

MICHIGAN EMPLOYMENT RELATIONS COMMISSIONFACT-FINDERS REPORT

LAKE SUPERIOR STATE COLLEGE

-and-

EDUCATION SUPPORT PERSONNEL  
ASSOCIATION MEAMichigan State University  
LABOR AND INDUSTRIAL  
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The undersigned, Barry C. Brown, was appointed by the Michigan Employment Relations Commission to determine the facts and to issue a report with respect to the matters in dispute. The fact finders hearing was held at the Cisler Center on the campus of Lake Superior State College in Sault Ste. Marie, Michigan on September 4, 1986. The parties summarized their positions at that hearing and, thereafter, the record was closed.

APPEARANCESFor the College:

Harry Bishop, Assoc. Dir. MASB  
Robert McCrory, Dir. of Aux Enter.  
Ruth Genzwell, Dir. Employee Rels.  
Bruce Harger, Dir. of Labor Rels.  
Roger Murphy, Dir. of Budge

For the Association:

Sandra Walker, Uniserv Director  
Trenka Pontus, President  
Urban Payment, Chief Steward  
Debbie Porcano, Negotiations Comm.  
John Krupa, Negotiations Comm.  
Wilmer Lawrence, Negotiations Comm.  
David Cryderman, Negotiations Comm.  
Sharon Duquette, Negotiations Comm.

*Lake Superior State College*

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## BACKGROUND

The employer, Lake Superior State College, is a four-year institution of higher education located in Sault Ste. Marie, Michigan. The 107 support personnel at the college are in a bargaining unit represented by the union, Education Support Personnel Association, MEA. This unit consists of most of the full-time, non-instructional staff at the college, including clerical employees, building attendants, skilled tradesmen, steam plant operators, food service staff, landscapers, etc. This unit has bargained with the college administration since 1973. The last collective bargaining agreement was with AFSCME Local 1909. That union was decertified in 1985 and the MESPA/MEA was certified by MERC. The AFSCME contract expired on June 30, 1985 and subsequently the parties engaged in collective bargaining for many months but many issues remained unresolved.

On November 14, 1985 and March 12, 1986 a state mediator met with the parties in an attempt to bring the parties to settlement on the matters still in dispute. These mediation efforts were not successful and on March 27, 1986 the employer petitioned the Michigan Employment Relations Commission to appoint a fact finder. At the time of the petition there were thirty-five unresolved issues listed in the employer's petition.

The fact finder scheduled a pre-hearing conference on August 26, 1985 at the college. The parties held a negotiation session on August 25, 1986 and they were able to reach tentative agreement on seventeen of those unresolved issues. The fact finder sought

to narrow and clarify the issues and in the process eleven more issues were resolved. The parties also resumed negotiations and they were near to agreement on some matters but after many hours of good faith bargaining two economic issues and six non-economic issues remained at impasse. It was these eight unresolved issues that were the subject of fact finding on September 4, 1986.

## OVERALL IMPRESSIONS

There was a strong negative reaction in the bargaining unit when the AFSCME negotiators agreed to minimal wage increases and a cap on the base for longevity pay in 1983. The college had pointed to dropping enrollment and reductions in both state and federal funding to bring about these modest economic gains. The members said that this was regarded as a "concessions" agreement and it was considered a prime reason for the decertification of AFSCME.

The employer finds itself in a very competitive market in which various higher education institutions seek the enrollment of students. The school administrators believe that in addition to the quality of the instruction in the institution, the cost of tuition and room and board is a strong factor in determining where a student will enroll. Thus they seek to keep personnel costs down and to maintain a high number of student employment opportunities so that the costs of school may be defrayed in part by wages from on campus jobs.

The employees quest to catch up from the perceived "concession" contract of 1983 and the delays in reaching a new agreement have created very high expectations for the union's bargaining committee. The employer's fears about the uncertain continuation of the present level of both federal and state funds and their concern about the high relative cost of room and board rates at LSSC have created a strong conservative response on the part of the employer's bargaining committee. It is this clash of objectives that has

prolonged the negotiations and left so many issues unresolved.

Several of the language change proposals made by the employer were said to be designed to fit the contract language to actual current practice or to give the administration more flexibility in support operations on campus. However, the union regards such changes with suspicion because the new language seems to permit or even encourage changes in long time protective practices. The members are said to feel insecure and threatened by new management approaches seemingly intended to erode the jobs in the bargaining unit. The employers use of contracted management firms accenuates this concern because these "outsiders" are perceived as insensative cost cutters who will do anything for a profit.

