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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE
FACT FINDING BETWEEN:

FERRIS STATE UNIVERSITY

CASE NO. G94 C-3017

-and-

FERRIS STATE UNIVERSITY HALL
DIRECTORS ASSOCIATION, MEA-NEA

Ferris State University

FINDINGS AND RECOMMENDATIONS

APPEARANCES:

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INTRODUCTION

Pursuant to Section 25 of Act 176, Public Acts of 1939, as amended, and the Commissions regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties. The hearing commenced at 9:00 a.m. at the University facilities in Big Rapids, Michigan on April 26, 1996. It was concluded that same day.

PRELIMINARY COMMENTS

This Fact Finding was initiated by a Petition filed by the Union on November 21, 1995. Prior to the filing of the Petition, two (2) mediation sessions were conducted on August 2, 1995, and November 14, 1995, respectively. The parties have negotiated extensively and, but for the identified issues below, the remainder of the collective bargaining agreement has been resolved.

At the hearing, both parties were afforded the opportunity to call witnesses and, indeed, both parties did so. Both parties have also supplied the Fact Finder with extensive documentation in the form of Exhibits and have supplemented the record with detailed Briefs that were provided subsequent to the day of the hearing.

ISSUES

The following issues were identified and placed before the Fact Finder for review and recommendation:

1. Wages.
2. Ability to Challenge Performance Evaluations Through the Grievance Procedure.

BACKGROUND

Ferris State University is a public institution of higher education with its main campus located in Big Rapids, Michigan. It employs approximately 1,300 regular employees, excluding student workers. Of the total workforce, approximately 315 are unrepresented administrative employees. The remaining employees are included in seven collective bargaining units ranging in size from three (3) employees to approximately 500 employees.

The Ferris State University Hall Directors Association is an affiliate of the Michigan Education Association. Presently, the bargaining unit is composed of 11 employees commonly known as Hall Directors. The Hall Directors are responsible for the "total administration" of the University's residence halls. In general, the Hall Directors are responsible for opening and closing the residence halls at the beginning and end of the academic year, for the maintenance of hall safety and security, and for the monitoring of the custodial operations within the halls. The Hall Directors also supervise the student staff including resident advisors, desk personnel and night security. The Hall Directors report to the University's Director and Assistant Director of Residential Life. See Joint Exhibit 20.

In 1995, the 11 members of the bargaining unit were paid anywhere from a low of $5,867.30 to a high of $22,427.98 for their contractual services. (It appears that two or three of those employees at the low end only worked a partial year.) Most of the unit members earned between $12,000 and $15,000 for their Hall Director's responsibilities. Six (6) unit employees supplemented their earnings with summer income ranging from $4,682.00 to $8,190.96. 10 unit employees earned "additional pay" ranging from $84.00 to $5,309.98 for unspecified duties. When added together, the lowest paid member of the bargaining unit earned $5,867.00 in 1995 and the highest paid unit member earned $33,354.04. See

Employer Exhibit 4. The Hall Directors are also entitled to receive certain "in-kind" compensation in the form of housing, utilities and meals which has not been considered as part of the above earnings. These "in-kind" benefits will be discussed further below.

The University and the Union have been parties to a series of collective bargaining agreements over a period of many years at least well before 1988. The most recent agreement between the parties is the 1991-1994 Agreement with a stated effective term of September 21, 1992 until July 1, 1994. Joint Exhibit 9. The parties commenced negotiations for a successor agreement in July of 1994 and, but for the above stated issues, were able to resolve their contractual differences.

Other pertinent factual information will be noted as appropriate in the discussion to follow.

ISSUE 1 - WAGES

The University proposes that, but for the first year of the contract, any wage increases to the bargaining unit members be tied directly to the level of student credit hours in any given year. More specifically, the University proposes the following:

Percentage Increase to Base Salary.

A. The following percentage increments shall be applied to each member's base salary at the end of the prior year:

1. 1994-95 through 9/30/95 - No increase.

2. Effective October 1, 1995, salaries will be increased on October 1 of 1995, 1996, 1997 and 1998, as follows:

   Based upon total student credit hours as reported in the annual HEIDI fall data admission to the State of Michigan:

   >Less than 116,000 = 0%
   >116,000 to 139,000 = 1.5%
   >139,000 to 149,000 = 2.0%
   >149,000 to 155,800 = 2.5%
   >155,800 = 3.0%

B. Base salary is defined for the Section only as that continuing contractual monetary commitment for services rendered according to primary contractual appointment and shall not include any additional monies received that are not designated to become part of said contractual commitment.

C. The percentage increments set out at 14.2A above shall be calculated after immediate past year promo-tion/merit increases are added to base salaries.

