AAUP-UNH Rebuttal Brief on
USNH Board of Trustees Closing Statement
in Fact-Finding before
Dr. Allan S. McCausland, Fact-Finder
31 March 2022

It was agreed with the Fact-Finder that rebuttal briefs would consider only new information and misrepresentations of facts on the record contained in the other party's closing statement. Rather than proceed linearly through the University's closing statement, we have grouped the rebuttal points according to the topics listed below and supply citations to the record to substantiate the rebuttal. References to the University's closing statement are denoted by [E-CL] for 'employer- closing' along with page number and paragraph number. Direct quotations from the University's closing statement appear in *italic* font.

1) Conduct, scope, and pace of negotiations
2) The University's ability to pay
3) Salary and compensation issues
4) Medical insurance
5) Parental leave
6) Post-fact finding public statements by AAUP-UNH

1. Conduct, scope, and pace of negotiations

The University characterized the pace of our proposals as *"infrequent"* [E-CL, pg. 4, line 8]. As the record established, we put a salary proposal on the table at the very first bargaining session on 14 February 2020 and we offered the first proposal on the parental leave benefit on 8 July 2020. The University did not respond with a salary proposal until 22 July 2020, and instead offered proposals on non-financial issues outside the scope of this fact-finding. Throughout the 18 months of bargaining prior to mutual declaration of impasse on 28 July 2021, the parties agreed to meet biweekly via Zoom, and that schedule was observed with very few exceptions. We advanced proposals on articles according to our priorities for the faculty bargaining unit in a timely fashion, and we did so after the University provided new information at negotiations both independently and in response to our requests for additional details, especially regarding medical insurance.

We placed our final package proposal on the table in January 2021, which included salary increases and medical insurance rates, and were prepared to modify our proposals had the University responded substantively. Upon offering its second package proposal in April 2021, the University made clear to us that it would not offer any continuing salary increases, but would re-open negotiations on salary issues upon attainment of certain financial metrics over which the faculty have no control. Given the University's unwillingness to bargain specific salary increases and its insistence that faculty accept the new medical insurance plan designs imposed on non-represented employees, we saw no point in offering new proposals at that time. Throughout negotiations and fact-finding, the University has justified its proposals on the basis that we should accept without challenge the changes in benefits imposed on non-represented employees, and that is not negotiation.

The University has repeatedly characterized the COVID-19 Enhanced Retirement Program (CERP) as part of the negotiation for a successor collective bargaining agreement [E-CL, page 36, para. 1; para. 4; page 36, para. 3]:

> *This MOA is recognized as a part of the bargaining for this agreement is an important piece of a complex financial landscape. [J-2]*
>
> *It is mutually agreed by the parties that the negotiation of the CERP is a part of this negotiation and the CERP itself was negotiated by the bargaining leads to reach the agreed upon program.*
>
> *It is mutually agreed by the parties that the negotiation of the CERP is a part of this negotiation and the CERP itself was a mutually agreed program.*

The University's characterization is false. The CERP Memorandum of Agreement stood alone as a side negotiation to the negotiations for a successor collective bargaining agreement. The initial proposal for the CERP was presented to us on 17 June 2020 as an expansion of the existing article 17.3.5 in the extant collective bargaining agreement known as the Voluntary Separation Program (VSP) [J-1]. The CERP Memorandum of Agreement [J-2] states:

> "The American Association of University Professors ("the Chapter") agree to the following temporary addendum to the Collective Bargaining Agreement (CBA) to implement the COVID-19 Enhanced Retirement Program for eligible employees."

However, there was no proposal to change the existing article 17.3.5 and an expanded voluntary separation incentive was not part of the negotiations for a successor collective bargaining agreement. The University's expenditures on the CERP were not limited to the $9.9M for tenure-track faculty alone, but included more than double that amount for retirements of non-represented staff employees. Thus, CERP was not a benefit negotiated for prospective faculty retirees to be traded off against benefits for continuing faculty members in the course of normal negotiations for a successor collective bargaining agreement.

