did not want to do it. This was our compromise  
22 essentially. We gave up faculty title in exchange  
23 for faculty status through the LARPS document.

24 Q. You said you gave up, you, meaning the

1 librarians --

2 A. Yes.

3 Q. -- gave up faculty status. Did the  
4 librarians ever have faculty status prior?

5 A. I'm sorry, we gave up faculty title.

6 Q. I'm sorry, and if I said that wrong, I  
7 apologize. Did the librarians have faculty title  
8 prior to the LARPS?

9 A. Yes.

10 Q. When?

11 A. Pre-LARPS.

12 Q. What do you mean by librarians had  
13 faculty titles prior to the LARPS?

14 A. We were ranked as faculty members prior  
15 to the creation of this document. We were not  
16 enfranchised faculty members. We did not have  
17 security. We did not have job protections. We did  
18 not have opportunities for retention or promotion.

19 We had faculty title. We did not have  
20 faculty status. This document reversed that. It  
21 gave us appropriate protections, job security,  
22 promotion, opportunities, faculty status, while not  
23 allowing us to still carry that faculty title.

24 Q. You mentioned Faculty Assembly a few

1 moments ago. Today librarians can and are involved  
2 in Faculty Assembly, correct?

3 A. Correct.

4 Q. Are there any committees or subcommittees  
5 within Faculty Assembly that librarians cannot sit  
6 upon or vote in?

7 A. To my knowledge, there are a handful of  
8 them. I don't know exactly which ones.

9 Q. Miss Boehme, have you ever been a member  
10 of a union?

11 A. Sort of.

12 Q. Tell me about it.

13 A. One of my jobs previous to this was in  
14 Escambia County, Florida an a Library Assistant. It  
15 was a part-time position. I was originally told that  
16 I would be eligible for the union membership, the  
17 Escambia Education Association. I went to pay my  
18 dues. They started the process and then they  
19 realized that part-time employees were not eligible,  
20 so I tried, but it didn't work out.

21 Q. Understood. Have you ever been in a  
22 management role negotiating a Collective Bargaining  
23 Agreement?

24 A. No.

1 Q. Have you ever been involved in  
2 negotiating a Collective Bargaining Agreement?

3 A. No.

4 Q. Is there a librarian science program at  
5 Miami University?

6 A. Not anymore, no.

7 Q. Was there at one point in time?

8 A. I don't know if there was a program. We  
9 definitely offered classes from what I could tell  
10 during my archives research.

11 Q. During what time period roughly?

12 A. '60 and '70s. I think that's when --  
13 that was when a lot of us still had faculty status  
14 because we were teaching those classes.

15 MS. DAY: No further questions.

16 MS. MUSKOVITZ: No redirect.

17 ALJ SPRAGUE: Thank you for your  
18 testimony today.

19 (Off the record.)

20 ALJ SPRAGUE: We are back on the record.

21 Dr. Smith, please raise your right hand.

22 (Witness placed under oath.)

23 ALJ SPRAGUE: Please state your full name  
24 for the record spelling your last name.

1 THE WITNESS: My name is Matthew, my  
2 middle name is David, Smith, S-M-I-T-H.

3 ALJ SPRAGUE: Thank you.

4 - - -

5 MATTHEW D. SMITH, Ph.D  
6 being first duly sworn, as prescribed by law, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 By Ms. Muskovitz:

10 Q. Dr. Smith, what do you teach?

11 A. I teach history at the Miami University,  
12 Hamilton campus.

13 Q. That's one of the regional campuses?

14 A. That's correct. So the divisional  
15 structure of the regional campuses is the College of  
16 Liberal Arts and Applied Science, but we generally  
17 are referred to as Miami Regional, so it's the  
18 Hamilton and Middletown campuses.

19 Q. What is your classification, your faculty  
20 classification?

21 A. So my faculty classification is Visiting  
22 Assistant Professor in the Department of Humanities  
23 and Creative Arts where I teach History. But I do  
24 have a slightly more complex appointment.

1 I have a dual appointment which is a  
2 yearly renewable appointment, but I teach 50 percent.  
3 So I teach a two-two load, two classes a semester, as  
4 my standard load, but I also am appointed every year,  
5 have been appointed every year of my work history as  
6 the Director of Public Programs at the Miami  
7 University, Hamilton and Middletown campuses.

8 I should say when I started at Miami, I  
9 was actually the Assistant Director of Public  
10 Programming, but in 2018 when my predecessor retired,  
11 the position of Assistant Director was eliminated, so  
12 I became the Director of Public Programs at the  
13 regional campuses.

14 Q. So you're one of the individuals that  
15 we've been referring to as the dual appointment?

16 A. Yes. I would say dual appointment is  
17 accurate, yeah.

18 Q. And what percent of your work is faculty  
19 work and what percent of your work is directing this  
20 program?

21 A. So that's, again, I'll try and answer  
22 that straightforwardly. So in terms of the official  
23 appointment is the understanding is that it's 50/50.  
24 Now, in terms of the public programs, again, I guess

1 technically that would make me a staff member as well  
2 as a faculty member, I would say that work is highly  
3 variable, but I have seven programs, free public  
4 programs which are offered to the community on our  
5 campuses.

6           These are things like lecture series,  
7 panel events, performance, music and other artistic  
8 performances, and that takes up -- I would say at  
9 least in theory it takes up half of my time. Perhaps  
10 in practice, it's more variable. But in theory, I'm  
11 50 percent faculty, 50 percent Director of Public  
12 Programs.

13           Q.    How long have you been -- in terms of  
14 your faculty role, how long have you been classified  
15 as a Visiting Assistant Professor at Miami?

16           A.    So I actually got my Ph.D from Miami  
17 University and began work at the same time as a  
18 Visiting Assistant Professor in 2011 at the Hamilton  
19 campus. Now, I'd been at the Hamilton campus now for  
20 over a decade.

21           And of course, just to clarify, typically  
22 these one-year Visiting positions are renewable each  
23 year up to five years, but because of the dual  
24 position, essentially what it means is that clock has

1 been frozen, so I've been reappointed for the last 11  
2 consecutive years.

3 ALJ SPRAGUE: Quick question. So your  
4 Assistant Professor duties, are they strictly in  
5 Hamilton and the other duties are at Hamilton and  
6 Middletown?

7 A. I'm based in Hamilton in that I have my  
8 offices there. Most of my class I teach on the  
9 Hamilton campus. I've actually taught on all three  
10 campuses. I've taught in Middletown and Oxford, as  
11 well as the Hamilton campus.

12 And in terms of my official status  
13 because we're considered an integrated division with  
14 Hamilton and Middletown, I would be considered a  
15 regional faculty member, but in effect for all  
16 practical purposes, I'm a Hamilton Instructor.  
17 That's where I teach the vast majority of my classes,  
18 yeah.

19 Q. So you've been a VAP for 11 years?

20 A. Yes.

21 Q. Do you get that February 15th letter  
22 every year saying just doing you a favor and  
23 reminding you that you might not have a job next  
24 year?

1           A.    Yes.  So for those of you who don't know,  
2    as a Visiting member of faculty, this applies to all  
3    Visiting faculty at Miami, every winter we get a  
4    letter notifying us that our term of employment is  
5    due to come to an end, and it also, for the interest  
6    of full disclosure, tells you there's no expectation  
7    of being rehired the following year, but this letter  
8    does not preclude that possibility.

9                    So it's -- I remember getting my first  
10   one of those and my sort of stomach dropped a little  
11   bit because of just nobody likes to get a letter, but  
12   it's a proforma letter, so I think Visiting faculty  
13   understand that this is a legal formality in terms of  
14   this doesn't either preclude or guarantee future  
15   employment or renewal of a new contract at the end of  
16   the year.

17           Q.    So you've gotten it every year for 11  
18   years?

19           A.    Yes, so it's become kind of -- of course  
20   you make a joke of it after a while, but it's become  
21   almost sort of a ritual, the February letter, yeah,  
22   yeah.

23           Q.    Do you know what you're teaching in the  
24   fall of 2023?

1           A.    The fall, let me see... So I believe my  
2 full course request is due at the end of this month,  
3 so I know what I'll be teaching in the spring of next  
4 year, but I will be submitting my full teaching  
5 request this month.

6           Q.    So this month meaning in December?

7           A.    In December, yes.

8           Q.    So how do your classes -- like at what  
9 point do you know what you're teaching in fall?

10          A.    I don't know in terms of the timeline  
11 specifically, but very shortly I should know what my  
12 full classes will be.

13          Q.    In January?

14          A.    Probably, yes. My department chair is  
15 pretty efficient that way.

16          Q.    So that's before you get your February  
17 letter?

18          A.    Yes, the point is I will have classes  
19 lined up to teach for the following academic year  
20 before I have the appointment for that academic year.

21          Q.    And that's before you're reminded you  
22 might not have that appointment?

23          A.    Yes. And this has been the same case all  
24 throughout my work history here at Miami University.

1           Q.    Even without these letters, I mean, is  
2   that normal that the Visiting faculty are assigned  
3   courses for the following year in the middle of the  
4   previous academic year?

5           A.    It's certainly normal in the department  
6   where I teach. I presume it's normal in other  
7   departments as well, and to me it indicates an  
8   expectation at least at the departmental level that I  
9   will be returning in the following academic year.

10          Q.    Is that typical of the Visiting faculty  
11   at Miami?

12          A.    Yes, it's certainly to the best of my  
13   knowledge certainly I can speak to my department  
14   colleagues, including Visiting faculty, but I believe  
15   that's normal throughout the University.

16          Q.    Do you know what -- There's a faculty  
17   that are called per credit hires, I believe?

18          A.    Yeah, I think they're referred to sort of  
19   colloquially as adjuncts, although I believe the term  
20   adjunct is not an official administrative term for  
21   them, but yes, essentially, sort of class by class  
22   appointments.

23          Q.    When are those typically made if you  
24   know?

1           A.    I don't have that information.  I know  
2   that's sort of a departmental chair decision, but I  
3   think the hiring process for those class by class,  
4   quote/unquote, adjuncts is much more ad hoc than it  
5   would be for other types of appointment.

6           Q.    And in your experience, are those people  
7   that are brought in to teach a class or two to fill a  
8   hole that comes up?

9           A.    Yes.  I would say the part-time faculty  
10  are hired I don't want to say on a casual basis but  
11  much more on a sort of ad hoc basis than other ranks  
12  of faculty including Visiting.

13          Q.    And do you consider yourself to be a  
14  seasonal or a casual employee of Miami?

15                MS. SQUILLANTE:  Objection.  Calls for  
16  legal conclusion.

17                ALJ SPRAGUE:  Sustained.

18          Q.    Do you know what -- Have you heard the  
19  term seasonal and casual?

20          A.    To be honest, I'm not sure how that would  
21  apply to this context, so I'm not really familiar  
22  with that terminology.

23          Q.    Okay.  Do you do scholarship?

24          A.    I do scholarship, yes.

1 Q. And how much scholarship do you do?

2 A. I have I would say a pretty active  
3 research agenda and, to be frank, probably on par  
4 with any tenured colleagues in my department. As an  
5 example, just last month I published a book, a  
6 historical monograph with Temple University Press  
7 entitled, and I apologize for the long-winded title,  
8 but "The Spire Still Point to Heaven, Cincinnati's  
9 Religious Landscape 1788 to 1873," and it's basically  
10 a religious history of 19th century Cincinnati. And  
11 that was published and is available through Temple  
12 University Press which is a fairly well regarded  
13 university press.

14 Q. So for the nonacademics in the room, why  
15 is it relevant that the publication of your book is a  
16 university press, is the Temple University Press?  
17 How does that differ from other publications?

18 A. Well, typically a university press is  
19 kind of the industry standard I guess if you want to  
20 say within academia, but I think the main  
21 consideration is that this has been through kind of a  
22 blind peer review process of submitting not just kind  
23 of draft to the editors of the press, the publishing  
24 house, but then it's sent out to external readers who

1 are highly regarded figures within the academic sub  
2 field in which the book is being published. So it is  
3 a -- at least like in terms of an imprint like Temple  
4 University Press, a fairly well regarded standard of  
5 academic integrity that is represented by that  
6 imprint.

7 Q. And it is peer reviewed?

8 A. It is blind peer reviewed, so not only  
9 reviewed by leading scholars in the field, but their  
10 comments are submitted anonymously, so there's no --  
11 I can't prejudice the outcome.

12 Q. In your department, how many faculty are  
13 teaching history?

14 A. There are -- including my department  
15 chair, there are six full-time historians. I count  
16 myself as a full time even though I teach a two-two  
17 load. So six historians in the department who are  
18 full-time continuing employment.

19 Q. How many of them are classified as  
20 Visiting faculty?

21 A. There's myself and then I have another  
22 colleague who is one of the six. The other four are  
23 tenured.

24 Q. And if you know, how long has the other

1 Visitor been in your department?

2 A. He's very recent. He actually started  
3 work at the beginning of the academic year. He was  
4 actually appointed. He's a Visiting Instructor, so I  
5 believe he was hired without his Ph.D but what they  
6 call ABD which is All But Dissertation.

7 So he was finishing his dissertation I  
8 believe at the University of Texas, and he is  
9 actually based in Toledo, Ohio, so just to the north  
10 of us, drives down twice a week to teach classes in  
11 the Middletown campus in Butler County.

12 He was hired -- and, again, typically  
13 Visiting Professors are hired into existing clearly  
14 defined positions, but he was hired to replace a TCPL  
15 faculty member who basically she quit over the course  
16 of the summer without really much notice. She for  
17 personal reasons decided she would part ways with  
18 Miami University, and that left my department chair  
19 obviously with a very small window of time to fill  
20 those classes.

21 So it filled the TCPL with a Visiting  
22 position. And, again, that's obviously also in  
23 addition to a change of rank, a diminution of that  
24 position because generally speaking a Visiting

1 Instructor would be considered a less high ranking  
2 than a lecturer.

3 Q. Does your department hold department  
4 meetings?

5 A. Yes, once a month.

6 Q. And by rank, who comes to the department  
7 meetings or I should say who's expected to come to  
8 the department meeting?

9 A. All full-time continuing faculty, so  
10 everybody really except the part-time faculty.

11 Q. That includes you?

12 A. Yes.

13 Q. What kind of discussions and decisions  
14 are made at the faculty meetings?

15 A. Very broad ranging. So everything from  
16 curriculum, academic programs, committee appointments  
17 because there are many subcommittees of the  
18 department and elections to committees. You know,  
19 many of the appointments are decided by sort of an  
20 informal democratic process.

21 Just general business of the department,  
22 reports from the committees themselves, other -- sort  
23 of a clearinghouse for policy updates and things of  
24 that nature. So very much sort of a general meeting

1 that's held once a month for the department hosted by  
2 the department chair.

3 Q. Do your -- I mean, are you fully  
4 integrated within the department even though your  
5 classification is Visitor?