D. New faculty hires during each of year of this agreement shall be eligible for Section 14.2A salary increases only if specifically approved for in their initial appointments.

The proposal, as stated, more accurately applies to the University faculty bargaining unit but, as will be discussed below, has also been proposed to the Hall Directors in the instant negotiations.

The Union, on the other hand, proposes that the Hall Directors receive a 1% increase of their 1993/94 base salary for 1994/95, a 4% increase of their 1994/95 base salary in 1995/96, a 3% increase of their 1995/96 base salary in 1996/97, and a 3% increase of their 1996/97 in 1997/98. See Union Exhibit F.

The University appears to argue that, while the Hall Directors deserve an equitable wage adjustment, the present economic condition of the University requires a more modest and "consumer oriented" approach. Several factors are cited by the University in support of its position.

The University submits that in the early 1990's, its leadership began to recognize that the institution would be facing significant organizational and financial problems in the coming years. State appropriations to the University were not increasing as rapidly as operating expenditures. Tuition, room and board charges were rising faster than the consumer price index. To exacerbate the problem, student enrollment at the University was declining. Employer Exhibit 6. This reduction in enrollment was due, at least in part, to the decline in the number of high school graduates and the resulting competition among all colleges and universities for the limited students available. The University felt that prompt remedial action was in order.

The University notes that during the next several years, it implemented a major organizational restructuring that resulted in the elimination of some academic programs and the creation of others that were more responsive to the students' needs and interests. Additionally, the University developed early retirement and other related incentives in an effort to reduce the size of its work force through attrition as opposed to layoffs or terminations. Finally, the University froze the salary levels for a significant number of employees, including nurses, clerical/technical, faculty and administration, at various times during 1993, 1994, and 1995. Many, if not all, of these employees went at least one year without a salary increase. By 1995, as a result of the aforementioned efforts, the University's expenditures were reduced to below 1993 levels while total overall revenues were maintained. Joint Exhibits 1 and 3.

The University further submits that circumstances in its Residence Halls, while generally reflective of the University as a whole, were even more acute. For fiscal year 1992, revenues exceeded expenses by approximately $850,000.00 (5%). Employer Exhibit 1. However, since that time, expenses now regularly exceed revenues because of flat revenues and increasing costs.

The University attributes this, in part, to the declining use of the residence halls by its student population. However, the University also cites the steadily increasing cost of the Hall

Director's compensation as part of the problem. Essentially, the University claims that it is paying an increasingly higher price for services that the students no longer find attractive or necessary.

Around 1994, as a further response to the organizational difficulties it was facing, the University also began to address its financial problems at the bargaining table. The administration believed that the University would have to become more "consumer oriented" if it was to curtail or eliminate the downward slide in student enrollment. In the eyes of the administration, this was particularly important because the University could no longer rely upon State appropriations but instead was becoming more dependent upon revenues from student tuition, room and board. In bargaining with several of its unions, the University introduced the concept of a "results-based" wage increase system. This same results-based system is at the heart of the dispute herein. According to the University, the results-based system is designed to encourage all employees to do everything they can to make the University attractive to students. In this regard, the wage system is directly tied to maintaining or increasing student credit hours; i.e. the more student credit hours generated, the higher the percentage wage increase. The University submits that early indications are that the concept has been successful. In 1995, the University showed an 8.2% increase in freshmen enrollment.

In this regard, the University points out that three (3) organized bargaining units now operate under the identical results-based wage program as well as all of the unrepresented employees. It submits that internal consistency compels the adoption of its wage proposal herein.

Finally, the University asserts that the Hall Directors also receive certain "in-kind" economic benefits that other University employees do not enjoy. These include the free use of a furnished apartment provided by the University, free utilities (except long distance telephone calls), and free meals in the dining hall for the employee and family members residing with the employee. Moreover, the Hall Directors receive comprehensive medical, dental, vision, life and disability insurance coverage. The University notes that according to recent Bureau of Labor Statistics, housing and utilities make up approximately 41% of the "market basket" which is the basis for the Consumer Price Index for All Urban Consumers (CPI-U), food and beverages make up approximately 17% of the "market basket", and medical care makes up approximately 7.5% of the "market basket". Accordingly, the University argues that the Hall Directors have suffered no significant loss in real income or in purchasing power and, to the contrary, have actually exceeded the salary gains made by other University employees who do not enjoy these "in kind" benefits.