In this context of mutual distrust the negotiations have dragged on. Both bargaining teams have members who regard concessions as signs of weakness. However, the parties have shown recent signs of movement and concilliation. Success on one issue has lead to agreement on another. A new college president and a new Director of Labor Relations are changes viewed with optimism by both parties. The fact finder also believes that a new collective bargaining agreement can be promptly adopted by the parties if the recent settlement momentum is maintained.

## FINDING OF FACT AND RECOMMENDATIONS

The fact finder will present below each party's proposal on each unresolved issue and then give his recommendations and a short rationale.

### I. EMPLOYMENT OF STUDENTS

#### A. UNION PROPOSAL:

The union proposes the retention of the present language (Sec. 51) as follows:

##### Section 51. Employment of Students

It is recognized by the Union that as a matter of policy the Employer is committed to provide work opportunities for students who by definition are excluded from the bargaining unit. Nothing contained in this Agreement shall be construed to impinge upon that policy. Specific duties customarily performed by a bargaining unit member shall not be performed by student employees to the extent that it results in the bargaining unit employee's layoff or removal from a classification. Neither shall an employee be required to take a vacation to provide employment for a student. Employment of students shall not deprive bargaining unit employees of overtime as provided for in this Agreement, except as required for special events and food trucks in the Food Service District. However, skilled duties of Cooks and Bakers will not be performed by student help, nor will students be allowed to operate any equipment over fifteen (15) horsepower (except light vehicles when used for transportation of personnel, supplies, or equipment to and from job sites).

#### B. COLLEGE PROPOSAL:

The employers proposal is the same for the first four sentences. However they would delete the last two sentences regarding the deprivation of overtime and the exclusion of certain specific duties from student employment.

C. RATIONALE:

The college should continue to provide jobs for students. The present language has not been a bar in student employment. In fact the number of students employed in 1986 is at an all time high even with no significant increase in enrollment. The college must always keep a core of regular full-time employees because students are inexperienced and transient. Thus the student employment level should be in general proportion to the rate of employment of unit personnel.

D. RECOMMENDATION:

The fact finder was not convinced that the present language of the contract has presented a barrier of student employment. There have been practices which have developed over the years concerning the meaning and application of this provision. There has never been a "guarantee of overtime" in the past interpretations of these terms. For all of these reasons the fact finder recommends that this provision be readopted as presently written.

## II. EMPLOYMENT OF SUPERVISORS

A. The union proposes the retention of the present contract language (Sec. 52) as follows:

### Section 52. Work of Supervision

Supervisory employees shall not perform work of any hourly rated job classification except: (1) in emergencies, (2) in the instruction of training of employees, (3) testing materials and production, (4) in the performance of necessary work when production difficulties are encountered and regular employees are not available or qualified. (In no event will supervisory personnel be utilized for work to prevent payment of overtime, unless regular unit employees refuse overtime or do not have the ability to do the work.)

B. The employer proposes that the following language be adopted:

Supervisory employees shall not be utilized in hourly rated job classifications to prevent payment of overtime except: (1) in emergencies, (2) in the instruction or training of employees, (3) testing materials or production, (4) for incidental or casual duties of a short duration. Work of supervisors will not cause the reduction in normal work hours or the lay off of any bargaining unit member.

### C. RATIONALE:

Supervisors are barred from the bargaining unit and they should not be used so as to deprive a union member of a job. Therefore any work by a supervisor should be of short duration and in limited circumstances. The present contract language is confusing in that it seems to allow some exceptions to the rule that supervisors may not do bargaining unit work and then those exceptions are limited. This needs to be cleared up.

### D. RECOMMENDATION:

The fact finder recommends that the employers proposed new language be adopted. It apparently provides the same restrictions on unit work by supervisors but is clearer and not ambiguous.



### III. REDUCTION IN SCHEDULE

#### A. UNION'S POSITION

The union proposes that the present contract language be retained as follows:

In an attempt to provide full weekly work schedules, employees will be offered alternate work assignments if a reduction in hours of their regular assignment is necessary. This work will be offered at their regular rate of pay, or the rate of the alternative assignment, whichever is higher. Such reduction in scheduling shall not cause the work week to fall below 38 hours for any employee. All hours worked by an employee outside his/her district will be deemed to have been worked in his/her district.