6 A. Yes. So not only myself but other  
7 Visiting faculty in the department serve on  
8 committees including -- there are a couple of  
9 expectations. I think we talked about Tenure and  
10 Promotion is rank limited, but in terms of the other  
11 committee appointments in the department, I've served  
12 in many committees, including last year I served on  
13 the Chair's Advisory Committee for my department  
14 chair. So that was sort of quite a crucial part of  
15 the functioning of the department.

16 So in terms of committees, in terms of  
17 faculty searches, Visiting faculty serve on the  
18 departmental searches as well. So we are pretty well  
19 integrated in every key regard I can think of.

20 Q. Have you ever been on a search committee?

21 A. I have, yes. In fact, I've been on -- I  
22 haven't recently been on a tenure line search  
23 committee but that's because my department hasn't had  
24 a tenure search for very many years, but I was on the

1 search committee that hired the Visiting Instructor  
2 the beginning of this year.

3 I've been on other University search  
4 committees including staff positions, and I've also  
5 when I was in graduate school, because I mentioned I  
6 got my Ph.D at Miami University, I was actually on a  
7 graduate student nonvoting member of the search  
8 committee that hired a faculty, now tenured  
9 colleague, at the American Historical Association  
10 which I think met in Philadelphia. That was when I  
11 was still getting my Ph.D. I certainly don't think  
12 there's any prevention of serving on those committees  
13 based on my VAP status.

14 Q. Have you ever done any course  
15 development?

16 A. Yes, I have. In fact, the course  
17 development that I've undertaken has also been tied  
18 to external grant money that I've been able to raise  
19 as a faculty member on behalf of my department.

20 In 2018, I received a \$89,000 program  
21 development grant from the Natural Endowment for the  
22 Humanities. They had an initiative called Dialogues  
23 on the Experience of War, and that was for public  
24 programming and the development of an undergraduate

1 humanities seminar for student veterans and for the  
2 general population at the regional campuses which was  
3 focused on the experience of the American  
4 Revolutionary War, the Vietnam War and the War on  
5 Terror.

6 And we drew from film, literature, art  
7 and history and philosophy to put together a kind of  
8 curriculum based on humanity sources. So that was a  
9 program that I developed as an overload class; was  
10 the PI, which is the Principal Investigator, the  
11 applicant on the NEH grant.

12 I think there were over 70 applicants  
13 that year for that program, 13 rewarded, so it was a  
14 highly competitive grant. I was there to apply for  
15 the grant, win the grant. I team taught it with four  
16 faculty members, including myself, three of whom were  
17 Visiting faculty. Only one of them was tenured.

18 So, again, this is an example of really  
19 Visiting faculty kind of hewing wood and drawing  
20 water for the department because we're talking here  
21 about -- you know, I realize if you're in the hard  
22 sciences, 89,000 doesn't sound like a huge grant, but  
23 for a humanities program, that's a lot of money. And  
24 that was developed purely on my initiative without

1 any expectation of a pay rise that would accrue to my  
2 base salary as a result of that additional effort.

3 Q. Do you want people in your position to be  
4 part of the overall Bargaining Unit that FAM is  
5 organizing?

6 A. Yes, and that's why I'm here, yep.

7 Q. Do you think you have a community of  
8 interest with the tenured, tenure track, TCPL and  
9 librarians at Miami?

10 A. I think by any common sense definition of  
11 community of interest, I would have a hard time  
12 finding faculty who would disagree with that  
13 statement, including myself.

14 MS. MUSKOVITZ: No further questions.

15 - - -

16 CROSS-EXAMINATION

17 By MS. SQUILLANTE:

18 Q. Hi, Dr. Smith.

19 A. Hello.

20 Q. You testified a few minutes ago that  
21 you're generally assigned your courses as a VAP in  
22 January prior to your receipt of that February 15th  
23 Notice letter?

24 A. Thereabouts. So the class requests the

1 faculty requests for their specific team. We don't  
2 get to choose the classes we teach, but we get to  
3 request them. So generally speaking, the department  
4 chair will try to honor those requests, but there may  
5 be some negotiation.

6 But those requests are due at the end of  
7 this month, the end of the calendar year, I guess,  
8 and so I would expect to hear earlier in the year  
9 when those classes are assigned.

10 Q. Okay. So just to make sure I'm  
11 understanding, you request what courses you're  
12 hopeful to teach or you're interested in teaching at  
13 the end of the calendar year and at the beginning of  
14 the next calendar year, receive notice of whether or  
15 not you'll actually be teaching those courses?

16 A. Yeah, and so that's sort of a -- and also  
17 it's a semesterly request, and generally speaking  
18 those requests are accommodated by the department  
19 chairs.

20 Q. I think you testified, Dr. Smith, that's  
21 your experience, and you assumed it was normal, that  
22 that took place in other departments as well outside  
23 your own department?

24 A. That would be my assumption, although I

1 don't have that information.

2 Q. What do you base that assumption on?

3 A. That I assume that Visiting faculty are  
4 part of the backbone of the faculty of most  
5 departments, TCPL likewise. And that there is, in  
6 terms of the scheduling of classes a year down the  
7 line, this is a very logistically involved process  
8 for the department chairs.

9 So as much as they can pin down what's  
10 going to be offered in the fall semester ahead of  
11 time, the assumption is based on -- again, based on  
12 practice that that would be -- it would be very  
13 difficult to imagine a department chair that would be  
14 waiting to the last minute for that kind of  
15 confirmation to be made before they at least penciled  
16 in the classes that are going to be offered in the  
17 fall.

18 Q. But you're not certain sitting here  
19 whether or not the VAPs either at the regional  
20 campuses or at the Oxford campus have a similar  
21 experience to you?

22 A. Well, I mean, I only say that to be  
23 conservative, yep.

24 Q. Dr. Smith, you hold both a position as a

1 VAP and also as the Regional Director of Public  
2 Programs. Did I get that right?

3 A. Very good.

4 Q. What percentage of your time would you  
5 say you spend on the Regional Director of Public  
6 Programs duties?

7 A. Again, that's -- when I say -- you know,  
8 I'm not trying to be evasive.

9 Q. Your best guess.

10 A. My best guess, so I would say that  
11 percentage, to be quite honest, has increased over  
12 the years. I took on that position in 2018. I would  
13 say the workload of that position has actually grown  
14 because we've actually developed new programs that we  
15 offer on a yearly or semesterly basis.

16 So, for example, we now offer a STEM  
17 lecture series, Science, Technology, Engineering and  
18 Math. So we're kind of programming across the  
19 disciplines. That program did not exist when I took  
20 on that position in 2018, but, again, it's a program  
21 that I developed in close consultation with regional  
22 faculty in the STEM disciplines.

23 So in my public programming position,  
24 although it's not a faculty position, I work very

1 closely with faculty in trying to identify  
2 programming needs, things that would actually be of  
3 benefit in terms of kind of building bridges to the  
4 community and so on.

5 So I would say if I was being perfectly  
6 honest, I would say probably somewhat over 50 percent  
7 of my time is spent in public programming as compared  
8 to my teaching load, although theoretically it's sort  
9 of measured as a 50/50 split.

10 The other part of that is because of the  
11 nature of my position, it's not a time punch. I  
12 don't clock in or clock out. So I've never been  
13 incentivized to really keep track of the time I spend  
14 in either position. Perhaps I should do, but I  
15 don't.

16 Q. Understood. In your role as the Regional  
17 Director of Public Programs, do you supervise any  
18 employees?

19 A. Not formally. I do have an  
20 Administrative Assistant I work with, but it's not a  
21 reporting line, so she is actually the Assistant, the  
22 Administrative Assistant to the Dean's office, but  
23 she is sort of ad hoc assigned to me to help with  
24 public programs. So she does things like paperwork

1 for contracts, travel arrangements for speakers  
2 coming out of town, booking flights, that kind of  
3 thing.

4 Q. Is she assigned exclusively to you,  
5 Dr. Smith, under the purview of the Public Programs,  
6 or does she also have other folks that she is --

7 A. To be clear, she works with me and  
8 with -- I mean it's called the Office of Public  
9 Programming, but I am the Office of Public  
10 Programming, so it's sort of more grandiose than it  
11 sounds.

12 She reports to the Dean directly. She's  
13 the Administrative Assistant to the Dean's office at  
14 the regional campus, so the Dean of the College of  
15 Liberal Arts and Applied Sciences. But she does in  
16 effect work with me on a lot of the public programs,  
17 so that's a significant part of her job, but she  
18 doesn't report to me in terms of like I'm not  
19 considered to be her supervisor.

20 Q. Understood. Were you involved in hiring  
21 her?

22 A. I was actually. I served on that search  
23 committee.

24 Q. Did you interview her during the

1 interview process, I should say?

2 A. Yes, so I interviewed her. I interviewed  
3 other candidates for that position. So that was --  
4 It was a typical search committee. I was not the  
5 chair of the committee, but I was on the committee.

6 Q. How many were on the committee if you  
7 recall?

8 A. Gosh, I don't recall precisely, but I  
9 think it was four or five. It would certainly be a  
10 standard sized committee.

11 Q. Did you recommend that she be the  
12 successful candidate, that she be hired in the  
13 position she now holds?

14 A. Yes, although I believe it was a  
15 unanimous recommendation.

16 Q. Do you have any role in evaluating her --  
17 let me back up. Does she receive a performance  
18 evaluation?

19 A. Yes, but not from me directly.

20 Q. Do you have any involvement in the  
21 evaluation of her?

22 A. Not in a formal sense.

23 Q. Dr. Smith, do you know approximately or  
24 your best guess how many folks there are like you,

1 and by that I mean they hold both a VAP role and also  
2 a Program Director role and split their time amongst  
3 those two roles at Miami?

4 A. That's a great question. Unfortunately I  
5 don't know that information. I believe it may be  
6 less than it has been in former years because I think  
7 those kind of positions I was hired into are not the  
8 typical form of hiring, and I think they're somewhat  
9 being sort of sun-setted upon, but I don't know the  
10 exact position.

11 I think each of those positions is by its  
12 nature atypical, so we would be -- these are not --  
13 we're not a cohort. So I'm not aware of a specific  
14 number of people in my situation who would have a  
15 faculty appointment, but also a Program Directorship  
16 or some other administrative role at Miami  
17 University, but I know there are others. I think  
18 it's a small number. I would be surprised if it was  
19 more than a dozen throughout the University.

20 Q. Are you familiar with how the University  
21 schedules its courses for VAPs?

22 A. I would say I am somewhat familiar. My  
23 wife is also a department chair at Miami University,  
24 and I tend not to sort of interrogate that process.

1 I tend to try to keep work and life as separate as  
2 possible, but I know it's a very involved process.

3 But I would say there's no difference in  
4 terms of the scheduling of classes between the ranks  
5 of full-time continuing faculty within the  
6 department, certainly within our division. I don't  
7 think it would be a consideration, for example,  
8 whether a faculty member was Visiting or tenured or  
9 tenure track or some other rank in terms of how a  
10 class was assigned.

11 I taught classes that have been taught by  
12 tenured faculty. In fact, typically I teach classes  
13 that are taught throughout the department across all  
14 ranks. So I don't think in terms of faculty rank.  
15 There may be some priority given to full-time  
16 continuing faculty over certainly part-time faculty  
17 who are hired on a more ad hoc basis, but within the  
18 core faculty, there's no distinction based on rank,  
19 at least in my department in terms of how those ranks  
20 or those courses are assigned.

21 Q. You receive an annual performance  
22 evaluation, correct?

23 A. I do, yes.

24 Q. Does that evaluate your performance both

1 as a VAP and in your role as a Regional Director of  
2 Public Programs or just in your role as a VAP?

3 A. So technically I have two annual  
4 evaluations because I have a dual appointment. So I  
5 am evaluated by my department chair as a faculty  
6 member, so this is primarily teaching, but I am also  
7 evaluated on my service to the department and to the  
8 University.

9 My research is not evaluated, but  
10 nevertheless, it's a core part of my identity as a  
11 faculty member. Then I also in my staff position, I  
12 also have an annual performance evaluation because I  
13 report to the Office of External Relations and  
14 Communications. So it's sort of a rather Byzantine  
15 hierarchy of administration.

16 So the Office of Public Program is really  
17 an Office of the External Relations and Communication  
18 at the regional divisional level. So I have a boss  
19 in that line of reporting, Jennifer Clark, who I  
20 report to for that annual evaluation.

21 Q. And it's she who prepares the evaluation  
22 with respect to your Regional Director role?

23 A. Yes, so those two are separate. They're  
24 not in any way intermixed.

1 Q. And she sits in the External Relations?

2 A. Relations and Communications. It used to  
3 be University Advancement, but they changed it  
4 recently to External Relations and Communication.

5 MS. SQUILLANTE: Nothing further.

6 ALJ SPRAGUE: No redirect. Thank you,  
7 Dr. Smith.

8 THE WITNESS: Thanks so much.

9 ALJ SPRAGUE: Thank you, Doctor.

10 (Off the record.)

11 ALJ SPRAGUE: We're back on. I'll need  
12 to swear you in at this time. Please raise your  
13 right hand.

14 (Witness placed under oath.)

15 ALJ SPRAGUE: Please state your full name  
16 for the record, spelling your last name.

17 THE WITNESS: Paul Schaeffer. Schaeffer,  
18 S-C-H-A-E-F-F-E-R.

19 ALJ SPRAGUE: Thank you, Doctor.  
20 Miss Muskovitz.

21 - - -

22 PAUL SCHAEFFER, Ph.D  
23 being first duly sworn, as prescribed by law, was  
24 examined and testified as follows:

## 1 DIRECT EXAMINATION

2 By Ms. Muskovitz:

3 Q. Dr. Schaeffer, you have a Ph.D?

4 A. Correct.

5 Q. What field are you in?

6 A. I am a biologist.

7 Q. What's your rank?

8 A. Associate Professor.

9 Q. I'd like you to look at two exhibits. In  
10 the small white binder, I'd like you to turn to Union  
11 Exhibit 33. At the same time, in the black binder  
12 I'd like you to turn to Employer Exhibit 18. I did  
13 give you a copy of Employer 18 to look at?

14 A. Yes.

15 Q. And is it fair to say you created Union  
16 33?

17 A. Correct.

18 Q. Okay. Those are the same names, so  
19 they're in alphabetical order?

20 A. Correct.

21 Q. So one of the classifications that we're  
22 seeking to include in the Bargaining Unit are people  
23 who spend at least half their time doing faculty  
24 work, teaching or service or research or combinations

1       thereof, correct?

2             A.     Correct.

3             Q.     And you were present just now when  
4       Dr. Smith was testifying about his role?

5             A.     Correct.

6             Q.     If you know, are there other people on  
7       campus that we think might fall within that same  
8       category?

9             A.     Yeah.  It's my impression there are quite  
10       a number of people who are all classified as staff,  
11       yet function for quite a lot of their time as  
12       faculty, yes.

13            Q.     Do we have any control over how the  
14       administration might classify an individual?

15            A.     Zero.

16            Q.     So can you go through what you've been  
17       able to identify that's contained in Union 33 and  
18       explain to the Hearing Officer at least anecdotally  
19       what you've been able to find out?