The Union, on the other hand, rejects the University's results-based wage proposal and, instead, submits that a more traditional wage increase proposal is appropriate. The Union does not appear to seriously dispute the underlying economic and organizational difficulties presented by the University. See

Union's Post-Hearing Brief at page 3. However, the Union claims that the University has exaggerated its plight. According to the Union, the University has the financial wherewithal to afford the 1%, 4%, 3% and 3% annual wage increases contained in the Union's proposal.

In particular, the Union notes that, according to its analysis, the University had a General Fund balance in June, 1995, of $9,543,095. Joint Exhibit 1 at page 24. This is in contrast to the $6,731,022 General Fund balance that the University had in June, 1992. Joint Exhibit 3 at page 24. The Union further asserts that in June, 1994, the University had a total of $25,949,308 in designated and unrestricted fund balances and that this amount grew to $30,275,639 by June, 1995. Joint Exhibit 3 at page 20 and Joint Exhibit 1 at page 20. The Union indicates that the University now has the discretion and certainly the ability to use these funds to finance its wage proposal.

Finally, the Union asserts that the University has not applied its so-called "results-based" wage proposal evenhandedly; contrary to the University's contention. It claims that while most of the University's employees are members of seven (7) collective bargaining units, only two (2) of those units voluntarily agreed to the results-based wage concept; the unit composed of nurses represented by Teamsters, Local 214 and the unit of clerical/technical employees represented by the Clerical/Technical Association, an MEA/NEA affiliate. (The Union notes that even though the Clerical/Technical Association is an MEA/NEA affiliate, it is an autonomous organization free to pursue its own bargaining agenda. Therefore, the Hall Directors Association should not be prejudiced by the agreements made by Clerical/Technical Association or any other MEA/NEA affiliated group.) The Union further points out that the Ferris Faculty Association (the largest of the organized bargaining units at 500 members) did not voluntarily agree to the proposal but had it unilaterally applied to them by the University after an impasse in bargaining.

In this same regard, the Union notes that although the University contends that it applied the same results-based wage proposal to the unrepresented administrators, in fact many of these same administrators received significantly higher wage increases contrary to the student credit hour formula. The Union points to Jana Hurley, the Assistant Director of Residential Life, who recently received a 31.95% wage increase. The Union contends that the University attempts to disguise these out-of- formula wage increases as "merit pay" or payment for additional job duties. The Union submits that the University cannot require its organized bargaining units to fall in lock-step to the results-based wage increase concept when it cavalierly disregards the same program for its unrepresented administrative staff.

Both parties seem to be in agreement that if the University's results-based wage proposal is adopted, the Hall Directors would likely be entitled to annual increases of 1.5% on October 1, 1995, 1996, 1997 and 1998 based upon the student credit hour data and projections currently available. The University's proposal does not call for a wage increase for 1994/95 through September 30, 1995.

The parties are also in agreement that the use of external comparables, i.e. other area colleges and universities, would not assist the Fact Finder in the analysis of this issue. Accordingly, no external comparables have been submitted by the parties or considered by the Fact Finder.

The Fact Finder initially recognizes that most, if not all, of the supporting data supplied by the parties has not been challenged for accuracy, relevancy or authenticity. The only exception to this comment may be the report submitted by the Union entitled "Review of Financial Reports - Ferris State University" authored in part by Dr. Leroy Dubeck at the request of the Michigan Education Association. See Union Exhibit A. The admissibility and weight of the report has been challenged by the University. Dr. Dubeck and others who participated in the preparation of the report were not in attendance at the hearing and therefore were not available to be called as witnesses for either examination or cross-examination purposes. While I accepted the report into evidence, I am unable to give it much weight due to the aforementioned reasons. Nevertheless, much of the information contained in the report can also be gleaned from other exhibits that have not been challenged. Accordingly, in analyzing this issue, I must assume that most, if not all of the pertinent data is admissible and worthy of detailed consideration.

The University Proposal.

There is no doubt that the University has experienced a significant decline both in overall student enrollment and in student use of the residence halls. In 1991/92, the University had a total enrollment of 12,461 students at its main and satellite campuses. Since that time, total student enrollment has consistently dropped until, in 1995/96, enrollment was 9,767, with 1,097 students enrolled at the satellite campuses (there are no residence hall operated at the satellite locations). This reflects respective annual reductions of 2.69%, 8.46%, 9.07% and 5.03%. In 1991/92, 5,054 students, or 40.56% of the student population, resided in the residence halls. By 1995/96, this number dropped to 3,111 students, or 31.85% of the total student population. This reflects respective annual reductions of 10.76%, 12.75%, 23.35% and 5.46%. See Employer Exhibit 6. The drop in the use of the residence halls appears to be even more acute than the overall reduction in student enrollment. Accordingly, the University's efforts to stem the tide of lost enrollment as well as the resulting loss of revenue is easily understood.