2. University's ability to pay

The University asserted in its closing statement that data on household median income and unemployment rate by state among the mutually agreed comparator group of institutions is "immaterial" to the negotiations [U-CL, page 15, para. 2, 3]:

> *The relative wealth of the residents of the State of New Hampshire compared to the other*

states along the I-95 corridor is wholly immaterial to the comparator data as there is no correlation between that data and the operating revenue of the University of New Hampshire, and indeed no link is established by the AAUP-UNH in their testimony.

The reported unemployment numbers are similarly immaterial; UNH's national faculty searches do not recruit faculty from a local pool of currently unemployed or under-employed New Hampshire residents.

To the contrary, the ability of the New Hampshire Legislature to make appropriations to the University System directly corresponds to the relative health of this state's economy, which the data presented at fact-finding overwhelmingly demonstrates to be superior to the comparator states. UNH President Dean and New Hampshire Governor Sununu serve on the USNH Board of Trustees and have standing before the Legislature to request increased state appropriations to the University System including UNH.

The University System introduced voluntary retirement incentive programs, including UNH's CERP, in spring 2020. Although the University has focused attention on the one-time expenses of CERP, the testimony of UNH Chief Financial Officer Vernon indicates that of the $33.5M recurring future savings provided by CERP faculty and staff retirements (58 faculty, 230 staff) approximately one-third of the vacated positions will be refilled [E-9, slide 005]. We label this decision as one choice among many possible uses of the future savings, which could include enhancements to faculty salaries and benefits for continuing faculty. The University also linked the CERP to an implied alternative of furloughing or involuntarily separating faculty [E-CL, page 5, para. 4]:

This program, in total, cost the University $9,900,000 and ensured that no AAUP-UNH faculty were furloughed or involuntarily separated as a result of COVID-19. That cost must be considered when evaluating the other economic terms which the parties are negotiating.

At no point in the negotiations over the terms of the CERP did the University threaten us with possible furlough and involuntary separation of faculty, and for good reason. Article 14.3.1 of the collective bargaining agreement [J-1] spells out the extreme conditions under which tenured faculty may be terminated from employment:

"14.3.1 There must be an official declaration of financial exigency by the Board of Trustees before any faculty member may be terminated due to financial exigency."

There was no declaration of financial exigency by the USNH Board of Trustees even as the pandemic was rapidly unfolding. The University's statement is vacuous.

The University objected to Dr. Rudy Fichtenbaum's written analysis of USNH's audited financial statements [E-CL page 17, para. 3]. As we testified in fact-finding [160: 18 – 161: 21], Dr.

Fichtenbaum has prepared analyses of USNH's audited financial statements at varying intervals over the past 20 years. He is well-versed in the analysis of financial statements for universities through his academic position as professor and professor *emeritus* of economics. His analyses encompass institutions of different sizes and educational missions across the nation. His prior analyses of USNH audited financial statements have been included in previous findings of fact, most recently in 2012, without any objection by the University. We insist that Dr. Fichtenbaum's most recent report be retained in the record of this fact-finding.

We shared with Dr. Fichtenbaum the University's closing statement and its characterization of his analysis. With Dr. Fichtenbaum's permission we have included as an appendix to this rebuttal brief his direct responses to the criticisms offered by the University.

The University asserted that our use of unrestricted revenue as the basis of percentage calculations for faculty salary and benefits ignores the restricted revenue sources available to the institution [E-CL, page 13, para. 4]:

> *In the cross-examination of CFO Vernon, the AAUP-UNH focused largely on the data supplied by the University in response to a request for information. The pages in Employer Exhibit 9 from page seven onwards [E-9:7-10] contain a subset of data requested by the AAUP-UNH. In many places in these slides, the data presented is devoid of the necessary comprehensive information and context. These slides look specifically at unrestricted funds. [253:2-6] The more accurate way to review the finances of the University is to look at the entire financial picture, presented in its entirety on the second slide of Employer Exhibit 9. [253:8] The lack of context in E9:7-10 can be substantial because the information request from the AAUP-UNH does not look at restricted gifts, grants, or the plant fund which is primarily depreciation. [Id] These slides, on their own, do not reconcile back to the audited financials which appear in the USNH Annual Reports for 2020 and 2021. [U-5] This appears to be a source of some confusion, and the AAUP-UNH noted that they have historically requested information only about unrestricted funds. [258:18-25] This was based on their understanding that restricted funds have constraints on them which may prevent them from addressing any kind of deficiency in the operating budget. [Id] UNH Director of Central Finance Kerry Scala, who created Employer Exhibit 9, clarified that some restricted funds may be available to pay salary and benefits, depending on the restrictions. The University's presentation included both unrestricted and restricted funds, including grants and gifts, which include depreciation and reconcile back to the audited financial statements. [258:1-10] [258:110]*

