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In the Matter of Statutory Factfinding involving:

CENTRAL MICHIGAN UNIVERSITY,
Employer,

-and-

SUPERVISORY-TECHNICAL ASSOCIATION, MEA,
Union.

MERC Case No. L97 L-3018

Appearances:

For the Employer: Robert Vercruysse
Vercruysse Metz & Murray

For the Union: Willie Mathews
Uniserve Representative

FACTFINDER'S FINDINGS, OPINION, AND RECOMMENDATIONS

I. INTRODUCTION.

This matter was initiated by the Employer on December 12, 1997, when its attorney filed a Petition for Factfinding with the Michigan Employment Relations Commission. Pursuant to its statutory authority under the Labor Mediation Act, MCL. 423. 210, the Commission appointed the undersigned to hold a public hearing in the matter, to determine the facts in dispute, and to make recommendations public as to the fair and reasonable settlement of all issues in dispute.

Central Michigan University

Benjamin A. Kerner

The theory of factfinding, in a nutshell, is that by making the facts of a labor dispute known to the public, the Factfinder can bring the persuasive force of an outside neutral's opinion to bear on the positions of the parties. The opinion of the neutral must, of course, be based on facts presented at the hearing in the matter. Through his opinion, the Factfinder may entreat the parties "to be reasonable." Through his assessment of their arguments and his sifting of their facts, he may persuade both parties to accept a compromise on some important issues, or he may persuade one party to accede to the other party's position, or he may focus on external points of reference to persuade one party that its view of a contract provision is unreasonable. All of these are within the province of the Factfinder. But his conclusions are merely recommendations—to be reviewed by the public and the parties alike. The parties may adopt his thinking in their own subsequent bargaining. But they are not compelled to do so. MCL 423.210.

There are approximately 115 employees currently in the group represented by this Union in this bargaining unit of supervisory and technical employees. The group is defined by the recognition clause, as follows:

> All regular and provisional full-time and regular and provisional part-time supervisory-technical employees at Central Michigan University, but excluding employees occupying positions of a confidential nature, those employees who are on the student employees' assistance payroll or its equivalent executive, senior administrative officers, administrative officers, clerical employee, maintenance and food service employees, public safety employees, public broadcasting employees, off-campus employee, and temporary employees.

The testimony of Union Local President Duane Barclay illustrated some of the types of work that members of the bargaining unit perform. They perform a wide range of functions from running lab equipment to repairing audio-visual equipment, to working in certain library positions to handling the first-line supervisory responsibility for the Employer involving many areas of operation including clerical, maintenance, food service, and others, all performed at the Mt. Pleasant, Michigan campus of the University.

The general reader should also know that the parties have been signatories to a collective bargaining contract dated 1994-97. It was effective through June 30, 1997. A successor agreement, in the eyes of the Union, should be effective July 1, 1997, through June 30, 2000. The University, on the other hand, believes that the time gone is irretrievable and should not be reflected in the agreement-to-be-formed. Thus, its position throughout these proceedings has been to orient its proposals to start at the time of ratification of the proposed agreement and to continue for 3 years from that date.

In the following opinion, I use the words "Employer" and "University" interchangeably. I use the word "current" language or "current" provision to refer to the language to be found in the 1994-97 collective bargaining agreement, now expired.

II. ISSUES IN DISPUTE.

1. FIRST ISSUE: HOURS OF WORK.

The Employer proposes a revision of Article 20 to permit assignment of persons in the bargaining unit to work on a flexible schedule. To accommodate these schedules, the Employer would also delete Article 20.2.

The Union proposes to keep the present schedule which identifies time of start for each of three shifts.

The Factfinder recommends that management's position be adopted. The reasoning is that flexibility is an important feature of an employer's competitiveness today. The testimony established that Central Michigan University is unique in some respects, but in many other respects it competes with other nearby colleges and universities, including Saginaw Valley State University, Ferris State University, and various community colleges. "Compete" in this context means compete for student dollars. In order to do so effectively, argues the Employer, it must be able to deliver its services effectively and efficiently.

I find that the flexibility inherent in non-traditional shift scheduling, such as is contained in the Employer's proposal, will add to the Employer's competitive advantages in this crowded educational marketplace. The change from fixed shift schedules, though a significant alteration of conditions of work, can and will be accepted by most employees.