If an employee does not desire these alternative assignments, he/she may elect to take vacation or leave without pay to protect his/her employment and benefit status provided this is applied for two (2) weeks in advance, or upon notice by the Employer of alternate work assignment. If an employee has not accrued enough vacation time to allow him/her to take the vacation option, the employee may borrow the time from a "vacation bank" which will be set up by the employer. The maximum amount of time that may be borrowed will be limited to one year's vacation accrual. This must be applied for in advance on forms supplied by the Employer. Time borrowed will be paid back from future accrued vacation time.

If an employee desires a voluntary reduction in scheduled work hours, he/she may request the reduced schedule in writing from his/her supervisor with one copy being sent to the Local President. Benefits will remain the same as delineated in other sections of this Agreement. It is understood that the College departments must have certain staffing to provide the level of service required for optimum operation. Therefore, all requests will be carefully evaluated and approval by the President will be necessary for each request, with copies to the Local President. An employee may request reinstatement to his/her original schedule at any time and it will be granted. However, requests for changes in schedules are limited to two per fiscal year.

The Employer may change the employee's schedule back to his/her original schedule if necessitated by the workload, with written notification to the employee and Local President.

B. COLLEGE POSITION:

The college has changed this language slightly as follows:

In an attempt to provide full weekly work schedules, employees will be offered alternate work assignments if a reduction of more than 2 hours of their regular assignment is necessary. This work will be offered at their regular rate of pay, or the rate of the alternate assignment, whichever is higher. All hours worked by an employee outside his/her district will be deemed to have been worked in his/her district.

If an employee does not desire these alternate assignments, he/she may elect to take vacation or leave without pay to protect his/her employment and benefit status provided this is applied for two (2) weeks in advance, or upon notice by the Employer of alternate work assignment. If an employee has not accrued enough vacation time to allow him/her to take the vacation option, the employee may borrow the time from a "vacation bank" which will be set up by the employer. The maximum amount of time that may be borrowed will be limited to one year's vacation accrual. This must be applied for in advance on forms supplied by the Employer. Time borrowed will be paid back from future accrued vacation time.

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The Employer may change the employee's schedule back to his/her original schedule if necessitated by the workload, with written notification to the employee and Local President.

#### C. RATIONALE:

The employer has said that the present language is meaningless because some staff is now working a 38 hour week and this provision could not be applied to them. The union replied that only one employee is now scheduled to work 38 hours a week. They said that the college has tried to hire two other employees for less than full-time and the union has filed an unfair labor practice charge about this alleged unilateral change in contracted working conditions.

#### D. RECOMMENDATION:

The fact finder recommends that the present language be continued. The problem suggested by the employer cannot be significant because the vast majority of the bargaining unit employees are scheduled to work forty hours every week. The decision by MERC and future bargaining will have to set the direction for changing this provision.

### IV. PARKING

#### A. THE UNION'S PROPOSAL:

The union proposes that the present language be continued as follows:

No parking fees shall be charged to employees within the bargaining unit for parking on campus one (1) registered vehicle at any time in available adjacent parking areas during the term of this Agreement. Violation of this restriction may subject the individual employee to revocation of the free parking privilege. New employees must register their cars at the time of hire. All other employees must register their cars each year during the annual registration period. All employees must display on their cars at all times the properly affixed parking permit decal. This Agreement does not exempt any employee from the payment of any parking fines for violation of published parking regulations.

B. THE COLLEGE PROPOSAL:

The employer would delete the word "adjacent" in the present language.

C. RATIONALE:

The college asserts that it is becoming more and more of a pedestrian campus and thus parking will be often available only on the periphery of the grounds and not next to the college buildings. They say they have already had employee complaints when new campus buildings and grounds did not provide "adjacent" parking. The union said that there are no known plans by the college to alter the present parking arrangements during the term of this contract, so there can be no problem with leaving the contract language unchanged for now.

D. RECOMMENDATION:

The present language has been in effect for a long time and many employees do not now have parking available right next to the building in which they work. The employees in this bargaining unit are so skitterish about change of any sort that it would be best to continue with present language. Eventually all college employees should have the same parking privileges at locations which are not unreasonably distant from their place of employment. However, the exact terms of a new provision should be negotiated by the parties in the future.

V. DURATION OF CONTRACT

A. UNION'S POSITION:

7/1/85 to 8/31/87

B. EMPLOYER'S POSITION:

7/1/85 to 8/31/88

C. RATIONALE:

The college says that fourteen months of the contract terms have already expired and that the parties would have to return to bargaining too soon if the present contract were to expire in 1987. The union said that it has already agreed to extend three months beyond its original proposed termination date and that is sufficient to give a full year under the new contract.