This statement is surprising because it reflects the UNH lead negotiator's unfamiliarity with past practice in negotiations and previous fact-finding hearings. <u>The University</u> has always insisted that <u>only unrestricted revenues were available to fund faculty salaries and benefits</u>. We agree with Director of Central Finance Scala that some restricted revenues may pay a portion of a faculty member's academic year base salary in rare instances when the donor/sponsor stipulations permit it. Summer compensation from external sponsored grant awards, which represent restricted revenue, are not part of base salary nor are such funds available to all members of the bargaining unit. The data we presented on faculty salaries as a percentage of unrestricted revenues thus conforms to established past practice in negotiations and prior findings of fact.

3. Salary and compensation issues

The University has stated that recent inflation data are not relevant to salary and compensation negotiations [E-CL, page 15, para. 4; page 16, para. 1]:

> *As the AAUP-UNH notes inflation began to increase "dramatically" in January 2021. [173:1-6] The inflation of the period since January 2021 has not factored into the proposal made by the AAUP-UNH, however, as the last of those proposals was made in January* '21. [J-23]
>
> *It is fine for the AAUP to acknowledge they do not expect UNH to "offer salary increases on that order" when discussing inflation, but the reality is the CPI is not a benchmark for salary proposals. [175:7-16]*

Our very first salary proposal of 14 February 2020 was presented with verbal narrative that justified the proposed 4% annual base salary increases using a combination of CPI-U data (then running about 2%) and New Hampshire housing price appreciation (then running about 7.7% in Q4 2019, 10.7% in Q1 2020 for Strafford County). Housing price appreciation was still a primary concern in the formulation of our last salary proposal in January 2021 when housing prices had risen 14.5% year-over-year for Strafford County. The CPI-U data have always been one factor in the formulation of our salary and compensation proposals in prior collective bargaining negotiations, so the CPI-U is indeed a benchmark for salary proposals. The University has additionally misrepresented the context of the remark made by Dr. Carter at fact-finding regarding our negative expectation of UNH to "offer salary increases on that order." His remark, as the transcript clearly shows, was in reference to housing price appreciation percentages, not CPI-U data [173: 25 – 175: 16]. The housing price appreciation value cited by him is 16% in December 2021, which does indeed exceed our expectation of reasonable base salary increases over the proposed agreement period ending FY23.

In its analysis of our proposals on base salary and other compensation increases, the University inaccurately characterizes the percentage increases, which appear in the record [E-CL, page 8, para. 1] [AAUP Exhibit FFP_Articles_16_18, slides 20, 21]:

> *They sought proportional increases to salary minima and promotion increases as well as to the compensation for summer and J-Term courses.*

Simple arithmetic on the record shows that increases to salary minima, promotion increases, and summer compensation are approximately 1.8% per year, which is less than the proposed base salary increases, and thus not 'proportional' to them.

The University fails to provide accurate context in its statement comparing the percentage change in faculty headcount with the percentage change in total faculty salary base [E-CL page 69, para. 3]:

> *In 2021 AAUP-UNH faculty accounted for 520.5 full time equivalent employees, down from 607.4 six years ago, a reduction of 14%, nearly exactly in line with the reduction in undergraduate enrollment. [E-9:10] However, the AAUP salary base has been reduced just $3.07 million in that time – or a reduction of 5% -to a total of $57 million (before fringe rate of about 40% is added) in base compensation. [E-9]*

Missing from the University's analysis is the fact that the most recent collective bargaining agreement spanning FY16-FY20 provided a compounded base salary increase of 15.9% to continuing faculty, and the increase was agreed by the University. One should not expect a 14% reduction in faculty size to produce a corresponding reduction in the total salary base when the University agreed to increase salaries over that same time frame.