2. <u>SECOND ISSUE: SHIFT DIFFERENTIAL.</u>

The current contract calls for shift differentials to be paid under Article 23 in the amount of $0.25/hour for second shift and $0.35/hour for third shift.

The Employer proposes to continue the shift differentials recognized under Article 23.

The Union proposes an upgrade in shift differential pay as follows: $0.50 for second shift work; $0.70/hour for third shift work.

The Factfinder recommends that the parties accept the Union's proposal. While the Employer, under the recommendations I have made, will gain tremendous assignment flexibility including the ability to require 10-hour shifts, or even 12-hours shifts, and swinging start times, it must also be recognized that flexible starting times and shift assignments require adjustments in their lives. The usual form of recognition in our society is money. The flexibility needed by the Employer, though reasonable to request, is also reasonable to pay for. One form of recognition, which I find to be reasonable in this context, is increased premiums for work at premium times.

3. THIRD ISSUE: ASSOCIATION EDUCATIONAL LEAVE.

Under current contract language, members of the bargaining unit who are selected to attend labor relations educational meetings [or other meetings of interest to employees] are given leave time, without pay to do so. The Association is allocated 30 days for use by members of the bargaining unit for this purpose.

The Employer would delete the contract provision [Article 25.1] authorizing leave time for Association educational leave.

The Union proposes to keep the present contract provisions intact and to upgrade the number of days allocated for educational leave from 30 to 50.

The Factfinder recommends that the parties adopt the Union position. There is clearly a benefit to the University as a whole [as well as to the Association in the conduct of its business] in having bargaining unit members who are trained and knowledgeable in areas of employees' common concern, whether that be collective bargaining practices or grievance handling techniques or rights under wage and hour law. Knowledge about these kinds of subjects can reduce grievances, can increase the efficiency of the entire grievance handling system, and can facilitate meaningful and thoughtful change from within the ranks of the organization.

Furthermore, the Association's position on increasing the days available for labor education is not unreasonable for a bargaining unit composed of 115 persons; and, I recommend its adoption as part of the Union proposal on this subject.

4. FOURTH ISSUE: SICK LEAVE.

The current provisions on sick leave allow an employee to supplement workers' compensation reimbursement by utilizing credits accumulated in his or her sick leave account.

The University proposes to end this provision [Article 32.2] based, in part, on its viewpoint that the provision promotes malingering.

The Union would continue to include Article 32.2 in the contract without any change.

The parties have agreed that other modifications of Article 32 are appropriate, including changes in the way the sick leave bank operates, changes in the availability of long-term disability leave for those employees who exhaust their sick leave benefits, and the manner in which bargaining unit members transition into sick bank entitlement. None of these changes are addressed herein.

As to the Employer's request or proposal for change in the available use of sick time to supplement workers' compensation reimbursements, I recommend its adoption. I wish to make clear that I do not endorse the Employer's rationale that the current provision [Article 32.2] promotes malingering. But I do find several independent factual bases for recommending adoption of the Employer proposal: The other two most nearly comparable state-supported colleges, Saginaw Valley State College and Ferris State University, do not appear to have any comparable provisions for coordination of sick pay and workers' compensation reimbursements in their applicable collective bargaining contracts. In addition, as the testimony of Maxine Tubbs showed [Tr. 44], employees have the option of supplementing workers' compensation reimbursement by purchase of low-cost [low-cost, as compared to use of sick time] short-term disability insurance. For these reasons, I recommend the adoption of the Employer's proposal on the one major unresolved item in the sick leave Article.

5. FIFTH ISSUE: RETIREMENT.

Under the current collective bargaining agreement, employees hired before 01-01-96 are covered by the statutory MPSERS plan. In accordance with that plan, employees participate in contributing to their own pensions. The benefits payable upon retirement include not only the pension itself but also subsidized health insurance.

The University proposes a new retirement Plan by which the Employer contributes 4% of base wages to an Internal Revenue Service Section 403(b)-qualified defined-contribution Plan; no employee contribution will be mandated under this Plan. Rather, employees will have the opportunity to supplement their retirement program through voluntary contributions to other tax-deferred investment opportunities.

The Union proposes a similar I.R.S. Section 403(b)-qualified Plan be put in place with defined employer contributions at the level of 12.5% of earned income for each employee in the bargaining unit.