20            A.     Sure.  So broadly, these folks all have  
21       mixed duties and they're quite idiosyncratic  
22       sometimes.  Some of them teach an enormous amount.  
23       Robin Abbott, for example, the GAS Coordinator,  
24       teaches two or three times as much as I do, for

1 example. Others throughout this teach quite a lot of  
2 formal coursework.

3 A lot of my teaching as a scientist is  
4 teaching individual students in a laboratory for  
5 which I'm given credit towards my teaching duties.  
6 And quite a few of these folks who work in various  
7 research facilities or run graduate programs also do  
8 quite a lot of this individual teaching and advising.

9 They're individuals who are very research  
10 active, spend quite a lot of their time collaborating  
11 with other individuals. I'm writing grant with one  
12 of these individuals to the National Science  
13 Foundation. And so, yeah, there's quite a number of  
14 examples in which both formal coursework, individual  
15 advising and teaching occurs, as well as research  
16 activity.

17 Q. So if the union is successful in having  
18 the Bargaining Unit include those for whom at least  
19 50 percent of their work is either research or  
20 teaching and/or service, independent of title, I  
21 mean, what would govern their title or the work they  
22 perform at Miami?

23 A. Well, when we think of the community of  
24 interest, the title that's designated by the

1 University is of very little interest, but when I  
2 seek out a colleague to collaborate with, to work  
3 with teaching or research or service duties, it's  
4 their competencies and their contributions to those  
5 activities that really matter. And folks who are  
6 spending a lot of time and have a lot of expertise in  
7 these areas are incredibly valued and folks that I  
8 interact with quite a lot.

9 Q. So is it fair to say the position is not  
10 absolutely these people would be in the Bargaining  
11 Unit but these are people to look at who might be in  
12 the Bargaining Unit?

13 A. I think we haven't advanced to the point  
14 where we can go through and say exactly what  
15 percentages of time for every single one of these  
16 individuals is established, but certainly many of  
17 them, if not most, exist in this category where  
18 they're spending more than 50 percent of their time  
19 doing faculty activities and, therefore, are  
20 appropriate for the unit.

21 MS. MUSKOVITZ: No further questions.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Day:

1 Q. Dr. Schaeffer, briefly, the persons on  
2 Union Exhibit 33, do you know whether they supervise  
3 any other employees?

4 A. To the best of my knowledge, the only  
5 person on this list that supervises another faculty  
6 member would be Elizabeth Wardle.

7 Q. What about supervising other  
8 administrative employees?

9 A. I assume that some of them do.

10 Q. I don't want you to assume. I just want  
11 you to testify from your personal knowledge.

12 A. I see. Yeah, I can see one there that I  
13 believe does.

14 Q. Who's that?

15 A. Steve Sullivan has some I believe  
16 Administrative help in the museum.

17 Q. Anyone else that you know?

18 A. And/or I believe has a staff member that  
19 works with him. I don't know if he supervises her,  
20 to be honest, but I assume that's an arranged  
21 position. Those are both staff members.

22 Q. Anyone else on this list in Union Exhibit  
23 33 that you are aware of who would supervise other  
24 administrative or unclassified or classified staff

1 persons?

2 A. Perhaps Kevin and Lynn, the last two on  
3 our first page.

4 Q. Those are Kevin Matteson and Lynne Myers?

5 A. Correct.

6 Q. How many credit hours does a full-time  
7 tenured or tenure eligible faculty member at Miami  
8 typically teach?

9 A. Typically is a bit of a misstatement  
10 because it's a full range from probably six credit  
11 hours a year up to 24 credit hours per year.

12 Q. What would you say the average credit  
13 hours per year is?

14 A. I have no idea.

15 Q. How many credit hours do full time TCPL  
16 typically teach?

17 A. I believe that's typically -- We had that  
18 entered into testimony earlier. I believe it's what  
19 we were calling three-three, so 18 per year. Maybe  
20 7.

21 Q. 18 per year?

22 A. I think that's correct. Maybe 24. I  
23 don't remember it off the top of my head now.

24 Q. Understood.

1           A.    I don't assign teaching duties to those  
2 folks.

3           Q.    Correct me if I'm wrong, did you play a  
4 role in creating or helping to create this Union  
5 Exhibit 33?

6           A.    That's correct, I made the last version  
7 of this. I had friends who helped me with some of  
8 the details filling this in. I started from your  
9 document which I think you started from an earlier  
10 version of ours.

11          Q.    I think that's right.

12          A.    But yeah, one, if you had done the nice  
13 work of filling in the rest of the job titles and  
14 alphabetized it. We just copied it over to make sure  
15 they would match.

16          Q.    Gotcha. When you were reviewing this in  
17 the final stage or any other involvement that you had  
18 regarding this list, whether it's this final version  
19 or the previous version, did you review any Position  
20 Descriptions when creating this?

21          A.    Yes.

22          Q.    What Position Descriptions did you  
23 review?

24          A.    I don't remember which ones. Quite a few

1 of them.

2 Q. You had to guess how many....

3 A. Three-fourths at least. I was on the  
4 websites trying to look at how Miami described these  
5 positions.

6 MS. DAY: No further questions.

7 MS. MUSKOVITZ: No redirect. Thank you,  
8 Dr. Schaeffer.

9 ALJ SPRAGUE: Have you run out of  
10 witnesses?

11 MS. MUSKOVITZ: I've got Tracy Haynes,  
12 then Phill Alexander and then Molly Moran.

13 ALJ SPRAGUE: Are we thinking those are  
14 all going to be short to moderate?

15 MS. MUSKOVITZ: I believe all the  
16 remainder of my witnesses will be short to moderate.  
17 That's my goal if I can accomplish it. Can't talk  
18 for cross.

19 MS. DAY: Neither can I.

20 ALJ SPRAGUE: Give me those real quick  
21 again.

22 MS. MUSKOVITZ: Tracy Haynes who's number  
23 six on my list.

24 ALJ SPRAGUE: Can you spell --

1 MS. MUSKOVITZ: H-A-Y-N-E-S. Then Phill,  
 2 with two L's, Alexander. And then Molly Moran,  
 3 M-O-R-A-N.

4 ALJ SPRAGUE: And very thumbnail sketch,  
 5 they are?

6 MS. MUSKOVITZ: Tracy is a TCPL. Phill  
 7 Alexander is a tenure track former Visiting  
 8 Professor, and Molly Moran is a TCPL.

9 ALJ SPRAGUE: Okay. They're all here?

10 MS. MUSKOVITZ: They're all here.

11 ALJ SPRAGUE: All right. Is everybody a  
 12 doctor?

13 MS. MUSKOVITZ: Molly is not a doctor.

14 ALJ SPRAGUE: Dr. Haynes, welcome. I'll  
 15 swear you in at this time. Please raise your right  
 16 hand.

17 (Witness placed under oath.)

18 ALJ SPRAGUE: Please state your full name  
 19 for the record, probably should spell both names.

20 THE WITNESS: Tracy Haynes, T-R-A-C-Y  
 21 H-A-Y-N-E-S.

22 - - -

23 TRACY HAYNES, Ph.D  
 24 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 By Ms. Muskovitz:

4 Q. Dr. Haynes, do you have a Ph.D?

5 A. Yes, I do.

6 Q. You work at Miami University?

7 A. Yes, I do.

8 Q. What's your job classification?

9 A. I am a Teaching Professor, so I'm one of  
10 the TCPL faculty.

11 Q. What's your rank within the TCPL?

12 A. I'm a Full Professor.

13 Q. Okay. That's the third highest  
14 promotion?

15 A. Yes.

16 Q. I want to ask you about governance. Are  
17 you a member of the University Senate?

18 A. Yes, I am.

19 Q. What is your role at the University  
20 Senate?

21 A. Well, currently I am Chair Elect to the  
22 Executive Committee which means I will be the Chair  
23 next year, so starting in fall of 2022 (sic).

24 Q. What is the Executive Committee of the

1 University Senate?

2 A. The Executive Committee will plan the  
3 agenda, invite the speakers and run the meeting.

4 Q. And so as a TCPL, you're a full member or  
5 eligible as a full member of the University Senate?

6 A. Yes, I've been on the Senate as a Senator  
7 since 2011.

8 Q. Are you on any Senate committees or have  
9 you served on any Senate committees?

10 A. Yes, I have. I served as the Senate  
11 liaison. Each of the Senate committees needs a  
12 liaison to the Senate, so a Senator has to be on each  
13 one, and I have served as a member and Chair of the  
14 Undergraduate Research Committee, and that term is  
15 over, but I served on that for six years.

16 I'm currently a member of what was  
17 formerly the Academic Program Review Committee but is  
18 now called the Developmental Improvement Process  
19 Committee, just was renamed this semester. I am a  
20 member of the Council of Undergraduate Curriculum and  
21 a member of the Liberal Education Council.

22 Q. The Liberal Education Council, can you  
23 explain in your own words what that is.

24 A. It is a committee that works with the

1 Office of Liberal Education to recently just develop  
2 the new Miami plan, and we are currently evaluating  
3 and approving courses that will be taught within the  
4 program. So it will develop the Miami plan which is  
5 the Liberal Education courses that all students must  
6 take.

7 Q. And TCPLs are full members of that  
8 committee?

9 A. Yes.

10 Q. Is it important that full tenured, tenure  
11 track and TCPLs participate in that committee?

12 A. I think it gives both perspectives, and I  
13 think we work well together. We don't really  
14 differentiate the members.

15 Q. When you go to a meeting of the  
16 University Senate, do you even know necessarily what  
17 people's rank are?

18 A. No. I mean, we could look them up, but I  
19 am not aware unless I personally know the person what  
20 their rank is.

21 Q. So if you see other Senators, you don't  
22 necessarily know whether they're tenure track or if  
23 they're tenured or if they're TCPL?

24 A. No.

1 Q. Is that something that just normally --  
2 Does that affect how the University Senate operates?

3 A. I don't think so, no.

4 Q. The University's counsel wrote a letter  
5 to SERB on June 24th, 2022 claiming that the Academic  
6 Program Review Committee did not allow TCPLs to be on  
7 that committee. Was that correct or incorrect?

8 A. Well, I am a member of the Academic  
9 Review Committee, so....

10 Q. Did you at one point -- were you at one  
11 point classified as a Visiting Professor?

12 A. Yes, I was hired as a Visiting Assistant  
13 Professor when I first came to Miami.

14 Q. And did you transition to a TCPL?

15 A. Yes, I did.

16 Q. What changed when you went from being a  
17 Visiting Professor to being a TCPL in terms of your  
18 job responsibilities?

19 A. My teaching responsibilities were  
20 primarily the same. I taught some different courses,  
21 but the course load was the same, but I began to do  
22 more service. That was the increase.

23 Q. Do you advise students currently?

24 A. Yes, I do.

1 Q. Did you advise students as a VAP?

2 A. Not formally.

3 Q. Informally you advised students?

4 A. Students would often ask advice, so....

5 Q. What department are you in at Miami?

6 A. Biology.

7 MS. MUSKOVITZ: I have no further  
8 questions.

9 ALJ SPRAGUE: Hang on a sec. I guess  
10 that's what your Ph.D is in? In biology.

11 THE WITNESS: (Nods head.)

12 ALJ SPRAGUE: Makes sense.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Day:

16 Q. Hi, Dr. Haynes. As Chair Elect, can you  
17 serve on any committees or vote on matters regarding  
18 promotion and tenure for tenured and tenure track  
19 faculty?

20 A. That wouldn't be something that the  
21 Executive Committee does.

22 Q. Can you serve on the Faculty Rights and  
23 Responsibilities Committee?

24 A. I believe that one is limited to the

1 tenure track.

2 Q. You testified that you were hired as a  
3 VAP and you transitioned to a TCPL. How did you  
4 become a TCPL?

5 A. Well, I was hired in 2002 as a Visiting  
6 Assistant Professor and was transitioned in 2007, so  
7 a lot has changed since then. So I was transitioned  
8 without a search, but that is not done now currently.

9 MS. DAY: No further questions.

10 MS. MUSKOVITZ: Thank you, Dr. Haynes.

11 ALJ SPRAGUE: Let's go off for a moment.

12 (Off the record.)

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

14 Dr. Alexander has taken the stand. Doctor, I need to  
15 swear you in at this time, please. Raise your right  
16 hand.

17 (Witness placed under oath.)

18 ALJ SPRAGUE: Please spell your -- well,  
19 you can spell your last name if you want but let's  
20 spell your first name.

21 THE WITNESS: Phill with two L's,  
22 P-H-I-L-L and then A-L-E-X-A-N-D-E-R.

23 ALJ SPRAGUE: Thank you.

24 - - -

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PHILL ALEXANDER, Ph.D

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

DIRECT EXAMINATION

By Ms. Muskovitz:

Q. Is it Dr. Alexander?

A. Yes.

Q. Dr. Alexander, do you teach at Miami  
University?

A. I do, yes.

Q. What do you teach?

A. I teach Game Studies and a handful of  
other classes in the Department of Emerging  
Technologies and Business and Design.

Q. So have you -- When you first started  
with Miami, what was your position?

A. I started as VAP in the English  
Department.

Q. And then did you have a fellowship?

A. I did, yes.

Q. What was the fellowship?

A. It's called the Heanon Wilkins Fellow.  
It's a diversity fellowship.

1 Q. And then following that, what job did you  
2 obtain?

3 A. When I became a Fellow, I was joint  
4 appointed, so I was half in English and half in what  
5 was then called IMS, just the program I'm in now.  
6 Coming at the end of that, I ended up just in the  
7 other program.

8 Q. What job classification?

9 A. It's hard to know because technically I  
10 was still referred to as the Fellow, but it was also  
11 counted as years towards being a VAP, and the salary  
12 was the same, so I'm going to say I was a VAP.

13 Q. Did you eventually become a tenure track?

14 A. I did, yes.

15 Q. What year?

16 A. 2018.

17 Q. So you worked as a VAP, you've worked as  
18 a Fellow and I think you've worked as a tenure track,  
19 correct?

20 A. Right.

21 ALJ SPRAGUE: Can I? Games studies,  
22 let's see, okay, prior Emerging Technologies and I'm  
23 sorry, I missed the last part.

24 THE WITNESS: In Business and Design. I

1 will say on the record it's a terrible name for a  
2 department, but we thought IMS was confusing, and we  
3 went the wrong way on that one.

4 Q. (By Ms. Muskovitz) So I want to ask you  
5 about faculty members in your department.

6 A. Okay.

7 Q. You are a tenure track faculty member,  
8 correct?

9 A. Yes.

10 Q. Are there any VAPs?

11 A. Yes.

12 Q. Are there any Fellows?

13 A. Not currently.

14 Q. Is there anybody with tenure?

15 A. In ETDB or in the Games program?

16 Q. Well, either.

17 A. Yes in ETDB and no in the Games program.

18 There are two of us that are tenure track.

19 Q. Okay. So in the Games program, there's  
20 two tenure track I think. Are there any TCPLs?

21 A. There are two TCPLs and then -- well,  
22 I'll let you ask me.

23 Q. And how many Visitors?

24 A. One right now.

1           Q.    So you have two tenure track, two TCPLs  
2 and one Visitor?

3           A.    Correct.

4           Q.    And did any of the TCPL -- Did any of the  
5 tenure track other than yourself or TCPLs, are they  
6 former Visitors?