Indeed, the Union does not seem to seriously dispute the crisis that has faced the University since the early 1990's. Fortunately, it further appears that the pendulum may be on the upswing with a reported 8.2% increase in freshmen enrollment in 1995/96.

It is also undisputed that, since 1994, the University has embarked upon a rather vigorous campaign to introduce and sell its concept of "results-based" wage increases. To date, it has been met with somewhat mixed results. Two of the seven organized bargaining units have agreed to accept the same University wage proposal that is at issue here, the nurses represented by Teamsters, Local 214 and the clerical/technical employees represented by the Clerical/Technical Association. These two units contain approximately 215 employees of the University. Employer Exhibit 10. The largest bargaining unit, the Ferris Faculty Association had the University's wage proposal unilaterally imposed after an apparent impasse in contract negotiations. Finally, the University has applied the results-based wage increase program to the 315 or so unrepresented employees. The remaining four (4) collective bargaining groups have not yet embraced this concept.

Based upon these facts, I am unable to agree entirely with the University that its wage proposal has been positively received by most of the employees. Over 800 of the 1,300 employees presently employed at the University have had the results-based wage increase concept unilaterally imposed upon them. Certainly, one cannot claim that this amounts to universal acceptance by the majority of the work force.

The Fact Finder is further troubled by the fact that of the 315 unrepresented employees who fall under this wage program, many of them received more than a 1.5% wage increase at some point during the last two years after the program was implemented. See Joint Exhibits 22 and 23, Union Exhibit B. In fact, a significant number of employees received wage increases of between 2.5% and 5%

while several others received raises between 10% and 15%. I recognize that many of the increases that exceeded 1.5% represented so-called "merit adjustments" or were granted as a result of additional duties being assumed by the employee. It is also true that many of these employees went without an annual wage increase at some time or another over the last three years. However, there is some merit to the Union's argument that even though the results-based wage concept was implemented for unrepresented administrators, the University has apparently found ways to bypass the rather inflexible barriers of the program.

Finally, the Fact Finder notes that under the University's "results-based" wage increase system, a large part of the employees' economic future becomes dependent upon factors over which they have little or no control. It is indeed true that in order to maintain existing students and to attract new ones, the University, its administration, faculty and staff must be able to present a "product" that is valued by the "consumer". I certainly cannot dispute the steps that the University has already taken to make its programs more appealing. I also recognize that employee wage levels in general are often defined by the market place and the value or attraction of any particular product. The University's continued ability to employ the Hall Directors is directly dependent upon student population. Yet, to say that the Hall Directors will be able to determine their future compensation levels through their own self-styled "marketing" appears to be a bit misleading.

The Union's Proposal.

As indicated earlier, the Union proposes annual wage increases of 1%, 4%, 3% and 3% over the life of the contract. The Fact Finder is not convinced that this proposal is the most suitable resolution of the dispute for many of the same reasons discussed above.

The Union does not dispute that the decline in student population presents significant problems not only for the University but for the Union's constituents herein. Indeed, after acknowledging the decline in student enrollment and, in particular, residence hall occupancy levels, the Union notes on page 3 of its Post-Hearing Brief that "The conclusion may be inescapable - fewer students will mean fewer credit hours and fewer students in the residence halls".

The Union also does not dispute the fact that the University has made a concerted effort to introduce and implement the results-based wage increase proposal to all of its employee groups across the institution. While not universally accepted at this point, the University continues to pursue this particular methodology of determining future wage increases and intends to apply this concept from the University President on down. It shows no sign at this point of abandoning the results-based wage increase program.

As indicated previously, I find some merit in the Union's assertion that the University has not strictly applied the results-based wage increase formula to its unrepresented staff and administrators. However, it should also be remembered that most, if not all, of these individuals did not receive an annual increase for at least one year between 1993 and 1995. Similarly, it appears that the organized clerical technical employees' wage scale was frozen in 1993/94 while the organized nurses' and faculty members' wages were frozen in 1994/95. See Joint Exhibits 10, 12 and 19.

I also find particular merit in the University's argument that, unlike other University employees, the Hall Directors enjoy the not so insignificant advantage of various "in-kind" benefits including an apartment and utilities fully paid for by the University as well as free use of the dining hall for the Hall Directors and their resident families. As noted earlier, these items alone can comprise in excess of 50% of the so-called "market basket" that is considered by the Bureau of Labor Statistics as the basis for the Consumer Price Index for all Urban Consumers (CPI-U). These "in-kind" benefits have not been affected by student population or the level of credit hours taken. The University has not proposed a reduction in or the elimination of these unique benefits. Unlike other University employees, the Hall Directors cannot claim that they have suffered a loss of purchasing power at least as it relates to these in-kind benefits.