The internal comparables on this subject show that faculty earn 10% contributions from the University towards retirement. The administrative group receive 4% contributions from the University towards retirement. The small NABET [public broadcasting employees'] group earn 12% of contributions from the University towards their retirement.

The external comparables show that supervisory and technical employees at Ferris State University earn 10% contributions from their employer towards

retirement. The supervisory and technical employees of Saginaw Valley State College earn 11% contributions from their employer towards retirement.

Data derived from a 1995 study conducted by an employer group based in Mt. Pleasant provided yet additional data on what employees in the local wage market can expect. This 1995 study showed that there was a wide range of practices in the local area among banks, oil distributors, manufacturers, service operations, health care institutions and other employers in the local wage area. Many employers featured Section 401(k) plans. Three public employers [City of Mt. Pleasant, C.M.C.M.H.S. and Isabella County] featured defined benefit plans; only one private employer [Isabella Bank & Trust] had such a plan. The majority of the private concerns had some Section 401(k) Plan, or a private profit sharing plan, or some combination of those. A typical private employer pension plan [viewing the small universe of 16 local employers featured in Employer Exhibit #6] provided 2 or 3% of base wage as a contribution to a Section 401(k) Plan. Some employers provided only an employer-matching plan [and then on very limited income base] for employees deemed to be supervisory or technical. [Central Michigan Community Hospital, Imperial Oil].

On the other hand, Alma College in Alma Michigan, less than 20 miles distant from Mt. Pleasant provided 8% of base pay in 1995 as an employer contribution to a Section 401(b) type retirement Plan.

The Factfinder concludes that the essential criteria for establishing an appropriate retirement Plan, given the range of practices and options, given the

internal comparables, and given the relevant external comparables would be to establish one comparable to Alma College's [private sector] or to Ferris State University or Saginaw Valley State University [public sector]. In other words, an employer contribution level of 10% is adequate but not overly generous. It is my recommendation that the parties adopt a defined contribution Plan, to require employer contributions of 10% of earned income.

6. SIXTH ISSUE: RETIREMENT SERVICE AWARD.

The current contract provides [at Article 43.3] a formula for the computation of a one-time payout to retiring employees based on years of service, age at retirement, and their highest annual income. Working out the figures for one or two classifications of employees in this bargaining unit, it can readily be seen that the amounts of these Retirement Services Awards are substantial. The University has eliminated the concept of Retirement Service entitlements from many other collective bargaining contracts, and for those where it has not been eliminated, the University has proposed its elimination [the AFSCME group and the POAM group, as well as this Supervisory Technical Association]. In place of a retirement payout, the University proposes to roll-up the current entitlement of employees in the bargaining unit into their base wages [up to a maximum defined by the maximum for employees in that pay range].

The Union proposes to continue the present system of accumulating retirement service monies, payable on a one-time basis upon retirement.

The Factfinder recommends adoption of the Employer's proposal on the issue of Retirement Service Awards. The Factfinder is convinced that the Employer's proposal has merit, is fair, in that it recognizes the current value of what employees formerly were entitled to receive as a one-time retirement payment, and [except for those 18 or 19 high seniority employees who may not receive such payments, Tr. p. 57] provides a substantial current and continuing benefit for most employees.

7. SEVENTH ISSUE: LONGEVITY PAY.

Under the current contract, longevity pay is additive, not rolled into base wages. The details are shown in Article 44.1.

The University proposes a one-time roll-up of longevity pay, with a cap defined by the maximum for employees in that pay range.

The Union proposes to continue the current system with a moderate improvement in the amount of additive longevity pay.

The Factfinder recommends that a combination of the two proposals be adopted as follows:

> Upon ratification, the amount of longevity that employees are eligible for according to the following schedule will be converted to an hourly amount and added to the base wage up to the maximum of the pay ranges.

7-11 years of service:	$ 700
12-16 years of service;	1,000
17-21 years of service	1,300
more than 22 years of service:	1,600

8. EIGHTH ISSUE: PARKING.

The current contract provides for payment of an employer contribution of $50 per year towards parking.

The Employer makes no proposal for the first year, consistent with its overall approach that no new terms and conditions of employment are necessary for a year that is over. But, the Employer proposes to add $0.02/hour to the base wage for the duration of the next collective bargaining agreement in order to defray employees' parking expenses.