7           A.    Yes, the other tenure track, I believe he  
8 was a VAP for 11 years. He was one of those rare  
9 exceptions and they just kept renewing over and over,  
10 and then one of the TCPLs was a VAP for three or four  
11 years.

12          Q.    So when courses are assigned in your  
13 department, when are they assigned? Like for next  
14 fall, when are courses assigned?

15          A.    So we already know what we're doing next  
16 fall, so that would have been assigned when we did  
17 our spring and winter, so about a month ago.

18          Q.    So when courses are assigned, how does  
19 the various job classifications affect who teaches  
20 what?

21          A.    It doesn't. When we sit down, it's all  
22 about who can teach what. We're a developing program  
23 with a small group of people, so we have to look at  
24 whose expertise fits where.

1 Q. So the fact that you're tenure track, you  
2 don't have any priority over a Visitor or a TCPL?

3 A. Not at all, no.

4 Q. Everybody's treated the same?

5 A. Uh-huh.

6 Q. And this is before the Visitors get their  
7 February 15th we-may-not-hire-you-again letter?

8 A. Yeah, every year we have to remind anyone  
9 who is new that that letter is a thing that happens.  
10 We have people who will get that letter who are  
11 already scheduled for classes next fall.

12 Q. Are they listed on schedules?

13 A. I don't know if the University has  
14 created that list yet, but if it's in the computer,  
15 they are, they're listed on our internal spreadsheet.

16 Q. Of all these different classifications in  
17 your department, who does service?

18 A. All of us. Everyone does everything.

19 Q. Including the Visitors?

20 A. Uh-huh.

21 Q. What about other duties in your  
22 department? I mean, how is that divided up? Is there  
23 a rank structure or are you all treated similarly?

24 A. For the most part, we're treated

1 similarly. I'm sure there are some small things we  
2 could figure out. For example, the Promotion and  
3 Tenure Committee, because of University rules, those  
4 have to be people who are already tenured.

5 Q. But since you don't have any tenured  
6 faculty --

7 A. Well, yeah, for the Games program, it  
8 doesn't matter, so....

9 Q. Have you ever created curriculum?

10 A. Yes.

11 Q. Do the other individuals with different  
12 classifications create curriculum?

13 A. Yes.

14 Q. There's one VAP that's been there for how  
15 many years did you say?

16 A. The one that converted late or the one  
17 that's still a VAP?

18 Q. The one that's still a VAP.

19 A. This will be -- next year will be his  
20 fifth year, so he's been here four years.

21 Q. And if you know, what promises, if any,  
22 has the administration made to that faculty member?

23 A. He was told he would be converted which  
24 is a term that is used frequently in our program. I

1 think it used to be a thing and isn't a thing  
2 anymore.

3 Q. How long ago and how many times?

4 A. I don't know how many times, but that  
5 would have been back when he was first hired. The  
6 language I heard was within a year.

7 Q. And did that -- was that promise kept?

8 A. Of course not. He wouldn't still be a  
9 VAP if it had been.

10 ALJ SPRAGUE: Can I back up just one  
11 second just to make sure I've got these numbers  
12 right. So for the Games program, you said you have  
13 two tenure track.

14 THE WITNESS: Right.

15 ALJ SPRAGUE: Two TCPLs?

16 THE WITNESS: Right.

17 ALJ SPRAGUE: And what's the other --  
18 IMS, what's the other --

19 THE WITNESS: ETBD. I don't know if I  
20 know our numbers right offhand.

21 ALJ SPRAGUE: Maybe I don't need to know  
22 them. That's all right.

23 THE WITNESS: It's probably not....

24 ALJ SPRAGUE: If you don't know them,

1 that's okay.

2 THE WITNESS: In terms of proportion,  
3 it's roughly the same. Our department has survived  
4 as a huge department of VAPs because that's what  
5 we've been able to obtain. There are I think three  
6 in the last two years that have gone from VAP to  
7 TCPL.

8 Q. (By Ms. Muskovitz) Two of them have gone  
9 from VAP to TCPL?

10 A. Three in our larger department, so one  
11 within the Games program. The other one was hired in  
12 as a TCPL.

13 Q. Who attends departmental meetings?

14 A. All of us.

15 Q. Who gets to vote on departmental matters?

16 A. All of us.

17 Q. What about the level of courses that are  
18 taught?

19 A. There's no distinction there. The VAP is  
20 teaching our Capstone, our upper level six credit  
21 hour Capstone.

22 Q. What is the six credit Capstone?

23 A. It's the senior experience, like the last  
24 thing the students do.

1 Q. That's being taught by a VAP?

2 A. By our one VAP.

3 Q. So at least in your department, are  
4 there -- we've been talking about a community of  
5 interest between the tenure track, the TCPL and the  
6 Visiting faculty. Do any of them have any different  
7 job duties, responsibilities to any of the others at  
8 least in your department?

9 A. Nothing that I can think of, no. We  
10 don't even have a director for our program. It's  
11 something that we kind of do as a community of five  
12 since we're so small right now.

13 Q. Is there a community of interest among  
14 all these different faculty members?

15 A. Oh, absolutely.

16 Q. Do all these different faculty members  
17 want to be covered by a single Bargaining Unit?

18 A. Yes.

19 MS. MUSKOVITZ: No further questions.

20 ALJ SPRAGUE: Let's see who's doing...

21 Ms. Squillante.

22 - - -

23 CROSS-EXAMINATION

24 By MS. SQUILLANTE:

1 Q. Hi, Dr. Alexander.

2 A. Hello.

3 Q. You testified just a second ago that  
4 you're a member of the faculty in the Games Studies  
5 program; is that correct?

6 A. It's called Games and Simulations, but  
7 yeah.

8 Q. Games and Simulations. Just how new?  
9 And I think you said it was a newer program at Miami.  
10 How new?

11 A. It's been an official degree for -- let's  
12 see, this will be our fourth year coming up -- so  
13 three-and-a-half years. We offered classes within  
14 the other department for it. So it was like a  
15 literal paper transition. We used to be a  
16 concentration within what was called IMS and we  
17 kicked over so that it's its own.

18 Q. If you know, how long were classes being  
19 offered in this particular discipline before it  
20 became its own program?

21 A. I think the -- they've been offered at  
22 least as long as I've been there. I took over for  
23 someone, so it will be 2010.

24 Q. I think you also testified that there are

1 two tenure track, two TCPLs and one VAP within the  
2 Game and Simulation Studies?

3 A. Yes.

4 Q. Is that the smallest program at Miami,  
5 one of the smallest programs?

6 A. I would guess. I don't have a frame of  
7 reference, but I would think five is probably pretty  
8 small.

9 Q. When were you hired originally as a VAP?

10 A. 2012, fall of 2012.

11 Q. I think you testified that you were hired  
12 as a Heanon Wilkins Fellow?

13 A. No, I was hired originally as a VAP in  
14 English.

15 Q. Understood. Then you later obtained the  
16 Heanon Wilkins Fellowship?

17 A. Yeah, in '14.

18 Q. Do you know how many -- in addition to  
19 you, how many Heanon Wilkins Fellows there were that  
20 year?

21 A. I do not, no. You would think that they  
22 would get us all together, wouldn't you? No.

23 Q. Any guess?

24 A. No. Unfortunately I didn't even get like

1 a letter telling me that it happened. It was just  
2 the department chair told me.

3 Q. Do you know how many Heanon Wilkins  
4 Fellows there are this year?

5 A. I do not.

6 Q. Do you know when the Heanon Wilkins  
7 Fellowship program was created, roughly?

8 A. I should. I spoke at Heanon Wilkins'  
9 funeral and I know it was in the paperwork. I want  
10 to say it was like 2000. I couldn't swear to that.

11 Q. Do you have any continuing obligations  
12 with respect to the Heanon Wilkins Fellowship?

13 A. No.

14 Q. You testified about the existing VAP  
15 within the Game and Simulation Studies program. Was  
16 that VAP a member -- was that VAP a Heanon Wilkins  
17 Fellow?

18 A. No, he's just a VAP. That sounds so bad  
19 "just a VAP." I didn't mean to make it sound that  
20 way.

21 Q. Does that VAP have a dual appointment or  
22 is he or she a VAP exclusively?

23 A. He does not. He exclusively is a VAP.

24 Q. Dr. Alexander, do you receive an annual

1 performance evaluation?

2 A. Yes.

3 Q. Is service one of the criteria on which  
4 you are evaluated in that performance evaluation?

5 A. Yes.

6 Q. When during the year are students able to  
7 see what courses are available to them?

8 A. They usually get access to that a week  
9 before the first group can register. So for the  
10 spring, that would have been late October, maybe the  
11 first week of June. For the fall, that will be  
12 sometime right before spring break, so March 10-15.

13 Q. You're currently a tenure track  
14 professor?

15 A. Yes.

16 Q. And you were previously a VAP?

17 A. Yes.

18 Q. How did you become a tenure track  
19 professor?

20 A. It's linked to the Fellow, at the end of  
21 the fellowship period. It's like an up/down tenure  
22 line or eject, I guess.

23 Q. Tell me more about that. What did you  
24 have to do? What did you present to the University

1 to help them make that decision?

2 A. Basically they have you do what would be  
3 a normal job interview but there isn't a pool.

4 Q. Isn't a pool?

5 A. It's a very weird kind of pantomime where  
6 you pretend you don't know everyone and they donate  
7 your research and you present it and you do a  
8 teaching model, and then they decide what they want  
9 to do.

10 Q. You also testified, Dr. Alexander, about  
11 I believe the current VAP, the VAP that's currently  
12 within your program, and you testified that he told  
13 you that he was told by the administration or by the  
14 University that he would be converted; is that  
15 correct?

16 A. Yes.

17 Q. How do you know that?

18 A. It's the worst kept secret in the history  
19 of any academic department ever. It's spoken about  
20 rather frequently openly.

21 Q. Did that particular VAP share that  
22 information with you or is it just common knowledge?

23 A. He has, but other people have mentioned  
24 it as well. Several other people, actually.

1           Q.    When you use the term converted, what do  
2 you mean by that?

3           A.    That is the language that has been used  
4 in our program to refer to someone going from being a  
5 VAP to TCPL. My understanding is previously, I don't  
6 know when previously, but apparently there was a time  
7 when that was something that could just be done, like  
8 there was a button you could press and a person could  
9 move which is no longer the case, there are now  
10 searches for that, but it's still referred to that  
11 way which is a little odd.

12          Q.    So as it currently stands, a VAP would  
13 have to go through a search, a competitive search  
14 process to be transitioned to a TCPL?

15          A.    Right, and there'd have to be a line  
16 which for our program is usually the program. There  
17 are not enough lines to keep up with growth. You  
18 asked about the size of our program. We're normally  
19 at eight. We're three down cause lines aren't coming  
20 back to us.

21                   MS. SQUILLANTE: Nothing further.

22                   MS. MUSKOVITZ: No redirect.

23                   ALJ SPRAGUE: All right.

24                   THE WITNESS: Thank you.

1 (Off the record.)

2 ALJ SPRAGUE: Back on the record.

3 Miss Moran has taken the stand. I'll swear you in at  
4 this time. Raise your right hand.

5 (Witness placed under oath.)

6 ALJ SPRAGUE: Please state your full name  
7 for the record spelling your last name.

8 THE WITNESS: Molly Moran, M-O-L-L-Y  
9 M-O-R-A-N.

10 ALJ SPRAGUE: Thank you.

11 - - -

12 MOLLY MORAN

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

15 DIRECT EXAMINATION

16 By Ms. Muskovitz:

17 Q. Miss Moran, what do you teach?

18 A. I teach design in the same department  
19 that Phill Alexander teaches in, although he teaches  
20 on the Games and Simulation side. We have another  
21 major, and that is the Emerging Technology and  
22 Business and Design major, and I teach there.

23 Q. What's your classification?

24 A. I am an Assistant Lecturer.

1 Q. And how long have you been at Miami?

2 A. This is my fourth year.

3 Q. So there's a promotion process I think  
4 people have testified to a TCPL, and you're right now  
5 an Assistant.

6 A. I'm an Assistant at the moment. I just  
7 submitted my dossier for promotion to my chair on  
8 December 1st. Which means between now and February,  
9 a committee will review that, make a recommendation  
10 to the Dean who will then review that and make a  
11 recommendation to the Provost.

12 Q. In your department, do you have VAPs?

13 A. Yes.

14 Q. And how many VAPs if you know?

15 A. So I'll speak to our larger department  
16 which incorporates again, that encapsulates the Games  
17 and Simulation program in the ETBD major. At  
18 present, we have I'm going to say two-and-a-half, and  
19 that's because one VAP is shared between music and  
20 between our department, but he teaches several  
21 classes in our department.

22 Q. Are the VAPs fully integrated into your  
23 department?

24 A. Completely.

1 Q. Does that include teaching assignments?

2 A. Yes.

3 Q. Does that include service  
4 responsibilities?

5 A. Yes. There is one exception in that in  
6 recent years, we have told VAPs that they cannot  
7 serve on University committees or divisional  
8 committees, but they serve on department committees.  
9 They do department service. They do service to  
10 students in service to the community. They also, of  
11 course, cannot serve on Promotion and Tenure  
12 Committees. They're not supposed to serve on search  
13 committees, but when I was hired, a VAP was on my  
14 search committee.

15 Q. For sometimes they're even on search  
16 committees for people that are hired above their  
17 rank?

18 A. Correct.

19 Q. Is that a critical part of what makes  
20 your department function?

21 A. Yes, yes. The numbers are such between  
22 our VAPs and our TCPL. We have tenured and tenure  
23 track, but that percentage is small. We have a  
24 number of affiliated people. So people from other

1 departments teach courses in our department in order  
2 to help make up the numbers because we essentially  
3 have more students than we have faculty to teach  
4 those students. So we need to find people where we  
5 can, but the number of tenure and tenure track  
6 compared to the other kinds of employees all together  
7 is a smaller percentage.

8 Q. And what about scholarship?

9 A. TCPL are not required to do scholarship,  
10 but if we do, we can count it towards service on at  
11 least some portion of it towards service on our  
12 dossiers for promotion. We do have... you're talking  
13 about scholarship. We do have the VAP that Phill  
14 mentioned who is, in full disclosure, my spouse.

15 He performs scholarship and research, and  
16 he is actually the lead on a DARPA grant. So that's  
17 the Defense Advanced Research Projects Agency. It's  
18 the University and through his work receives money  
19 for that grant, and there's some other universities  
20 on that grant and he is the lead and directs the work  
21 of the other faculty at the other universities.