Although the University opines that median household income and unemployment rate by state is 'immaterial' to negotiations and fact-finding, it reverses itself by comparing faculty salaries with median household income in New Hampshire [E-CL, page 15, para. 3]:

> *While the University does not benchmark against this data, it is important to note that the median salary for the lowest paid AAUP-UNH individual faculty member is still higher than the median household income for New Hampshire state residents. [U-2, U-3]*

The University's comparison is irrelevant: the faculty do not recruit from the general pool of New Hampshire residents. Indeed, our testimony at fact-finding is that the faculty seek exceptionally talented colleagues capable of enhancing the University's Carnegie R1 status.

4. Medical insurance

The University's closing statement on medical insurance is a classic case of internal inconsistency. It rejects the applicability of the Commonwealth Fund study we presented at fact-finding [AAUP Exhibit Article 17-B, items 3, 4] as unrepresentative of 'the unique employment environment of higher education' [E-CL, page 25, para. 2], then proceeds to use the study results to argue that faculty pay less on a percentage and absolute dollar basis for medical insurance than a representative New Hampshire private sector employee would pay. We testified that our use of the Commonwealth Fund study results was <u>restricted to the relative rate of increase of employee contributions over time</u>. It was precisely the relative rate of increase that our last medical insurance proposal attempted to constrain, first, by limiting the growth of the employee's contribution percentage and second, by setting caps on the employee's absolute dollar contribution that increase slowly over the proposed contract duration. In both aspects our proposal permitted a slow growth of employee contribution for medical insurance when coupled with the modest salary increases we proposed.

We testified at fact-finding that the federal MEPS-IC data used in the Commonwealth Fund study reflected private sector costs for the purchase of traditional group medical insurance plans, whereby the employer transfers the actuarial risk of plan solvency to the insurer, and the employer pays a risk premium for that protection from atypically large medical claims expenses. We maintain that the relative rates of growth of private sector employee medical insurance premiums for New Hampshire appropriately bound the rates of premium growth for self-insured public sector entities, including USNH, which do not pay the risk premium to a traditional group insurance provider. If this were not true, then USNH made a serious mistake in 2012 by electing to self-insure for employee medical claims expenses. To the contrary, as we testified at fact-finding, USNH trumpeted its $10M savings in the first year after choosing to be self-insured.

The University presented new data in its closing statement [E-CL page 25, para. 3 (continued on page 26)] for comparison of medical insurance rates with data from the Commonwealth Fund study we provided. The University did not, however, describe the method it used to arrive at its table entries and did not provide the raw data needed to validate the numbers in its table. Indeed, the University's consultants Brown & Brown combined the twelve medical plan tiers in some unknown fashion [E-CL, page 25, para. 3]:

> *Based on the information in the record, Brown & Brown aggregated all UNH-AAUP plans and tiers of covered employee enrollment.*

Without a clear description of its method of 'aggregation' there is no confidence in the University's newly presented information.

The table at the top of page 26 [E-CL, page 26] shows employee contribution percentages as a fraction of an unspecified median income, but there is no explanation of the cohort among which the median income is determined. The employee's percentages of total premium for the single and family coverage options in the table do not correspond to values stipulated in the collective bargaining agreement for FY20 (which sets rates for CY2020), and the absolute dollar values in the table at the bottom of page 26 [E-CL, page 26] do not correspond to any published data in the AAUP-UNH medical rate sheet for CY2020. Moreover, the University does not understand the methodology of the Commonwealth Fund study, which is clearly described in its report. The University refers to a 'plan' in the New Hampshire data table from the study, but there is no such 'plan.' Rather, the Commonwealth Study uses the federal MEPS-IC data to construct an exemplar of employee contributions, deductibles, and employer contributions weighted by the distribution of household types in each state. The study makes no assessment of claims coverage or plan designs, hence the University's statement [E-CL, page 26, para. 2] that

> *The USNH plan is richer, it costs more than the compared NH Study.*

has no evidence to support it. The University also speaks of the ‘total value of the plan’, but there is no possible comparison with the Commonwealth Fund study results because those results do not include a plan.