Finally, I am not persuaded that the University is as flush with financial wherewithal as suggested by the Union. The University has established, without contradiction, that it has been able to reduce its expenditures over the last several years, in part, by foregoing required expenditures for capital assets, maintenance and replacement reserves. As noted by the University, it has been able to "make ends meet" by postponing necessary expenditures. Moreover, the assets in many of the funds, including the general fund, may not be used for auxiliary fund operations such as Residential Life. Therefore, I am not persuaded that the University is now blessed with an abundance of resources to devote solely to employee compensation.

Accordingly, I am not convinced that the Union's wage proposal is entirely supportable.

The Fact Finder's Recommendation.

Based upon all of the foregoing, the Fact Finder is not persuaded that either party is entirely justified in their wage increase proposals. Accordingly, I believe that a compromise recommendation is in order. **I therefore recommend that the Union's proposed 1% wage increase be adopted for the 1994/95 contract year through September 30, 1995. I further recommend that the University's result-based wage increase proposal be implemented effective October 1, 1995, and throughout the remaining years of the contract as proposed by the University. This contemplates that wage increases will be paid according to the formula on October 1, 1995, 1996 and 1997.**

ISSUE 2 - PERFORMANCE EVALUATION GRIEVANCES

Article 13, Section 13.3 states, in pertinent part that "A bargaining unit member who disagrees with an evaluation may submit a written rebuttal which shall be attached to all file copies of the evaluation in question and/or submit any complaints through the grievance procedure."

The University proposes to eliminate the right of a bargaining unit member to advance a disagreement over a performance evaluation through the grievance procedure. The Union proposes to maintain the status quo.

It is undisputed that this particular contractual right has existed in the Hall Directors' agreement for some time. The parties cannot recall the exact date that the language first appeared in a collective bargaining agreement but agree that it precedes, at least, the 1988-1991 Agreement.

The parties further agree that despite the existing language, only one employee, Althea Woodley, has filed a grievance over a disputed performance evaluation. That particular grievance was resolved satisfactorily prior to arbitration.

The University contends that the existing language has a "chilling effect" on a supervisor's evaluation process. According to the University, supervisors are less likely to be direct and candid in their evaluations if they know that they may have to defend them in a grievance or arbitration situation. The fact that only one or possibly two grievances have been filed over disputed evaluations proves that supervisors have been intimidated by this language.

The Union, on the other hand, claims that the grievance procedure affords a unit member a forum in which to challenge an allegedly improper evaluation. According to the Union, if the language has not presented a problem in the past, there is no reason to change it now.

Very limited evidence was presented by the parties on this particular issue.

The Fact Finder is impressed by the fact that this language has not produced any significant number of grievances. Indeed, the parties can only specifically recall one grievance in the last several years and that grievance was resolved, apparently to everyone's satisfaction, prior to arbitration.

Contrary to the University's argument, I cannot conclude that this language has resulted in a "chilling effect" upon a supervisor's evaluation responsibilities. Indeed, it appears from the lack of grievances that the Hall Directors' supervisors have exercised their evaluative tasks responsibly. I am presented with absolutely no evidence illustrating that the supervisors deliberately "water down" their evaluations in order to avoid a grievance. Indeed, if supervisors exercise their evaluation duties in a responsible and professional manner, they should not be intimidated by the fact that their criticism of an employee's performance may be challenged in grievance procedure.

The University further argues that a performance evaluation is not, in itself, discipline and therefore should not be subject to the grievance procedure. I find this view of the grievance procedure somewhat myopic. If a particular performance evaluation is indeed accurate, than it may form the basis for future justifiable discipline. However, if the evaluation does not accurately reflect the employee's performance, than it should not be relied upon as a device to legitimize future discipline. In this regard, the grievance procedure can serve a useful purpose in verifying the accuracy of the performance evaluation before it becomes a disciplinary dispute.

The Fact Finder's Recommendation.

Based upon the above analysis, it is the recommendation of the Fact Finder that the language in Article 13, Section 13.3 concerning the "grievability" of performance evaluations remain intact.

CONCLUSION

The Fact Finder has made the above recommendations after carefully considering and analyzing the evidence contained in the record. I sincerely hope that the recommendations can serve as the basis for resolving this dispute. I ask that you use these recommendations at least as a starting point for further, intensified negotiations. The Fact Finder will be available and will respond to any joint inquiries made by the parties.

Kenneth M. Gonko

KENNETH M. GONKO

DATED: August 9, 1996

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