22 Q. When you say the lead, what does the term  
23 PI mean?

24 A. Principal Investigator, I believe.

1 Q. So what is a Principal Investigator on a  
2 -- Well, first of all, is DARPA a federal agency?

3 A. It is. It is affiliated with the  
4 Department of Defense, but it is not formally part of  
5 the Department of Defense.

6 Q. Are DARPA grants competitive?

7 A. To my knowledge, yes.

8 Q. So what does it mean for this faculty  
9 member to be a PI on a grant that involves other  
10 academic institutions?

11 A. It means he has the responsibility to  
12 ensure that the University conducts all research in  
13 accordance with best practices and that the other  
14 universities are also doing the same.

15 Q. And he's classified as a Visitor?

16 A. Yes.

17 Q. Does he get one of those letters every  
18 February?

19 A. He does.

20 Q. Has the administration made promises to  
21 him?

22 A. Verbally, yes.

23 Q. But those promises have never been  
24 reduced to writing?

1 A. No.

2 Q. And they've never been honored?

3 A. Correct.

4 Q. In your department, who attends  
5 department meetings by classification?

6 A. We have an expectation that all full-time  
7 people attend our department, so that's tenured,  
8 tenure track, TCPL and Visiting Professors. We often  
9 have -- some of our affiliates attend our department  
10 meetings and occasionally some of our colloquially  
11 known as adjuncts.

12 Q. But they're not expected to attend?

13 A. Correct, they're not expected to attend.

14 Q. But VAPs are expected to attend?

15 A. Indeed.

16 Q. And, again, are VAPs expected to do  
17 service?

18 A. Yes.

19 Q. Have you ever served on a hiring  
20 committee?

21 A. Yes.

22 Q. Have you ever served on a hiring  
23 committee for a tenure track position?

24 A. Yes, I did that last spring, this past

1 spring.

2 Q. Even though you're a TCPL?

3 A. Correct.

4 Q. Have you ever served on a divisional  
5 level committee?

6 A. Yes.

7 Q. Does your department work with any  
8 librarians?

9 A. Yes.

10 Q. Do any of the librarians teach in your  
11 department?

12 A. At least one, to my knowledge, teaches on  
13 a part-time basis but a fairly regular basis.  
14 Returns each semester to teach a course.

15 Q. Teach a full course?

16 A. Yes.

17 Q. In your department?

18 A. Yes.

19 Q. And that's a librarian at Miami?

20 A. Yes.

21 Q. And are the VAPs, at least from your  
22 firsthand experience, are they employed to fill gaps  
23 or holes within the department?

24 A. No. No. To my knowledge and based on

1 what I've seen and also based on the fact that since  
2 I've been here, I've seen six different VAPs in our  
3 department, three of whom have been converted over in  
4 TCPL positions now, we fully expect those people to  
5 be long-term members of our faculty, full members of  
6 our faculty. That is the expectation that we have.

7 Q. And that's the expectation of even those  
8 that are currently classified as a VAP?

9 A. Yes.

10 Q. And from your experience, do those  
11 individuals share a community of interest with both  
12 you and the tenure track faculty within your  
13 department?

14 A. 100 percent.

15 MS. MUSKOVITZ: No further questions.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Day:

19 Q. Is it Ms. Moran?

20 A. Uh-huh.

21 Q. In your role as Assistant Lecturer, do  
22 you ever formally review VAPs?

23 A. No.

24 Q. You testified that on your search

1 committee, a VAP was part of that committee. Are you  
2 aware in addition to that time that occurring in any  
3 other occasion?

4 A. Give me a moment to think, please. Not  
5 to my knowledge.

6 Q. You were testifying about VAPs that were  
7 made verbal promises. I think it wasn't quite clear  
8 what those promises were, so let me start there.  
9 Made verbal promises regarding what?

10 A. Regarding permanent employment with the  
11 University as either a Visiting Assistant -- no,  
12 sorry -- it was either an Assistant Professor or an  
13 Assistant Teaching Professor role.

14 Q. So just making sure I understand your  
15 testimony, that VAPs in your department have been  
16 made verbal promises as to a position as a TCPL  
17 faculty member or as a tenure track faculty member?

18 A. Correct.

19 Q. Do you know what those promises entail,  
20 meaning was it a promise that they could slide over  
21 without any other application process?

22 A. No, I think the -- as far as I  
23 understand, the expectation was clear that there  
24 would be a search; however, as Phill stated, I

1 believe we've had three VAPs make it through a search  
2 in the past two years. So I think that expectation  
3 was clear; however, at least in the initial promise  
4 was we will aim to convert you within one year.

5 Q. Understood. And just to make sure I  
6 heard you correctly, the three VAPs in the department  
7 that have converted, they did go through a search  
8 process?

9 A. Correct.

10 Q. You testified that a librarian working  
11 with your department teaches a course. Do you know  
12 whether or not that librarian is paid additional  
13 compensation for teaching that course?

14 A. I do not know.

15 Q. Do you make a decision whether or not  
16 there is a need for a VAP in the department?

17 A. I do not.

18 MS. DAY: No further questions.

19 MS. MUSKOVITZ: No redirect.

20 ALJ SPRAGUE: All right. Thank you for  
21 offering your testimony today.

22 MS. MUSKOVITZ: You can be excused. So  
23 the Union calls Kate Rousmaniere.

24 ALJ SPRAGUE: How many more have you got?

1 MS. MUSKOVITZ: Well, probably, I don't  
2 know, one or two.

3 ALJ SPRAGUE: Tell you what we're going  
4 to do. If you all want to just -- you can hang or  
5 disperse. This is the super exciting part of any  
6 hearing where we go over what's been identified. So  
7 I think we should probably just do that now to make  
8 sure we've got that squared away.

9 MS. MUSKOVITZ: Okay.

10 ALJ SPRAGUE: Because I think Miami kind  
11 of took care of some AAUP's documents here, so I may  
12 have missed a couple here. I have a bunch of binders  
13 up here, so let's see. Let's start with AAUP; is  
14 that all right? Get ready for battle here.

15 Dr. Alexander, I'd love to hear your --  
16 regale us with your tales of DARPA, but I don't think  
17 we're going to have time for that today. All right.  
18 Ready?

19 MS. MUSKOVITZ: Yes.

20 ALJ SPRAGUE: We've got 1. Did we get 2?

21 MS. MUSKOVITZ: Just the Recognition  
22 Clauses of 3 through 16. I believe 3 through 16 to  
23 be self-authenticating and 2 is just a compilation of  
24 those. So it just makes it easier because the

1 Recognition Clause is in one document.

2 I believe they're -- It's a  
3 demonstrative exhibit that I put together by copying  
4 the front page and the Recognition Clause in those 14  
5 contracts, I believe each of those 14 are  
6 self-authenticating. I see no reason why it can't be  
7 admitted just for ease. It's an easier way to look  
8 at the chart I put together.

9 ALJ SPRAGUE: I think we had most of the  
10 contracts. I'm not sure about....

11 MS. DAY: I think there's a handful that  
12 we did not have any testimony regarding.

13 ALJ SPRAGUE: The compilation is 2 or 3?

14 MS. MUSKOVITZ: 2.

15 ALJ SPRAGUE: Then we've got... I don't  
16 know if we got 6. Did we get that?

17 MS. DAY: We got 6.

18 ALJ SPRAGUE: 14?

19 MS. DAY: No 14. Also no 8.

20 ALJ SPRAGUE: I thought I had 8 in there.  
21 Let's see what else we've got. And then I think  
22 we've got everything else from 33.

23 MS. DAY: The University would object to  
24 the admission of 18. I don't believe we had any

1 testimony as to personal knowledge regarding that.

2 MS. MUSKOVITZ: The FOP contract? I  
3 actually don't care. So you're objecting to the FOP  
4 contract?

5 MS. DAY: Yeah.

6 MS. MUSKOVITZ: I don't think it makes  
7 any difference one way or the another, so we can  
8 withdraw 18 if it makes them happy.

9 ALJ SPRAGUE: All right. If you want to  
10 do that, we can.

11 MS. MUSKOVITZ: Although I do think it's  
12 self-authenticating. I think labor contracts are  
13 self-authenticating.

14 ALJ SPRAGUE: Okay. All right. So as  
15 far as the other CBAs, any issues with those 2  
16 through 17?

17 MS. DAY: No objection.

18 ALJ SPRAGUE: All right.

19 MS. DAY: Other than for 8, 14 and 17  
20 that were not testified to, we would argue that  
21 they're not -- even assuming that they're  
22 self-authenticating, there is no testimony regarding  
23 them, so they're irrelevant.

24 MS. MUSKOVITZ: We think they're relevant

1 and will intend if they're excluded to proffer them  
2 to the record for the Board because I think it would  
3 be an inappropriate exclusion.

4 ALJ SPRAGUE: All right. I think I'm  
5 going to let those in to give them the weight they're  
6 worth.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 ALJ SPRAGUE: Joint Exhibits, looks like  
9 we've got them all, right?

10 MS. DAY: Sorry, the University also  
11 objects to admissibility of Article 31. I don't  
12 believe there was any testimony that any witness had  
13 personal knowledge of this policy.

14 ALJ SPRAGUE: Which one's that?

15 MS. DAY: That's the Athletic Policy  
16 Committee. I believe that that was presented through  
17 Dr. Wagner's testimony and she did not have personal  
18 knowledge of it.

19 MS. MUSKOVITZ: So one of my next  
20 witnesses teaches the business of sports, so that's  
21 the problem with doing this before I'm done with my  
22 witnesses.

23 ALJ SPRAGUE: I know, but if we hold off  
24 until 7:00 o'clock tonight, I don't know that

1 everybody's going to be fresh enough to do it.

2 MS. MUSKOVITZ: I would request that be  
3 held off.

4 ALJ SPRAGUE: That's fine. I'm not going  
5 to mark anything else yet. I'm just trying to figure  
6 out where we're at. Joints, no problem?

7 MS. DAY: No issue on behalf of the  
8 University.

9 ALJ SPRAGUE: So if we've got something  
10 that needs clean-up, we'll figure that out in  
11 advance.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 ALJ SPRAGUE: So for Miami, I've got 1.  
14 Did we get 2?

15 MS. DAY: No.

16 ALJ SPRAGUE: 3 through 9 -- sorry, 3  
17 through 6. Did we get 7?

18 MS. DAY: No.

19 ALJ SPRAGUE: You're not planning on  
20 doing that one, right?

21 MS. DAY: No intention right now.

22 ALJ SPRAGUE: Okay. We can... I'll take  
23 out 2 and cross it off -- sorry, 7 is....

24 MS. DAY: We don't have any testimony

1 regarding 7. It has not been --

2 ALJ SPRAGUE: That's fine. And 10?

3 MS. DAY: Correct, no testimony regarding  
4 10.

5 ALJ SPRAGUE: 11, 12?

6 MS. DAY: 11 and 12 are in. 13, 14 and  
7 15, we have no testimony regarding, but 16, 17 and 18  
8 we do.

9 ALJ SPRAGUE: Yep, okay. So I think  
10 we're pretty good except for someone in business or  
11 sports. Which one is that?

12 MS. DAY: Exhibit 31, Union's Exhibit 31.

13 ALJ SPRAGUE: Okay.

14 MS. MUSKOVITZ: And I believe we're  
15 withdrawing 18, correct?

16 ALJ SPRAGUE: At some point. You can  
17 just do it if you want to just do it when we go back  
18 on or we can wait. Let's just wait. And I'm sorry,  
19 we're running a list again. So who are the next two  
20 and that's probably all the time we're going to have.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 (Off the record.)

23 ALJ SPRAGUE: Back on the record.

24 Dr. Rousmaniere has taken the stand. I'll swear you

1 in. Please raise your right hand.

2 (Witness placed under oath.)

3 ALJ SPRAGUE: Please state your full name  
4 for the record, spelling your last name.

5 THE WITNESS: Kate Rousmaniere,  
6 R-O-U-S-M-A-N-I-E-R-E.

7 ALJ SPRAGUE: Thank you. Miss Muskovitz.

8 - - -

9 KATE ROUSMANIERE, Ph.D  
10 being first duly sworn, as prescribed by law, was  
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Muskovitz:

14 Q. Dr. Rousmaniere, you're a Professor at  
15 Miami?

16 A. Yes.

17 Q. What's your rank?

18 A. Full Professor.

19 Q. What do you teach?

20 A. I teach Educational History, the History  
21 of Education in the Department of Educational  
22 Leadership.

23 Q. How long have you been at Miami?

24 A. 30 years.

1 Q. Have you ever served in an administrative  
2 role?

3 A. Yes, I was Department Chair for nine  
4 years.

5 Q. What years were you Department Chair?

6 A. 2002 to 2011.

7 Q. Okay. In your department, are there -- I  
8 mean, other than yourself, are there other tenure  
9 track faculty?

10 A. Yes, there are ten tenured or tenure  
11 track faculty.

12 Q. Are there TCPLs?

13 A. Yes, three.

14 Q. Are there VAPs?

15 A. Yes, two.

16 Q. Okay. In terms of the programs, what  
17 work -- what are the -- first of all, does your  
18 department have a graduate department?

19 A. Yes, we have three Master's programs and  
20 two doctoral programs.

21 Q. What are the two doctoral programs?

22 A. A Ph.D program and an Ed.D, or a Doctor  
23 of Education.

24 Q. How is an Ed.D different than a Ph.D in

1 your department?

2 A. Generally in our department, an Ed.D  
3 tends to be for school practitioners. It's the  
4 advanced degree for school practitioners who are  
5 going to be superintendents or school principals.

6 Q. Is it a terminal degree?

7 A. Yes.

8 Q. Who runs your Ed.D program by title?

9 A. A Dr. Lucian Szlizewski -- don't ask me  
10 to spell his name -- and he is a TCPL faculty.

11 Q. So one of your TCPL faculty members runs  
12 your doctoral program?

13 A. Correct.

14 Q. Do TCPL faculty in your department  
15 supervise dissertations?

16 A. Yes, Lucian supervises -- he manages the  
17 Ed.D program. The Ed.D program is a cohort based  
18 program of about 15 school people, school  
19 administrators, and they each write a dissertation,  
20 and Lucian manages and supervises those dissertations  
21 as a TCPL faculty.

22 Q. Do you have a school principals program?

23 A. Yes, one of our Master's program is an  
24 MSE.d which prepares school folks to become school

1 principals. It's called the School Leadership  
2 Program.

3 Q. And who runs that program?

4 A. A TCPL faculty named Kathy Mecoli.

5 ALJ SPRAGUE: Can you spell that one?

6 THE WITNESS: Yep. Last name is spelled  
7 M-E-C-O-L-I.

8 ALJ SPRAGUE: Kathy with a....

9 THE WITNESS: Kathy with a K.

10 Q. So these various different  
11 classifications, are they all fully integrated within  
12 your department?

13 A. Yes.

14 Q. Do they attend faculty meetings?

15 A. Yes.

16 Q. Do they sometimes teach the same courses?

17 A. Yes.

18 Q. Are there times when there's different  
19 sections of the same course given at the same time  
20 and both may be a tenured or a tenure track or a TCPL  
21 or a VAP might teach different sections of those  
22 courses?