5. Parental leave

The University misrepresented our proposal on parental leave by claiming that we had dropped a certain protection of faculty seeking parental leave, which appears in the most recent collective bargaining agreement as article 17.4.3.7 [J-1]:

> “Time spent on parental leave status does not count as full-time for tenure or sabbatical purposes.”

The University’s claim appears below [E-CL, page 32, para. 4]:

> *In their proposal of July 8, 2020 the AAUP also seeks to remove the language which states leave time does not qualify as full-time service to the University for purposes of tenure or sabbatical. [Appendix I] This could have potentially significant impacts on a new parent who rely on those years not counting as service.*

Our proposal appears in the record with a revised article number (and a typographical error on the article number) [J-14]:

> “7.4.3.6 For academic year faculty appointees, any academic year in which a faculty member qualifies for parental leave status does not count as full-time for tenure or sabbatical purposes. For fiscal year faculty appointees, any fiscal year in which a faculty member qualifies for parental leave status does not count as full-time for tenure or sabbatical purposes.”

The intent and effect of our revised language is the same as that of article 17.4.3.7. The University’s claim is false because Appendix I of its closing statement is <u>not</u> the text of our parental leave proposal, which instead correctly appears in joint exhibit J-14.

The University also claims that certain protections of faculty for ‘medical leaves’ are voided by our 8 July 2020 proposal [E-CL, page 32, para. 4]:

> *The AAUP proposal fails to address or account for the issue of a medical event, and a corresponding medical leave of absence which the union fails to address.*

Our proposal does not alter article 13.8.4, which covers the timing of mandatory tenure decisions for any reason:

> “13.8.4 Any year of less than full-time service shall not count toward determining the timing of mandatory tenure decisions unless an agreement is reached between the faculty member and the Dean in writing prior to the leave that the time on such leave will be counted.”

Like the exclusion of years of service for time spent on parental leave, medical events are not exclusive to childbirth and are covered elsewhere in the collective bargaining agreement.

The University's graphical illustration of its parental leave proposal [UNH Exhibit 3, slide 11] shows an increased duration of paid parental leave with respect to the current guaranteed twelve weeks, but fails to note the maximum leave duration may only become available if the birth parent qualifies for the new Short Term Disability leave. The qualification criteria for Short Term Disability were not presented at fact finding.

6. Post-fact finding statements by AAUP-UNH

After the fact-finding oral hearings concluded, the University provided new information, which appears in its closing statement and replicates information provided to the bargaining unit members, the University community, and the independent press media. The University seizes upon the use of the word 'regressive' in AAUP-UNH's petition to President Dean as framing the University's proposals in negotiations moving backward. We have never framed the University's bargaining proposals as moving backward during the course of negotiations, and our use of the word 'regressive' signifies the University's positions with respect to the terms of the most recent collective bargaining agreement. As demonstrated at fact-finding, the University's last package proposal would substantially degrade faculty salaries with respect to those of the mutually agreed comparator group institutions, and would diminish retirement, medical insurance, and parental leave benefits by comparison with the existing benefits. By any interpretation of 'regressive,' the University would take faculty backward with respect to their present employment terms. There is no conflict between our public statements after fact-finding with our testimony at fact-finding. It is only the University's misunderstanding and false framing of the context in which the word 'regressive' appears that motivates their charge.

The University stated [E-CL page 39, para. 2] that we proposed a reduction of faculty headcount as a solution to its presumed future financial shortfalls:

> *Now, the AAUP-UNH is publicly condemning a reduction in faculty, a reduction that the union itself proposed is the solution to the financial challenges faced by UNH.*

At no point in negotiations have we ever suggested reducing faculty headcount, whether tenure-track or other faculty types, as a solution to a financial problem that is unrealized at present and may not be realized in the near future. Dr. Fichtenbaum's testimony that attrition is one method universities use to address declining student enrollment and revenues is a generic statement based on his years observing institutions' financial management practices. Dr. Fichtenbaum did not say that UNH could solve its putative financial problems by faculty attrition nor did we say so.

