

# ***NCSFA-AAUP Response to Frequently Asked Questions Concerning Our Request for Factfinding***

## **What is factfinding?**

- A factfinder is a neutral third-party that reviews each side's positions related to a disagreement and then presents a non-binding resolution for the two parties to accept or reject. The factfinding process presented by the NCSFA-AAUP, the same process used to successfully settle our 1<sup>st</sup> collective bargaining agreement, used a third-party factfinder to assist both sides in reaching agreement.

## **The NCSFA-AAUP says factfinding was used in 2008 and the College says it was NOT. What is the truth?**

- Robert Stein was mutually retained by both parties as a factfinder during our 2008 negotiations in accordance with the Mutually Agreed Upon Dispute Resolution Procedure (MAD Agreement) that was signed by the North Central State College Board of Trustees and the North Central State Faculty Association in June 2008. Mr. Stein's factfinding approach was to work with both parties during the factfinding process and encourage agreement on as many issues as possible prior to writing a factfinder's opinion. In effect, Mr. Stein sees his role first as a mediator and then as a fact-finder. Mr. Stein's approach was successful in moving both the College and the NCSFA-AAUP to a point where they were able to reach an agreement without an official opinion being written. It is the NCSFA-AAUP's position that without the possibility of having a final factfinder's opinion, the process would not have worked.

## **What is the difference between factfinding and mediation? I thought they were the same?**

- Mediation is the effort of a 3<sup>rd</sup> party neutral to get both sides to continue talking about the areas of disagreement. A mediator makes no public judgment of either side's position and issues no findings. A mediator has nothing to pressure either side into making movement or reevaluating their position. A factfinder has a non-binding opinion that can pressure both sides to make movement toward an agreement. A mediator appointed through the Federal Mediation and Conciliation Service (a federal agency that works with the State Employment Relations Board) is without cost to either party, whereas a factfinder is paid by both parties.

## **What do you expect to gain from factfinding?**

- Factfinding will result in a neutral 3<sup>rd</sup> party reviewing the positions of both the College and the NCSFA-AAUP. Such a review provides both sides with an objective outsider's perspective that may help the two sides come to agreement. The risk that the factfinder will issue a final opinion will place some pressure on both sides to be reasonable in trying to reach agreement. If the factfinder is able to get both parties to move to agreement without rendering a factfinder's opinion (this happened in 2008), both sides will have an agreement to move forward with. If not, then the factfinder will issue an opinion, and both sides will have the value of seeing how a 3<sup>rd</sup> party neutral sees each side's arguments. This opinion should help both sides to work toward a final agreement, even though either side may reject the factfinder's report.

## **Who pays for factfinding and how much does it cost?**

- The cost for fact-finding is paid for by both sides – all costs are equally shared. In 2008, the total cost of the factfinding process was \$5,016 (each side paid \$2,508). It is our position that factfinding was far less expensive in 2008 than the delays that have been experienced in this year's negotiations as the College has fought to prevent factfinding from being included in the contract. We contend an agreement could have been reached as early as July if we would have duplicated the process used in 2008.

## **Why is the College opposed to factfinding?**

- The primary reason provided by the College has been they do not believe in and do not like factfinding. Objectively speaking, the reason why anyone is opposed to factfinding is due to the unpredictability of the outcome. Both sides run the risk of having a factfinder seeing the "facts" in a disparaging light OR having a factfinder see the facts in a "crazy/non-logical" light. Both scenarios are always possible when using a neutral 3rd party. In addition, when using a 3<sup>rd</sup> party, both sides are allowing someone else to “stick their nose” in and give an opinion. We are willing to take this risk in order to reap the benefit of having a 3<sup>rd</sup> party’s objective review. However, the concerns of having an “outsider” come in who does not understand our particular situation is mitigated in several ways. First, the State Employment Relations Board screens and certifies any potential factfinder whose name it sends to the parties to consider. Thus, in all instances, the parties receive a list of trained professionals from which to choose, and the parties do so by alternately striking, so the one left is presumably the most neutral of the neutral factfinders provided by SERB. Second, the parties themselves may mutually agree on who the factfinder should be, which was true in our case with Mr. Stein. The parties chose him because he has developed a specialty in higher education and is highly regarded by management and faculty alike. Finally, the parties spend a great deal of time with the factfinder, both together and separately, so the factfinder becomes fully conversant with the issues, and the strengths and weakness of both parties’ positions.

## **Why does the NCSFA-AAUP want factfinding so badly?**

- It helped us reach agreement when we negotiated our very 1<sup>st</sup> collective bargaining agreement in what many considered record time.
- It provides an additional dispute resolution step prior to using other less-desirable processes (reputation-harming impasse, strike, implementation of a non-agreed to contract, etc.).
- It provides an objective 3<sup>rd</sup> party neutral’s review of both sides’ positions – this has the potential of allowing both sides to see weaknesses in their positions.
- It could help build trust in data that is presented and reaffirmed by a factfinder.
- It is NON-binding (thus allowing both sides to still negotiate their own agreement after the opinion is submitted).
- State of Ohio law provides for factfinding as a dispute resolution process.

In a letter dated February 7, 2011, President Plotts wrote “we are confident if the parties are unable to resolve all issues, a final contract can be reached through good faith mediation.” He also said that “changing the terms and process agreed to by both parties [the current contract prohibits factfinding] . . . without giving it a chance to be successful is not something with which I can agree.”

We have not reached agreement. We have tried in good faith. We have asked that factfinding be included in future negotiations (we are no longer asking that it be used this time). And still the College continues to refuse to allow language into the contract that would provide for fact-finding in future negotiations if needed.

***Why does the College continue to spend thousands of extra dollars, prolonging negotiations to prevent Factfinding from becoming available as a non-binding tool to help both sides reach agreement?***