23 A. Yes. I teach in the doctoral -- in the  
24 Ed.D program regularly. And TCPL faculty teach in

1 that program, and VAPs have taught in that program.  
2 And VAPs often teach in the principal, the Master's  
3 program, and TCPL also and Full Professor. Sorry,  
4 everybody teaches in all the programs.

5 Q. In your department, do VAPs serve on  
6 hiring committees?

7 A. No.

8 Q. What about search committees?

9 A. Search and hiring is sort of the same  
10 thing, so no.

11 Q. Do they attend department meetings?

12 A. Yes.

13 Q. Do they do service?

14 A. Yes.

15 Q. So within your department, are the  
16 tenured and the tenure track and the TCPLs and the  
17 VAPs fully integrated faculty members?

18 A. Yes, they are.

19 Q. Do they share community of interest?

20 A. Yes.

21 Q. Would it make any sense for them to be  
22 all covered by completely separate Collective  
23 Bargaining Agreements that govern their working  
24 conditions?

1           A.    No.

2           Q.    Why?

3           A.    Because their jobs -- they are community  
4 of interest, but their jobs are -- their focus of  
5 their jobs are different enough. So the TCPL faculty  
6 who work with school people need to be -- are  
7 integrated with the tenure track faculty, and we need  
8 to further that integration of the two together. The  
9 emphasis is in different areas and the interest in  
10 the department is to pull those interests together.

11          Q.    Let me ask you about librarians. What is  
12 the Boldly Creative grant?

13          A.    The Boldly Creative grant was established  
14 by I believe the President or the Provost about five  
15 or six years ago. It's a large internal University  
16 grant to support curriculum -- innovative curriculum  
17 development within the University. I am involved in  
18 a Boldly Creative grant on the history of race at  
19 Miami that is chaired by a librarian. It's actually  
20 led by two librarians.

21          Q.    So you're saying two librarians are the  
22 leads on the grant?

23          A.    Yep.

24          Q.    Is it a -- does it involve scholarship?

1           A.    Yes, research and scholarship.

2           Q.    Is there any work through this grant to  
3 create or develop curriculum?

4           A.    Yes.  Also involved in the grant is a  
5 TCPL history professor who is working with students  
6 on writing the history of race -- the history of  
7 African Americans at Miami University in the 19th  
8 century, and she's doing that with her class,  
9 developing a curriculum and developing scholarship.  
10 And another component of the grant is the  
11 storytelling component which is teaching faculty and  
12 students how to conduct oral histories and stories  
13 about the past, and that is led by a librarian.

14          Q.    You've been at Miami for 30 years?

15          A.    Uh-huh.

16          Q.    Do the librarians at Miami share a  
17 community of interest with other faculty members?

18               MS. DAY:  Objection.  Speculation.

19               MS. MUSKOVITZ:  It's not speculation at  
20 all.

21               MS. DAY:  She's not a librarian.

22               MS. MUSKOVITZ:  That's okay.  I think  
23 it's an appropriate question.

24               MS. DAY:  I don't think she can testify

1 from personal knowledge.

2 ALJ SPRAGUE: I think you need to  
3 establish some more foundation for that.

4 Q. (By Ms. Muskovitz) Do you work with  
5 librarians?

6 A. Yes, regularly.

7 Q. What do you do with librarians?

8 A. I send my students with them. Just  
9 yesterday -- I'm supervising a doctoral student who  
10 needs to do some extensive research on her topic area  
11 and we directed her to a librarian, our cognate  
12 librarian at the University, to help her develop her  
13 literature review for her doctorate.

14 I also work with librarians to -- I send  
15 students, undergraduate and graduate students there  
16 to learn to develop research plans and to identify  
17 literature for their research. And I work with  
18 librarians on this Boldly Creative project, and I  
19 wrote the introduction to a history of Miami  
20 University book that a librarian wrote a couple of  
21 years ago.

22 So I've been working -- as a historian,  
23 I've been working with librarians on the history of  
24 Miami for some years with librarians who are leading

1 that research.

2 Q. So is there an integration of their work  
3 at Miami with the work of other faculty members at  
4 Miami?

5 A. Yes. For me, for many of my colleagues,  
6 a lot of their work that they do for their own  
7 research and with their students relies on  
8 collaboration with librarians.

9 Q. Given that experience, do you share a  
10 community of interest with them?

11 A. Yes, I think I do. I do.

12 MS. MUSKOVITZ: I have no further  
13 questions.

14 MS. DAY: No cross.

15 ALJ SPRAGUE: Thank you. You may  
16 step-down. Thank you for offering testimony today.  
17 Off for a moment.

18 (Off the record.)

19 ALJ SPRAGUE: Back on. Dr. Morris has  
20 taken the stand. I need to swear you in at this  
21 time. Please raise your right hand.

22 (Witness placed under oath.)

23 ALJ SPRAGUE: State your full name for  
24 the record, spelling your last name.

1           A.    Sam Morris, M-O-R-R-I-S.

2                   ALJ SPRAGUE:  Thank you, Doctor.

3                                   - - -

4                                   SAM MORRIS, Ph.D

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

7                                   DIRECT EXAMINATION

8   By Ms. Muskovitz:

9           Q.    Dr. Morris, you have a Ph.D?

10          A.    Yes.

11          Q.    And how long have you been at Miami?

12          A.    I was hired in 2011.

13          Q.    What is your job classification?

14          A.    I'm a Clinical Professor.

15          Q.    And what is your rank?

16          A.    Full.

17          Q.    So you're at the highest level among the  
18   clinical professors, correct?

19          A.    Yes.

20          Q.    You've had two promotions?

21          A.    Yes.

22          Q.    Do you do scholarship?

23          A.    Yes.

24          Q.    Do you do service?

1           A.    Yes.

2           Q.    And obviously you do teaching?

3           A.    Yes.

4           Q.    What is your field?

5           A.    Sport Leadership and Management.

6           Q.    Have you had any role in the Senate  
7 either in the University Senate or the Faculty  
8 Assembly?

9           A.    Yes, both.

10          Q.    And so what positions have you held in  
11 the University Senate?

12          A.    I'm a Senator at Large.  I'm also the  
13 chair of a Senate subcommittee.

14          Q.    What committee is that?

15          A.    Faculty Welfare.

16          Q.    What does the Faculty Welfare Committee  
17 do?

18          A.    Well, it's fairly laconic in the name.  
19 It's faculty welfare.  We're charged with benefits,  
20 services to support faculty leave, health care,  
21 tuition and fee waivers.  There's a somewhat  
22 extensive list listed in our charge.

23          Q.    By rank, what types of members are on the  
24 faculty welfare committee?

1 A. Tenure line and clinical faculty.

2 Q. Full?

3 A. Yes.

4 Q. You all have an equal vote?

5 A. Yes.

6 Q. In the small white binder, can you turn  
7 to Tab 31, and my question will be whether you're on  
8 the Athletic Policy Committee?

9 A. No.

10 Q. Do you know what the Athletic Policy  
11 Committee is?

12 A. Yes.

13 Q. What is the Athletic Policy Committee?

14 A. It's a Senate subcommittee that is  
15 charged with advising the Athletics Department on  
16 matters dealing with intercollegiate athletics. I  
17 was formerly a member of the committee.

18 Q. So you had been on the committee?

19 A. Yes, from 2017 to 2020 I was on this  
20 committee.

21 Q. For three years?

22 A. Four. Four, full academic year, yes.

23 Q. So by rank, what types of faculty members  
24 are on the Athletic Policy Committee?

1           A.    Also tenure line and clinical, TCPL,  
2   excuse me.

3           Q.    And that's typical of most of the  
4   committees under both the University Senate and the  
5   Faculty Assembly?

6           A.    I can only speak to Senate and I think,  
7   yes, true of most.

8           Q.    Have you ever been on a search committee?

9           A.    Yes.

10          Q.    Have you ever been on a search committee  
11   for an administrator?

12          A.    I'm serving currently in such a role.

13          Q.    And what search committee are you  
14   currently serving in?

15          A.    For Associate Dean, within the College of  
16   Education, Health and Society.

17          Q.    So you're in the search committee for the  
18   Associate Dean?

19          A.    Correct.

20          Q.    By rank, who else is on the search  
21   committee?

22          A.    We have not formally established the  
23   committee yet because we are still finalizing OEEO  
24   training, but we have met, and it is tenure line

1 faculty and myself.

2 Q. Have you ever published?

3 A. Yes.

4 Q. Is that in academic journals?

5 A. Yes.

6 Q. And do you conduct service? You've  
7 obviously participated in multiple committees,  
8 correct?

9 A. Yes.

10 Q. Is that considered service?

11 A. Yes.

12 Q. Do you see yourself as fully enfranchised  
13 within your department?

14 A. Yes.

15 Q. How many people are in your department?

16 A. We have 11 tenure line faculty, two TCPLs  
17 and five Visiting faculty.

18 Q. And if you know, how are the courses  
19 divvied up between the Visiting?

20 ALJ SPRAGUE: Give me that one more time.

21 THE WITNESS: 11 tenure line, two TCPL  
22 and five Visiting.

23 Q. How are the courses divvied up the  
24 between the Visiting faculty, the TCPLs and the

1 tenure line?

2 A. Based on need and expertise.

3 Q. So that goes whether it's a 100 level,  
4 200 level, 300 level or above?

5 A. Yes, we have a Visiting faculty member  
6 teaching in the graduate program at the 600 level.  
7 We have Visitors teaching at the 100 level. We have  
8 tenure line who teach at 200 level. It's effectively  
9 random -- well, not random but equally distributed.

10 Q. Are they fully integrated into your  
11 department?

12 A. Who's they?

13 Q. The Visitors.

14 A. Yes.

15 Q. And the same with the TCPL?

16 A. Yes. Visitors have voting rights in our  
17 department.

18 Q. So I was going to ask you, who attends  
19 department meetings?

20 A. Visitors, TCPL, tenure line and our  
21 administrative support staff.

22 Q. And who has voting rights?

23 A. Visitors, TCPL and tenure line.

24 Q. Do you have any per credit hour people in

1 your department --

2 A. Yes.

3 Q. -- as faculty members? And how do they  
4 get appointed?

5 A. At the discretion of our chair and I  
6 assume with some advisement at the dean's level, but  
7 that's an assumption.

8 Q. And are they different from the VAPs?

9 A. Yes.

10 Q. How so?

11 A. They don't attend faculty meetings.

12 Q. They don't vote?

13 A. They don't vote. In many cases, as I've  
14 been in the department for 11 years, we have per  
15 credit faculty whom I do not know, whom I've never  
16 met.

17 Q. But that's not the case with the VAPs?

18 A. No, never.

19 Q. And are the VAPs put on the fall course  
20 assignment before they even get their February 15th  
21 letter?

22 A. As others have testified today, we have  
23 internal documents where we assign faculty to course  
24 requisition (sic) numbers, RCNs, classes. I don't

1 know at what point faculty are formally assigned to  
2 those course registration numbers.

3 Q. But are they regularly put into the fall  
4 schedule as well at the same time --

5 A. Yes.

6 Q. -- as other faculty members in your  
7 department?

8 A. Yes, at least internally.

9 Q. And at least in your department, is there  
10 an expectation that they will continue as long as  
11 they can?

12 A. Yes. I paused because many of them are  
13 seeking opportunities elsewhere.

14 Q. How would that be a loss to Miami if that  
15 is the case?

16 A. Invariably we hire incredibly good  
17 people. All the VAPs that we've had and lost in my  
18 time have been incredible, and we would have loved to  
19 retain them. I'm quite happy when they receive  
20 opportunities to go elsewhere because it's good for  
21 them, more security for them when they do so, but  
22 it's always a loss because we hire very good VAPs.

23 Q. Are they Ph.Ds?

24 A. Invariably, yes.

1 Q. Who is, and I know I'm going to pronounce  
2 this incorrectly, but Dean Durojaiye?

3 A. Durojaiye, yeah, to my understanding.  
4 Others probably know better than me.

5 Q. I'll spell it. I believe it's  
6 D-U-R-O-J-A-I-Y-E. Does that sound about right?

7 A. Yes.

8 ALJ SPRAGUE: Can we get that one more  
9 time.

10 MS. MUSKOVITZ: D-U-R-O-J-A-I-Y-E.

11 ALJ SPRAGUE: Can we have a first name?

12 MS. MUSKOVITZ: I don't.

13 A. Ande, A-N-D-E.

14 ALJ SPRAGUE: There was a point with  
15 that, sorry....

16 Q. So Dean Durojaiye, do you know what --  
17 what his responsibility is as a dean? He's over  
18 what?

19 A. CLAAS, College of Liberal Arts and  
20 Applied Sciences.

21 Q. So he's the Dean of College of Liberal  
22 Arts and Applied -- you said social sciences?

23 A. Applied Sciences.

24 Q. Applied Sciences, thank you. And what is

1 his faculty rank?

2 A. TCPL.

3 Q. So he's a dean, but he's a TCPL?

4 A. Yes.

5 MS. MUSKOVITZ: I have no further  
6 questions -- oh, wait, can I take that back?

7 ALJ SPRAGUE: Sure.

8 Q. If you look at Joint Exhibit C in the  
9 binder in front of you, that's the TCPL policy?

10 A. Correct.

11 Q. If I direct your attention to Page 2  
12 under Lectures and Clinical Lecturers under  
13 Assignment, do you see section 4?

14 A. Yes.

15 Q. And what does the policy say with respect  
16 to Lecturers and Clinical Lecturers of all three  
17 ranks at Miami University?

18 A. It's about an eight line section that  
19 you're referring to, but the part that always stands  
20 out to me is that they, quote, should be as fully  
21 enfranchised as possible in the day-to-day life of  
22 the University's programs in which they are  
23 appointed. Fully enfranchised is the phrase that  
24 jumps out to me.

1 Q. And if you look at Page 3, there's  
 2 sections that cover teaching faculty, all three  
 3 ranks, and section 5. What does that also say about  
 4 with respect to their enfranchisement?

5 A. The same.

6 Q. That they should be fully enfranchised as  
 7 possible in the day-to-day life of the department  
 8 program in which they are appointed?

9 A. Yes.

10 Q. In your department, is that the case?

11 A. Yes.

12 MS. MUSKOVITZ: No further questions.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Day:

16 Q. Hi, Dr. Morris.

17 A. Hello.

18 Q. You testified that you do engage in  
 19 research as part of your experience at Miami  
 20 University, right?

21 A. Yes.

22 Q. When you receive your formal evaluation  
 23 every year, is research part of your evaluation?

24 A. Yes.

1 Q. How so?

2 A. It's listed as effectively an Addendum.  
3 My chair is very careful to write in my evaluation  
4 every year that research is not a formal part of my  
5 evaluation but that it is received and acknowledged.

6 Q. As a member of the Faculty Welfare  
7 Committee or a Chair, is that accurate --

8 A. Yes.

9 Q. -- do you have a role regarding  
10 compensation for faculty members who teach during the  
11 summer semester?

12 A. That's not something we've dealt with  
13 directly, no. I suppose it would fall under our  
14 purview, but it has not come onto our agenda.