Concluding Remarks

The University has repeatedly stated that we fail to recognize its “financial realities.” Dr. Fichtenbaum’s testimony, which was corroborated by Vice-Chancellor Provencher’s testimony at fact-finding, is that USNH is presently in very good financial condition. We acknowledge as facts Vice-Provost Ellis’s testimony on recent declines in undergraduate enrollment and net tuition revenues. The University and USNH have imposed changes in employer retirement contributions and medical insurance plan designs on non-represented employees and presented at fact-finding negotiated agreements with other represented employee groups that incorporate some of those imposed changes. With all due respect to our faculty colleagues at Keene State College and Plymouth State University, those institutions are not R1-ranked research universities, and their faculty unions have negotiated terms of employment appropriate to their needs and acceptable to their members. The University has implemented cost-cutting measures, including the CERP, which provide sources of revenue reallocation to support our proposals. The University acts in negotiations as though its hands are tied, but it has simply chosen not to support its tenure-track faculty by instead expending a portion of its avoided future expenses on its other preferred priorities.

Appendix – Dr. Rudy Fichtenbaum’s response to UNH/USNH Closing Statement

[Excerpts from the University’s closing statement are indented. Dr. Fichtenbaum’s responses to those excerpts appear in non-indented **bold** font.]

> The Testimony and Report of Dr. Rudy Fichtenbaum
>
> As a counterpoint to the many presentations of the University, the AAUP-UNH submitted as Union Exhibit 6: An Updated Analysis of the Financial Statements of University of New Hampshire Fiscal Years 2001-2021. [U6] This report was compiled by Dr. Fichtenbaum after the declaration of impasse and, in stark contrast to the financial presentations of the University which were all updates to presentations provided to the union during bargaining, was first provided to UNH during the factfinding. [185:15-16] The University objects to the inclusion of the report in the record as it was not a part of the bargaining process and insufficient foundation was provided about the methodology and source of the data. [186:1-4] To the extent the factfinder permits the report in the record, the University offers the following rebuttal to its accuracy and utility in factfinding.
>
> Dr. Fichtenbaum’s report is 65 pages long, but he provided testimony only on a handful of pages and his entire direct oral testimony takes fewer than six pages of the more than 290 pages of testimony in the record. [160-165] In his testimony Dr. Fichtenbaum characterizes the University System as “in very good financial condition” and relied on the absence of an underlying change in the Moody’s rating to make that assessment. [163:15-19]

Although I presented the Moody’s rating I did not rely solely on that rating to draw my conclusions. The claim by the University is absurd. Why write a 65 page report if I was only relying on Moody’s. If that was the case, I could have just looked up what Moody’s said and written a 1 page memo. There is no evidence that I relied solely on Moody’s.

I looked at each of the University’s financial statements in detail and then did a summary analysis. The University’s viability ratio and primary reserve ratio both improved in 2021 compared to 2020 as did its net asset score. In fact, the change in net position for the University was $161.3 million. Its ratio of fixed assets to debt improved in 2021.

> As Vice Chancellor Provencher plainly states, Moody’s is not the only credit rating agency, and it is undisputed that S&P has already lowered USNH’s credit rating because of financial concerns directly attributed to reductions in enrollment. [208:13-209:10] In contrast, Dr. Fichtenbaum believes “the University in should be able to manage the declines in enrollment through the use of attrition.” [164:164:4-7] His methodology is also unclear from the record. At one point he states “Well, mostly the data that I use to analyze what’s happening financially at an institution comes from the audited Financial Statements. I will often supplement that, depending on availability of data, with data from IPEDS.” [161:25-162:4] It is unclear from his testimony if he supplemented the University System’s Audited Financials with data from IPEDS in this case. What is clear is that that the Audited Financial Statements from 2020 and 2021 are in the record in their entirety. [U-5] And that Dr. Fichtenbaum’s report does not always accurately reflect those statements. Within Figure 9

on page 39, numbers in the fiscal year 2020 and 2021 columns in the row labeled "Non-operating Rev.(Exp.)" do not belong there and the Total Operating Expense FY20 and FY21 are incorrect – they do not agree with the financial statements. [U-5:39]