The Union proposes that all parking fees, whatever they may be, should be reimbursed outright by the Employer, one parking fee per employee.

The evidence shows that the clerical group does not currently have any paid parking or contribution towards parking. The same is true of the professional-administrative staff. The same is true of the P.O.A.M. bargaining unit. The NABET group currently enjoys $50 contribution towards parking.

It appears from the data on internal comparables that some employees groups get as much as $100 reimbursed towards parking expense. Others get $50 reimbursed towards parking expense. A few groups get no contribution towards their parking expense.

The Factfinder recommends that the parties adopt the status quo, a contribution of $50 per year by the Employer to each employee, to defray parking costs.

9. NINTH ISSUE: TERM OF CONTRACT.

The Employer proposes to make the Agreement a three-year agreement effective beginning on the date of ratification of the Agreement.

The Union proposes making the date of the agreement retroactive to July 1, 1997, the next day following the termination of the last collective bargaining agreement.

The Factfinder has determined that the traditional practice of dovetailing bargaining agreements is a tradition with logic and history to support it. Fourteen or 15 months have elapsed since the expiration of the last collective bargaining agreement. Therefore, by the passage of time, some benefits may have become irrevocably lost to employees. However, most employees can easily recoup most benefits—since they are monetary in nature--and the University can and should expect to pay such benefits. I doubt [and there has been no evidence to show] that the University anticipated a lapse of some benefits due to the bargaining time required to complete this contract. Similarly, there has been no showing that the Trustees budgeted for an increase in pay or benefits. However, collective bargaining-related increases in wages and improvements in benefits are a normal contingency of life for a public University. As the Union's reference to the report of certified public accountant Mr. Perbek makes clear, the University is not in a precarious state of financial health presently. And, one may properly assume that senior administrators of an institution as large and sophisticated as

Central Michigan University have made some provision in reserves or revenues for at least moderate increases in employee costs, such as are proposed here.

In short, both parties operate on the *de facto* assumption that once new terms and conditions have been defined, they will apply seamlessly to employees covered under the previous contract as though there had not been a lapse due only to the time requirements of bargaining. At least in the absence of a showing of dilatory bargaining [a showing that has nowhere been suggested or proven], it can hardly be fair to penalize employees covered by the previous collective bargaining agreement on account of the diligent efforts of their Union to bring fruition to the current bargaining.

Thus, in conclusion on this subject, I recommend that the parties adopt a term of contract defined by the dates July 1, 1997, through June 30, 2000. I recommend that the benefits and terms of the Agreement-to-be-formed should be applied retroactively to July 1, 1997.

10. TENTH ISSUE: WAGES.

The University would improve wages in the second and third years of the proposed contract by allocating 1% of each work group's base pay as an automatic across-the-board wage increase, and by allocating 1% of each work group's base wage for merit increases. Merit increases would be granted to individuals in each work group at the discretion of supervisors, but would total 1% of the work group's total combined base wages.

The Union has proposed wage increases as follows:

in 1997-98:	4.0 % across-the-board;
in 1998-99:	4.0% across-the-board;
in 1999-2000:	4.0% across-the-board.

The comparables show that among C.M.U. groups, only the faculty have bargained a contract to date that incorporates the years in question. Faculty will receive a 3.0% increase in 1998-99 and another 3.0% increase in 1999-2000.

Among external comparables, Saginaw Valley State University personnel in positions comparable to those in this bargaining unit have received or will receive increases as follows:

in 1997-98:	2.50%
in 1998-99:	2.75%;
in 1999-2000:	3.00%.

At another comparable, Ferris State University, employees in technical and supervisory ranks have received or will receive increases in the first two years of their contract [identical to the recommended first two years of the proposed contract here] of 0% to 3% based on reported student credit hours. In 1999-2000, those Ferris State employees will receive a straight 3.0% increase.

I find no support in this record for the concept of awarding part of the pay based on merit. I find support based on the internal and external comparables for wage increases to be granted as follows:

in 1997-98:	2.0%;
in 1998-99:	3.0%;
in 1999-2000:	3.0%.

I commend the above numbers to the parties for their serious consideration.