15 Q. Do you think it would be possible that  
16 compensation during the summer semester would be  
17 something negotiated at the bargaining table?

18 A. Yes.

19 Q. Do you think that there would be any  
20 conflict between the various group of faculty members  
21 here who may want additional compensation over the  
22 summer?

23 A. It's possible.

24 Q. You were testifying earlier about Exhibit

1 31, the Athletic Policy Committee. And you were a  
 2 former member of that committee, correct?

3 A. Yes.

4 Q. Are VAPs eligible to be a member of that  
 5 committee?

6 A. Not to my knowledge, but I haven't looked  
 7 at it for a while. Let me quickly....

8 Q. Sure, take your time.

9 A. It appears no.

10 Q. Are librarians eligible to be members of  
 11 the Athletic Policy Committee?

12 A. No, apparently. Again, I'm quickly  
 13 perusing it. No.

14 Q. You were asked some questions about Dean  
 15 Durojaiye, and I'm probably butchering that.

16 A. We know what you mean.

17 Q. Do you know whether he is eligible to  
 18 vote on promotion and tenure matters for tenure track  
 19 faculty?

20 A. I don't know.

21 Q. Do you know whether he holds a hybrid  
 22 position or a sole position as a TCPL?

23 A. I do not know.

24 MS. DAY: No further questions.

1 MS. MUSKOVITZ: No redirect. I have one  
2 last witness, and it's Julie Alexander. I would like  
3 to be able to have her testify.

4 ALJ SPRAGUE: Go off for a moment.

5 (Off the record.)

6 ALJ SPRAGUE: Back on. Dr. Julie  
7 Alexander has taken the stand. I'll need to swear  
8 you in at this time. Please raise your right hand.

9 (Witness placed under oath.)

10 ALJ SPRAGUE: Please state your full name  
11 for the record, spelling your last name.

12 THE WITNESS: Julie Alexander,  
13 A-L-E-X-A-N-D-E-R.

14 - - -

15 JULIE ALEXANDER, Ph.D  
16 being first duly sworn, as prescribed by law, was  
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Muskovitz:

20 Q. Is it Dr. Alexander?

21 A. Yes.

22 Q. What department -- you're at Miami?

23 A. Yes.

24 Q. What department do you teach in?

1           A.    I teach in the Farmers School of  
2 Business, specifically in a program called the  
3 First-Year Integrated Core.

4           Q.    So was your -- today what is your job  
5 classification?

6           A.    I am a TCPL, Assistant Teaching  
7 Professor.

8           Q.    And what position did you hold before you  
9 were a TCPL?

10          A.    I was a Visiting Assistant Professor, I  
11 was a VAP.

12          Q.    How long were you a VAP?

13          A.    Five years?

14          Q.    How long have you been a TCPL?

15          A.    One-and-a-half years.

16          Q.    So there's a white binder in front of  
17 you, and I'd like you to look at Union Exhibit 26 and  
18 turn to -- there's some page numbers in the upper  
19 right-hand corner. Turn to Pages 4 and 5.

20          A.    Yes.

21          Q.    Is that you?

22          A.    That is me.

23          Q.    I want to ask you about the courses you  
24 taught as a VAP, and the courses you taught as a

1 TCPL.

2 A. All right.

3 Q. Are they different? The same? What's  
4 the relationship?

5 A. They are essentially the same. And  
6 looking at this list, I could see that it might be a  
7 little confusing because as a VAP, as listed I taught  
8 BUS 308. That's actually the same class as Business  
9 284. It was reclassified by I believe our Curriculum  
10 Committee in I think perhaps 2018 or 2019. It's  
11 essentially the same course, though.

12 Q. And so you're teaching the same thing as  
13 a TCPL as you taught as a VAP?

14 A. Yes, I am.

15 Q. Can you describe what is the First-Year  
16 Integrated Core? What does that mean?

17 A. Sure. It is a program of four integrated  
18 courses that students take in their first year as  
19 students in the Farmers School of Business, so it's  
20 usually freshmen or any transfer students we might  
21 have. They're four two-credit courses, so a total of  
22 eight credits.

23 It's taught in one semester. And as all  
24 of the students who are in Farmer and want to

1 graduate from Farmer must complete the course  
2 successfully. So we have a lot of students that we  
3 have to kind of get through the program, and there's  
4 just a large group of us. It's a pretty intense  
5 program, and it's where I've been doing most of my  
6 work since I came to Miami.

7 Q. Did you do service as a TCPL?

8 A. I do.

9 Q. Did you do service as a VAP?

10 A. I did.

11 Q. What committees have you served on?

12 A. I was part of a couple of task forces  
13 which are essentially the same as committees except  
14 the Instructors who were part of a First-Year  
15 Integrated Core didn't actually belong to any  
16 department even though we were part of the Farmers  
17 School of Business.

18 So I don't believe we were allowed to  
19 call them committees. We had to call them task  
20 forces. But I was part of a technology task force as  
21 a VAP. I was part of a task force to work on like  
22 microcredentialing and badging.

23 Q. And that's as a VAP?

24 A. As a VAP, yeah.

1 Q. What about now?

2 A. Right now I am part of the Technology  
3 Committee for the First-Year Integrated Core and the  
4 Integration Committee for the First-Year Integrated  
5 Core.

6 Q. When you were a VAP, did you get one of  
7 those February letters every year?

8 A. I did.

9 Q. And what was the general sense at least  
10 in your department when those letters came out every  
11 February?

12 A. Well, I can tell you that the first time  
13 we all got them, it was very scary because we'd never  
14 seen anything like that before. We were all new --  
15 most of us were all new to the University, and we  
16 actually had to have a couple of faculty members  
17 e-mail us as a group and explain what that meant.  
18 And then each subsequent year, someone would e-mail  
19 us and say, "You're going to get that letter, but  
20 don't worry, you're coming back, it will be okay."

21 Q. How did you know you were coming back?

22 A. Well, I still participated in our end of  
23 the year meetings where we wrapped everything up and  
24 talked about what changes we were going to make to

1 our curriculum in the upcoming year, but we didn't  
2 formally know until we got a letter of reappointment.

3 Q. So even if it may not have been legally  
4 enforceable, is there an expectation within your  
5 department that's shared with the VAPs?

6 A. Pretty much, yes.

7 Q. And in your department, if you know, are  
8 the courses for the following fall determined at the  
9 beginning of the spring semester?

10 A. Yes, they are.

11 Q. Often does that happen before those  
12 February letters even get issued?

13 A. I believe so.

14 Q. Does your program have directors?

15 A. We do have one Director and one Assistant  
16 Director.

17 Q. What's the title, the faculty title of  
18 those two?

19 A. They are both TCPLs.

20 Q. The Director and the Assistant?

21 A. The Director and the Assistant Director.

22 Q. What about course leads?

23 A. They are all TCPLs.

24 Q. Would you say that all of those faculty

1 members are fully integrated within your department?

2 A. Yes.

3 ALJ SPRAGUE: I'm sorry, did you say  
4 course leads?

5 Q. Course leads. You said there's course  
6 leads?

7 A. Yes. So within the four courses in our  
8 program, because we have so many students, we have to  
9 have a number of students to teach the Business 102  
10 course, a bunch to teach the Business 104 course.

11 Q. A bunch of students you said?

12 A. Sorry, a bunch of faculty to teach all of  
13 those courses. So as a team, because we want to  
14 provide a uniform experience for the students, we  
15 need to make sure that we're coordinating our  
16 assignments and the teaching materials that we give  
17 to the students, so we meet weekly and we have a  
18 course lead who serves as our sort of leader of our  
19 team.

20 Q. And that person coordinates the multiple  
21 sections of a particular course?

22 A. Yes.

23 Q. To make sure that there's at least  
24 consistency?

1           A.    Yes, exactly.

2           Q.    That's a fair amount of work, would you  
3 think?

4           A.    Yes, it is.

5           Q.    So, again, are these various faculty  
6 members within your department fully integrated with  
7 each other?

8                   ALJ SPRAGUE:  And I'm sorry, the actual  
9 point of that was that that person's a TCPL?

10                   MS. MUSKOVITZ:  Yes.

11                   THE WITNESS:  Yes.

12                   ALJ SPRAGUE:  Or more than one, I guess.

13                   THE WITNESS:  Yes.

14           Q.    (By Ms. Muskovitz) Are they all TCPL?

15           A.    I believe so now.  We have an Interim  
16 Team Lead for our Business 104 who I believe is still  
17 a VAP at the moment.

18           Q.    So right now one of the VAPs is even the  
19 Team Lead?

20           A.    Yes.

21           Q.    So when this work gets divvied up, is  
22 there -- does it matter whether somebody is a TCPL or  
23 a VAP or any other rank?

24           A.    The only difference is that a TCPL I

1 believe just has a slightly less of a course load,  
2 but we all teach the exact same course.

3 Q. Again, are you all fully integrated  
4 within your department?

5 A. Yes.

6 Q. Do you all share a community of interest  
7 with respect to your working conditions?

8 A. Absolutely.

9 Q. Do you favor being in the same Bargaining  
10 Unit with tenured and or tenure track faculty?

11 A. Yes.

12 Q. Are you worried they might sell you short  
13 if as a TCPL you're in the same Bargaining Unit with  
14 tenured and tenure track faculty?

15 A. I don't believe so. The First-Year  
16 Integrated Core is a very valuable program to the  
17 Farmers School of Business. Students, for lack of  
18 better explanation, students love our program.  
19 They're very involved with it.

20 And I will say that everyone except for  
21 one faculty member who joined us last year, everyone  
22 who staffs a First-Year Integrated Core class is  
23 either a TCPL or a VAP. There are no tenured or  
24 tenure track people except for one person who decided

1 to join our program because he liked it.

2 Q. And you said it was a very valuable  
3 program within the Farmers School of Business?

4 A. Yes, it is.

5 MS. MUSKOVITZ: No further questions.

6 ALJ SPRAGUE: Cross?

7 MS. SQUILLANTE: Yes, briefly.

8 - - -

9 CROSS-EXAMINATION

10 By MS. SQUILLANTE:

11 Q. Hi, Dr. Alexander. Is the First-Year  
12 Integrated Core -- do I have that right --

13 A. Yes.

14 Q. -- is it a program --

15 ALJ SPRAGUE: I'm sorry, I missed the  
16 first part of that.

17 Q. The First-Year Integrated Core, and I  
18 hadn't finished yet, is that a program or a  
19 department at Miami University?

20 A. It's a program.

21 Q. What's the distinction between a program  
22 and a department?

23 A. That's a good question. We really --  
24 Those of us who teach in the First-Year Integrated

1 Core were wondering why we couldn't be a department  
2 for quite some time. My only understanding of it is  
3 that departments, the difference is that they have a  
4 voting structure, and also I guess the Farmers School  
5 of Business as a whole decides to make them a  
6 department or the Provost joins up with it. I'm not  
7 100 percent sure how the process works, but we are as  
8 of now just a program, not a department.

9 Q. Could a student obtain a degree in  
10 First-Year Integrated Core?

11 A. No.

12 Q. When you were previously a VAP, were you  
13 formally evaluated on your service?

14 A. On my service, formally evaluated? Yes,  
15 in that I had to turn in a list of all the service  
16 that I had done, in addition to all of my teaching,  
17 turn in a narrative every year, uh-huh.

18 Q. Were you required to go through a  
19 competitive search when you were -- I'll say when you  
20 transitioned from a VAP to a TCPL?

21 A. Yes, I was.

22 Q. As a TCPL, do you teach more courses by  
23 volume than you did as a VAP?

24 A. No.

1 MS. SQUILLANTE: Nothing further.

2 MS. MUSKOVITZ: No redirect.

3 ALJ SPRAGUE: Doctor, thank you for  
4 offering your testimony today.

5 (Off the record.)

6 ALJ SPRAGUE: Let's go back on.

7 MS. MUSKOVITZ: The Union rests and  
8 requests the introduction of Union Exhibits 1 through  
9 17 and 19 through 33.

10 ALJ SPRAGUE: And you're withdrawing  
11 Exhibit 18 at this time?

12 MS. MUSKOVITZ: Correct.

13 ALJ SPRAGUE: I'll mark that as  
14 withdrawn. Objections, if any?

15 MS. DAY: No objections.

16 ALJ SPRAGUE: We're leaving out which  
17 one?

18 MS. MUSKOVITZ: The Union withdraws Union  
19 Exhibit 18 which is the FOP contract.

20 ALJ SPRAGUE: Right, so 1 through 17.

21 MS. MUSKOVITZ: 1 through 17, 19 through  
22 32. I will tell you that I did not update the Table  
23 of Contents.

24 ALJ SPRAGUE: 19 through --

1 MS. MUSKOVITZ: 33, I'm sorry, 33, which  
2 is not listed on the Table of Contents. I can  
3 supplement that if you'd like.

4 ALJ SPRAGUE: Oh, in the beginning of the  
5 book?

6 MS. MUSKOVITZ: Right.

7 ALJ SPRAGUE: There's still a little bit  
8 left on this. We'll have to do that when we're done  
9 so we have a complete master copy for submission.

10 MS. MUSKOVITZ: That's fine. I can  
11 submit a modified....

12 ALJ SPRAGUE: You don't have to do that  
13 today.

14 MS. MUSKOVITZ: Okay.

15 ALJ SPRAGUE: Without objection, I'll  
16 admit Exhibits 1 through 17 and 19 through 33 of the  
17 Union's Exhibits at the time.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 ALJ SPRAGUE: Go off the record for a  
20 moment.

21 (Off the record.)

22 ALJ SPRAGUE: Back on. No objections to  
23 the admission of Joint Exhibits A through F, correct?

24 MS. DAY: Correct.

1 MS. MUSKOVITZ: Correct. That's correct.  
2 I signed the stipulations, at least provided consent  
3 to have them signed.

4 ALJ SPRAGUE: Oh, the stipulations?

5 MS. MUSKOVITZ: They're all identified in  
6 the stipulations, each of the Joint Exhibits.

7 MS. DAY: That's correct.

8 MS. MUSKOVITZ: So they're really  
9 incorporated into the joint stipulations.

10 ALJ SPRAGUE: Does the University want to  
11 go over those now or do you want to wait until your  
12 rebuttal? Are you going to hook any up there do you  
13 think?

14 MS. DAY: No, I don't believe there will  
15 be any additional, so we can do them now if you'd  
16 like.

17 ALJ SPRAGUE: We will now consider  
18 University's Exhibits, so identifying Miami's 1, 3,  
19 4, 5, 6, 8, 9, 11, 12, 16, 17, 18. Any objection to  
20 any of those?

21 MS. MUSKOVITZ: No objection.

22 ALJ SPRAGUE: With no objection, I'll  
23 mark those as admitted at this time. Go off for a  
24 moment.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 (Off the record.)