A review of Dr. Fichtenbaum's report affirms there are many discrepancies between what he believes may be accurate and the realities faced by UNH. For example, on page 26 of his report, he states "the expenditure of on a building is typically allocated as an expense over a 30-year period" however depreciable life is not always 30 years. [U6:26] His report makes general statements about the ability of universities to use bonds however USNH may not bond on its own. As testified to by Vice Chancellor Provencher, USNH has no statutory authority to issue bonds and debt for any academic buildings, improvements to academic buildings, etc. All those capital funds must come from the State or University funds. [225:7-21]

The argument about depreciation is just pure idiocy and a case of administrators not being able to read the English language. I used the word "typically". That means it is the norm but nowhere did I say always. If I meant always, I would have used the word always. However, I recognize that depreciable life is not <u>always 30 years.</u> That is why I used the word typically.

Further, in his limited testimony Dr. Fichtenbaum states that "the institution has strong cash flows." [163:24] However, in his report he says he believes Moody's scorecard "provides the best indicator of an institution's performance." [U6:58] Moody's scorecard, according to Dr. Fichtenbaum's report, states that USNH has solid cash flow margins except for 2021 and that the weakest area of performance is in the growth of operating revenue. [U5:62] The Moody's assessment also states "there has been a softening in the amount of cash that the University System has on hand" and while it reaffirmed the Aa3 rating it did so with a negative outlook. [U5:62] On page 57 of his report, Dr. Fichtenbaum notes an assumption that UNH's cash flow will rebound. As clearly stated in the presentations of each of UNH's financial experts, this is not going to occur without both strategically growing revenue and reducing the cost structure. [U5:57]

The University has already reduced its cost structure with the early retirement buyout. In particular it reduced instructional spending from 36.3% of its expenses (excluding depreciation) in 2017 to 28.7% in 2021. It is the responsibility of the University administration to "strategically grow revenue" and if they do this then their operating cash flow should improve. It is also true that while they have cut spending on instruction the percentage of spending going to academic support (Dean's Offices and various centers) has increased as has spending on student services and operations and maintenance.

An assessment of Dr. Fichtenbaum's report by UNH Central Finance Director Kerry Scala reveals a number of inconsistencies between Dr. Fichtenbaum's data and the University System's financial statements. These include: on page 9, Figure 1 the fiscal year deferred outflow differs from our financial statements; on page 16, Figure 3 deferred inflows for FY16 and FY 17 differ from our financial statements; on page 22, Figure 5 has numerous inconsistencies in the Assets to Liability calculation5. Because there is no evidence in the record of where Dr. Fichtenbaum gathered or how he manipulated his data, it is impossible for us to respond to specific conclusions he draws.

	Balance at June 30,	
	2017	2016
ASSETS		
Current Assets		
Cash and cash equivalents	$ 66,069	$ 69,154
Short-term investments	146,588	158,413
Accounts receivable, net	21,729	20,288
Pledges receivable, net - current portion	3,187	3,471
Notes receivable, net - current portion	3,293	3,507
Prepaid expenses and other current assets	7,811	8,758
Total Current Assets	248,677	263,591
Noncurrent Assets		
Debt proceeds held by bond trustee for construction purposes	10,718	56,584
Endowment and similar investments - campuses	514,162	459,419
Endowment and similar investments - affiliated entities	216,346	195,890
Pledges receivable, net of current portion	7,106	8,697
Notes receivable, net of current portion	18,094	18,617
Pension assets	993	-
Property and equipment, net	1,119,628	1,077,051
Total Noncurrent Assets	1,887,047	1,816,258
TOTAL ASSETS	**2,135,724**	**2,079,849**
DEFERRED OUTFLOWS OF RESOURCES	**33,067**	**44,552**

[Note: units in table above are thousands of $]