11. FLEXIBLE BENEFIT PLAN [PREMIUMS].

No recommendation is made on this issue. I did have data, summaries, or evidence sufficient to allow me to make an informed judgment about the sufficiency of the present plan versus the merit of the University's proposal to continue the present Plan with an approximate two percent increase in the share of premium costs. I would think it imprudent to make any recommendation without evidence in support thereof.

12. TWELFTH ISSUE: UNIVERSITY POLICIES.

The parties have bargained about and want to continue to bargain about whether certain University-wide policies should be included in the booklet containing the collective bargaining agreement; or whether, alternatively, those policies should be included and labeled therein as "FOR REFERENCE ONLY;" or whether, alternatively, those policies should be excluded in any form from the booklet comprising the final, printed collective bargaining agreement and from being considered "part of the bargain."

At hearing, the Factfinder expressed some skepticism as to whether this issue should even be considered, i.e., whether it is an appropriate subject for hearing. My reasoning, stated at hearing was that since neither party could appropriately insist on its position on this subject to the point of impasse, it does not appear to be a mandatory subject of bargaining. Supporting this view, it appears to me incontrovertible that whatever the outcome of bargaining is on the issue in question, that outcome will have no impact on:

- whether University-wide policies are applied to employees of the bargaining unit;
- how the University probably will choose to administer those policies;
- the substantive rights of employees under federal or state laws as referenced in the University-wide policies.
- the terms and conditions of employment enjoyed by employees of the bargaining unit.

Thus, the subject of this section is in my opinion a permissive subject of bargaining, and strictly speaking, should not be the subject of a recommendation herein. Rather than make a specific recommendation, I offer the following ideas to guide the parties to conclusion on this issue.

i) There is no way that the Employer can compel the Union to include policies "For Reference Only" in the collective bargaining agreement, if the Union feels that it does not want to include such policies in such fashion. The Employer can publish and presumably has published its policies in another format aside from this collective bargaining agreement.

ii) There is no way that the Union can compel the Employer to include policies, as though they were bargained-for parts of the agreement, against the wishes of the Employer.

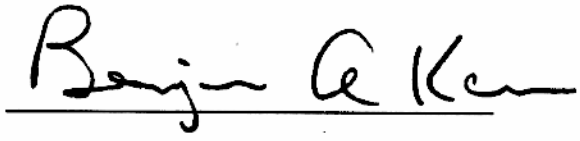
iii) Everyone understands that there is *some utility* in including University-wide policies on such subjects as wage and hour administration, Family & Medical Leave Act administration as appendices to the bargaining agreement. If such policies are clearly introduced in the Appendices to the Agreement as "current University Policies" and are marked "For Reference Only," then it hardly seems likely that any reader of the Agreement--employees, supervisors, courts, or arbitrators--will be misled into believing that such policies are contractual terms and conditions of employment, or that such policies cannot be changed by the University in accordance with procedures applicable generally to the adoption and amendment of University employment policies.

iv) Moreover, if the University were to agree to reproduce some of its employment-related policies as Appendices to the bargaining agreement with the clear designation "For Reference Only," the University would not be prohibited thereby from amending its policies. And, of great importance to the Union, the usual rule applies to the amendment as well as to the original policy: It must be consistent with the terms of the collective bargaining agreement and it must be administered in a way that is consistent with the terms of the collective bargaining agreement.

I commend to the parties and their representatives the view that this issue is *a practical issue*--one of how best to implement and administer the contract--and is not an issue of ideology or of first principles or of economics. The issues can be resolved readily and quickly based on the ideas I have presented here.

III. CONCLUDING COMMENTS.

The above recommendations are meant to achieve a balanced approach to the renewal of the parties' collective bargaining expectations. If one party chooses *to insist on all of the Factfinder's recommendations* that came out in its favor and *to reject all those that did not come out in its favor*, then obviously the benefit of a balanced approach will be lost for both parties. Each party must accept that where its interests did not succeed in impressing the Factfinder as being meritorious, other proposals were considered meritorious; and given the nature of the evidence, which varied on each issue, it will be necessary to accept some "losses" in order to achieve an equitable contract. It is anticipated that through minimal additional bargaining, the parties will find solutions which approximate those outlined above.



Benjamin A. Kerner
Factfinder

Detroit, Michigan
Dated: September 1, 1998