3 ALJ SPRAGUE: We're back on.

4 MS. DAY: Your Honor, the University  
5 would like to re-call Ruth Groom on a brief rebuttal  
6 examination. Matters came up during the Union's case  
7 in chief regarding what was characterized as a layoff  
8 of VAPs, and we would like to present testimony as we  
9 have not had a chance to provide testimony on that  
10 topic, as well as to clarify our understanding of the  
11 numbers of persons included in the various categories  
12 in the proposed unit.

13 ALJ SPRAGUE: Any objection?

14 MS. MUSKOVITZ: I don't know what they're  
15 going to ask her.

16 ALJ SPRAGUE: Well, we'll find out. You  
17 can always object if there's an issue. Witness is  
18 still here?

19 MS. DAY: Yes.

20 ALJ SPRAGUE: I'm going to swear you in  
21 again since it's a new day.

22 (Witness placed under oath.)

23 ALJ SPRAGUE: Let's see, let's get your  
24 name again. We've already got you in the record, so

1 we know who you are, okay.

2 - - -

3 RUTH GROOM

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

6 DIRECT EXAMINATION

7 By Ms. Day:

8 Q. Ruth, there was testimony earlier today  
9 regarding what had been characterized as a layoff of  
10 VAPs during Covid. Looking at Respondent's Exhibit  
11 16 in the black binder, I want to direct your  
12 attention to data for fall of '20. Was that the fall  
13 of 2020 academic year that would have ended in spring  
14 of 2021?

15 A. Yes, we would refer to that as academic  
16 year '21 or academic year '20-21.

17 Q. What is the retention rate for VAPs at  
18 that time?

19 A. 36.5 percent.

20 Q. Why was there a decrease?

21 A. As spring of '20, March of '20 happened,  
22 one of the things that the University did, because of  
23 concerns around financial stability and the ability  
24 to make payroll inside of the pandemic, is the

1 Provost asked the deans and the department chairs to  
2 take a look at their core schedules and to make  
3 adjustments in regards to following standard  
4 University workloads or departmental workload norms,  
5 as well as offering only the core courses that were  
6 necessary for students to be able to graduate.

7 So to offer those courses, prioritize  
8 them first and not offer the boutique courses which  
9 is something that a faculty member might want to  
10 teach and is interesting, but it doesn't actually  
11 count towards requirements for either a major or  
12 minor if necessary for degree completion.

13 Additionally, the Provost deferred the  
14 leaves that had already been approved for faculty  
15 that year. So the assigned research appointments and  
16 the faculty approved leaves were deferred which  
17 enabled then those faculty to be placed on the  
18 teaching schedule.

19 So once the core schedule was reworked,  
20 it was then identified where areas still did need to  
21 have full time Visiting Assistant Professors and  
22 Instructors, and wherever that need was met, then  
23 those VAPs and Instructors were brought back to teach  
24 in the fall of '20, that following academic year.

1 I believe we also had a few calendar year  
2 VAPs had been hired in January of 2020, and of course  
3 those people still had a contract for the calendar  
4 year, so they were automatically -- they were still  
5 under their contract. We did not terminate anyone's  
6 contract early. The appointments that ran from fall  
7 of '19 through May of 2020 were all honored. And, of  
8 course, even -- we were looking at this in March, and  
9 of course the infamous February 15 letter had already  
10 been sent that had notified there was not an  
11 expectation of reemployment.

12 ALJ SPRAGUE: Can I jump in real quick?  
13 So you had said if -- I guess I don't -- I forget  
14 what you said, if you said full time or tenure track  
15 couldn't cover. That's probably what you said. Then  
16 the VAPs would be brought back. I don't know that  
17 was exactly your phrasing, though. What group was it  
18 if you said "if VAPs couldn't cover them"?

19 THE WITNESS: If there were not enough  
20 resources or ability to teach the courses that were  
21 remaining on the schedule within the tenured, tenure  
22 track and TCPL staff, then that indicated the need  
23 for either full time temporary or part time  
24 temporary, and all of those -- any such need was --

1 we hired people to do that teaching.

2 ALJ SPRAGUE: Okay.

3 THE WITNESS: Additionally, we did not  
4 lay off or not bring back for that fall semester  
5 anyone who was tenured, tenure track or TCPL. All of  
6 the ongoing faculty were of course on the payroll and  
7 on the schedule for that fall of '20.

8 Q. (By Ms. Day) Let me ask you a couple  
9 clarifying questions about what you just said. You  
10 said that the Provost or the President deferred  
11 leaves.

12 A. The Provost deferred leaves, yes.

13 Q. What leaves are you referring to?

14 A. So the two categories of faculty leaves,  
15 some places call them sabbaticals; we call them  
16 Assigned Research Appointments or Faculty Improvement  
17 Leaves.

18 Q. Was the result of deferring those leaves  
19 during Covid that there were more tenured or tenure  
20 eligible faculty members available to teach courses?

21 A. Yes, that is correct. We had  
22 approximately I want to say 66 leaves had been  
23 approved, and so that returned those people to the  
24 teaching schedule.

1           Q.    So that had an impact on the number of  
2 VAPs and Instructors that were needed by the  
3 University?

4           A.    That's correct.  Those faculty were now  
5 available to teach.

6           Q.    In the following year, the numbers  
7 increased -- the percentage increases regarding  
8 retention rate for fall of 2021, correct?

9           A.    That's correct.

10          Q.    Why did it increase in 2021?

11          A.    So there would be a few factors that  
12 would cause an increase like that.  So in fall of  
13 '21, all of the leaves deferred from the prior year,  
14 then those people were then able to take their leaves  
15 the following year.

16                    Additionally, asking to teach just the  
17 core courses, there was more freedom in scheduling  
18 courses that maybe do not count towards any  
19 graduation requirements.

20                    An additional reason why you see a little  
21 higher percentage there is partially the reflection  
22 of how a retention rate is calculated.  And so if we  
23 accept the retention is the number who are there and  
24 hired in fall of '21 in that category and then of

1 course the denominator becomes the number that was  
2 there in the fall of '20, that is a lower denominator  
3 than is typical, so that is one of the reasons why  
4 the percentages look higher -- I mean it is higher,  
5 yeah.

6 Q. Did student enrollment fluctuate during  
7 Covid?

8 A. Yes, we did experience some changes in  
9 student enrollment. Our international students who  
10 would have wanted to start in fall of '20, if they  
11 were not already in the United States, they were not  
12 able to get visas for the most part to come in and  
13 take courses.

14 Additionally, we did see some students  
15 who were graduating high school who had been accepted  
16 to the University but decided to take a gap year  
17 because of just all the uncertainty and all of the  
18 things that were just different in that time period  
19 due to the pandemic.

20 Q. Did that have an impact on the number of  
21 VAP Instructors that were needed?

22 A. With a smaller class size, you would not  
23 need to offer as many sections of some of the courses  
24 that typically do produce a need to hire temporary

1 faculty.

2 Q. Were any faculty members -- Let me  
3 start -- back up. Were any tenured or tenure  
4 eligible faculty members laid off at Miami University  
5 during Covid?

6 A. No.

7 ALJ SPRAGUE: Say that one more time.  
8 Sorry.

9 Q. My question? Were any tenured or tenure  
10 track faculty members laid off during Covid?

11 A. No.

12 Q. Were any tenured or tenure track faculty  
13 members laid off because of Covid?

14 A. No.

15 Q. Were any TCPL faculty members laid off  
16 during or because of Covid?

17 A. No.

18 Q. Were any VAPs or Instructors laid off  
19 during or because of Covid?

20 A. No. Appointments were not -- There  
21 were -- They were temporary appointments, and we  
22 appointed who -- where there was a teaching need.

23 Q. How does the February 15th letter affect  
24 the University's ability to bring VAPs or Instructors

1 back at the end of the year?

2 A. At the end of the year, if the department  
3 and the dean have -- see there is a need to have that  
4 person return to teach in the fall, then they are --  
5 they are brought back, but outside of that, then  
6 there is no reappointment if that need is not there  
7 for that next year.

8 That does not mean that someone who is  
9 not appointed this fall, there might be a need next  
10 fall. And there would be a checking with them to see  
11 if they were interested in coming back and teaching  
12 as long as they hadn't hit the five-year cap.

13 Q. Do you know whether any VAP or Instructor  
14 who was not asked to return in fall of 2020 was  
15 subsequently asked to return to Miami University as a  
16 VAP or an Instructor?

17 A. Yes, that has occurred. I believe that  
18 is reflected in the Exhibit 17. You can see there  
19 were some years where there were gaps. That existed  
20 even prior to fall of 2020. We had instances where  
21 someone would teach one year, perhaps not the next  
22 year, come back the next year, even have a gap of  
23 several years. That does happen.

24 Q. Ruth, are you familiar with the rough

1 numbers of the persons in the various faculty and  
2 other groups that are included in the proposed  
3 Bargaining Unit?

4 A. Yes, I am. Some rough numbers from  
5 preparing the number lists since I started in  
6 October, I have a general number.

7 Q. What is your understanding of the number  
8 of tenured and tenure faculty members that would be  
9 included in the proposed Bargaining Unit?

10 A. So this number does exclude chairs or  
11 those identified as management. Rough 60 percent,  
12 maybe a little greater than 60 depending on where  
13 final numbers shake out.

14 Q. Do you know what the numbers are rather  
15 than percents?

16 A. So I would -- Well, if it's roughly a  
17 thousand, 60 percent is around 600. It could be 625,  
18 650.

19 Q. Understood. What is your rough -- What  
20 is your understanding of the number and percentage of  
21 TCPL in the proposed Bargaining Unit?

22 A. That would be around 16 percent. I think  
23 we have between 190 and 200. There are potentially  
24 some that would fall into management such as the

1 First-Year Integrated Core Program Director would  
2 likely be considered management, as well as maybe our  
3 physician associates. So there are a few TCPL that  
4 might fall into that management bucket as well.

5 Q. What is your understanding of the number  
6 of VAPs and Instructors, numbers and percentage of  
7 the proposed Bargaining Unit?

8 A. I think that would be around 15 percent  
9 based on this year's numbers given that the  
10 unofficial number for this year is 161.

11 Q. Are you looking at Respondent's Exhibit  
12 16 and referring to 161 VAPs and Instructors?

13 A. Yes, since that was still open and in  
14 front of me, I did take a peek at it.

15 Q. What is your understanding of the number  
16 or percentage of librarians who would make up the  
17 proposed Bargaining Unit?

18 A. So the current number is 30 librarians,  
19 is roughly three percent.

20 MS. DAY: No further questions.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Muskovitz:

24 Q. Miss Groom, are you aware that when all

1 of those VAPs were not offered positions in the fall  
2 of 2020, that the administration received a petition  
3 with about 800 signatures?

4 A. That was not a petition that I received,  
5 so, no, it did not come to me.

6 Q. But have you -- Do you have any knowledge  
7 that a petition was given to management seeking to  
8 revisit that decision so that faculty could have some  
9 input either through the Faculty Assembly or some  
10 other body?

11 A. I am aware that the -- that decision that  
12 was made was controversial, but I do not recall that  
13 I received any comments around the petition. I mean,  
14 I did -- I was aware that there was pushback upon the  
15 decision, but I don't believe that I was ever told  
16 that there was a petition.

17 Q. You were never told there was a petition?

18 A. I don't recall that I had ever heard  
19 about that.

20 Q. You do know it was controversial,  
21 correct?

22 A. I know that a decision was considered  
23 controversial, yes.

24 Q. And do you know that there were many

1 members of the faculty that wanted to at least  
2 explore alternatives including short-term wage  
3 reductions to alleviate that?

4 A. That is not something that I believe  
5 crossed my desk. I know that many talks were  
6 occurring at that time about what varying  
7 possibilities would be. Like if this happened, then  
8 what would the next step we would need to take be.

9 At that time, I was more focused on  
10 because we do have staff who report in through my  
11 office. I was actually delivering position  
12 elimination notices to some staff members because we  
13 did actually have to eliminate positions on the staff  
14 side of the house, so my time was focused on  
15 providing those elimination notices.

16 Q. You said there were a lot of  
17 conversations that occurred surrounding those  
18 decisions as they affected faculty?

19 A. They were conversations surrounding the  
20 University as a whole, not just faculty in the  
21 meetings I was in.

22 Q. Is it fair to say that all of those  
23 conversations were done by management and faculty had  
24 no voice?

1           A.    I would not characterize it as fair to  
2 say that.  I am not a member of University Senate, so  
3 it sounds as if discussions may have occurred at  
4 University Senate but I do not attend those meetings.

5           Q.    You have no idea whether those  
6 conversations occurred in the University Senate or  
7 not?

8           A.    I assume that they likely occurred at  
9 University Senate as that is something that that body  
10 would be used for, those conversations of that  
11 nature, but personally participating in those  
12 conversations, I did not.

13          Q.    Were you present when the testimony was  
14 given that that was the request but that request was  
15 never honored?

16          A.    I was present for Dr. Wagner's testimony  
17 today, yes.  I didn't memorize all of it.  She was up  
18 here for a lengthy period of time.  I think I did  
19 hear her say those words, yes.  I recall that.

20                MS. MUSKOVITZ:  No further questions.

21                MS. DAY:  No further redirect on  
22 rebuttal.

23                ALJ SPRAGUE:  You may step-down again.

24                (Off the record.)

1 ALJ SPRAGUE: Back on. By agreement of  
2 the parties, the post hearing briefing schedule has  
3 been established as follows: Our court reporter will  
4 attempt to get a copy of the transcription to  
5 individuals on or before December 27th  
6 electronically.

7 Thereafter, on or before January 27th,  
8 the respective counsel will electronically file with  
9 the Board in various spots simultaneous post hearing  
10 briefs, 50 page maximum, which I am indicating now  
11 and pertinent exhibits as needed.

12 And also we have corrected or received a  
13 final copy, except for the index, of exhibits for  
14 both parties, and the Report and Recommendation  
15 procedure for the general counsel inquiry process has  
16 been reviewed with counsel. Does that comport with  
17 your memories of what we discussed?

18 MS. DAY: Yes, your Honor.

19 MS. MUSKOVITZ: Yes.

20 ALJ SPRAGUE: Anything further we need to  
21 take care of today?

22 MS. MUSKOVITZ: Not from the Union.

23 MS. DAY: Just to clarify for the record  
24 that counsel for the parties have agreed to split the

1 cost of the transcription, as well as the court  
 2 reporter's time in the hearing.

3 MS. MUSKOVITZ: That's correct.

4 ALJ SPRAGUE: All right, so noted. Thank  
 5 you. The record will remain open for the submission  
 6 of our transcript and the requisite post hearing  
 7 briefs. Thank you all. You've done a great job.  
 8 Very impressed. We'll take all this under advisement  
 9 and get you your Report and Recommendation.

10 MS. MUSKOVITZ: Thank you.

11 MS. DAY: Thank you.

12 ALJ SPRAGUE: We're off the record.

13 (The hearing was concluded at 5:45 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 Tuesday, December 13, 2022, and carefully compared with my original stenographic notes.

Cynthia L. Cunningham  
Cynthia L. Cunningham

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