Figure 1 is on page 2 and it is a flow chart not a table so it contains no numbers at all. However, Table 1 is on page 9. Apparently, the administration is incapable of reading since they can't tell the difference between tables and figures. With regard to the substance of their claim, I have no idea what the administration is talking about with regard to total assets and deferred outflows in 2016 and 2017. Above is a photo of their audited financial statement from 2017. For 2016, it shows total assets of $2,079,849 and deferred outflows of $44,552. Add those two numbers together and you get $2,124,401. That is the exact number in the last row of the table in my report on p. 9. Similarly, $2,135,724+ $33,067= $2,168,791. This is just basic arithmetic. If the University is in financial trouble perhaps it is because administrators at the University cannot even perform basic addition. The only thing that is true is that the totals are not in the financial statement i.e., the financial statements do not add total assets and deferred outflows of resources. But a check that my numbers are correct comes from a basic accounting identity that (total assets +deferred outflows)= (total liabilities+deferred inflows) +net assets and from this it follows that (total assets +deferred outflows)- (total liabilities+deferred inflows)=net assets. All of these number tie out in my report. To say that there is no evidence in the record as to where my numbers come from is just a lie. I stated at the outset that the

numbers come from the audited financial statements as well as IPEDS. The University prepares both of these reports.

There is no Figure 5 on p. 22. Again this is a case of the administration or their lawyer being unable to read plain English. There is a Table 5 on page 22. There is a difference between Tables and Figures. They are not interchangeable. If they were we would not need two different words.

What are the numerous inconsistencies. They don't even list one. How can I respond when they won't tell me what is inconsistent.

> Finally, Dr. Fichtenbaum himself acknowledged that some data presented is too narrowly parsed. On page 48, Figure 31 represents the "Percentage Increase in Compensation" for Instruction and Non-Instructional expenses. This Figure goes back to 2002, thought Dr. Fichtenbaum notes the definitions changed in 2010. [U5:48] Under the current definitions, "Compensation for Instruction" does not include any of the following: research, public service, academic support, student services, institutional support, operation and maintenance of plant, auxiliaries or Scholarships & Fellowships. [U5:64-65] [188:14-24] Many of those functional expenses also account for some of the most vital, compensated work undertaken by faculty including research outcomes, activities and services which support research, instructions and service, conference, institutes, general advisory services, professional development, information technology, and supplemental instruction. [U5:64-65]
>
> The University could submit an entire brief on the concerns it has with the content of Dr. Fichtenbaum's submitted report but will instead allow the above to stand as a representative sample. This report is overbroad, makes assumptions based on what is presumed to be the general behavior of universities without accounting for the realities faced by UNH or USNH operating within the State of New Hampshire. We believe it contains numerous inaccuracies and there was insufficient evidence presented to permit us to understand the methodology, making it difficult to assess the credibility of the witness or his report. Therefore, the University urges the factfinder to afford this little weight. For all of the many reasons detailed below, the financial picture of the University System cannot simply be boiled down to "I would characterize the University System of New Hampshire as being, you know, in very good financial condition" and leave it at that. [163:15-16]

From: Rudy Fichtenbaum <rfichtenbaum@gmail.com>
Sent: Thursday, March 24, 2022 10:30 AM
To: Cliff Brown <Cliff.Brown@unh.edu>
Subject: Re: UNH Closing Statement

CAUTION: This email originated from outside of the University System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Cliff,

A couple more things. All of the information in my report came from the financial statements which are contained in the Annual Reports. I also used other information in the annual reports like the notes to the financial statements and that is also where I got enrollment data which is not part of the audited statements but is in the annual report.

Also while Standard and Poor's has downgraded UNHS there is only a small difference in the credit ratings. Aa3 for Moody's is AA- for S&P. S & P downgraded UNHS from AA- to A+ which is equivalent to an A1 Moody's rating. So S & P is basically one level lower than Moody's. The big point that you can see in my report is that if you look at the Moody's ratings over time there is no big change.

I am not saying that a decline in enrollment is not a problem if it continues. But given the cost savings measures the University has taken any further reductions should be manageable through attrition. This is predicated on the University administration doing its job of "strategically increasing revenue."

Best,

Rudy