D. RECOMMENDATION:

The pragmatic approach is to go for a shorter term contract now because it is easier to sell both sides and because a new bargaining agent will want to get some time in under a contract before they can face some of the long term issues now raised by the college. The fact finder recommends that the 1987 expiration date be adopted.

VI. LONGEVITY PAY

A. THE UNION'S POSITION:

The union seeks the present language with the removal of the \$10,000.00 cap on the annual earnings base used in computing longevity pay.

B. THE EMPLOYER'S POSITION:

The college would continue the present longevity pay provision

C. RATIONALE:

Many employees in the bargaining unit have gross annual earnings in excess of \$13,000.00. The biggest "concession" they made in 1983 was to give up from 2% to 8% of the amount of their total wages over \$10,000.00. The union said that a total removal of the cap is a "must" in these negotiations.

The employer has argued that some of their employees will get up to \$320.00 more annually if the cap is removed. They say it is simply too costly to grant the unit this demand.

D. RECOMMENDATION:

The employees were already being paid their 1985 longevity pay on the basis of the terms of the expired AFSCME contract. The five plus year employees got \$200.00 and the most senior employees got \$800.00. Thus under the employer's proposal there would be no cost in 1985 and under the union's proposal the majority of the unit members would get from a few dollars to more than \$300.00. The employer calculates the cost of uncapping the base for longevity pay to be six cents per hour for all of the employees in the bargaining unit.

The fact finder has examined closely the longevity pay programs at other colleges throughout the state. Several schools (Grand Valley, Oakland, etc.) offer no longevity pay at all. Most others had a salary cap (For example Central Michigan \$13,000.00, Michigan State \$9,500.00, Wayne State \$7,000.00, etc.). For some schools the salary cap was the base salary for the job (Ferris, Saginaw Valley, etc.). Other schools give fixed dollar amounts (Macomb, Schoolcraft, etc.). Only Eastern Michigan has a program like that at LSSC. The fact finder determines that the uncapped longevity pay base is not typical in comparable employment circumstances.

The fact finder believes that when the \$10,000.00 cap was adopted in 1983 that figure was much closer to the average annual earnings for the employees in the bargaining unit. The employees

should be able to recoup some of their 1983 concession but it is not economically feasible to try to do it all at once. For these reasons the fact finder recommends that the 1985 cap be set at \$12,000.00 and the 1986 cap be set at \$13,000.00. For many employees this figure will not represent a cap at all. For others, most of their annual wages will be included. On the other hand the costs for this benefit are manageable and predictable for the employer.

#### VII. WAGE PROPOSAL

##### A. UNION'S PROPOSAL:

7/1/85 to 06/30/86 - .50 per hour

7/1/86 to 12/31/86 - .40 per hour

1/1/87 to 08/31/87 - .40 per hour

This represents a 7% increase in each year of the contract.

##### B. COLLEGE'S PROPOSAL:

7/1/85 to 06/30/86 - .33 per hour

7/1/86 to 08/31/87 - .24 per hour

This represents a 4% increase in the first year and a 3% increase in the second year.

##### C. RATIONALE:

The union noted that the 1984-1985 base figure for wage costs is \$1,530,392.00. The employer agreed on this amount but they also said that for every dollar of increase in direct wages there is an .18 additional cost for wage driven fringe benefits. They also said that the new benefit package is a "me too" copy of the faculty program and it will add an additional .18 per hour to the second year of the contract increasing their offer for that year to 5.5%.

The union submitted a summary which showed that several other colleges offered their support employees similar fringe benefits. However the total package at Lake Superior State College was one of the most comprehensive offered at any state college. This is particularly true with the addition of the dental program in the current agreement. The improved life insurance plan will provide an added cost of 2 1/2 cents per hour. The improved dental plan will add a cost of 11 cents per hour; the improved shift differential pay will provide an added cost of 1 1/2 cents per hour; the improved vacation schedule will provide an added cost of 3 cents per hour. These new benefits add a total of 18 cents per hour to the total package offered by the employer.

The employer offered evidence that consumer price index for the first year of the contract was 3.8% and for the second year of the contract it was only 1.2%. Further they noted that the unemployment rate in the Eastern Upper Peninsula of Michigan has been as high as 24% in 1985 and it is still running at a 17% average rate. They said therefore that the jobs at the college are highly valued and actively sought when one comes available. Finally, the employer showed that the local contract settlements for education support groups have averaged about 4.5% in both 1985 and 1986. The union did not dispute these figures but they argued that K-12 school district units were not comparable to a college support group.

The college has not indicated any inability to pay the demands now sought by the union. However, they have asserted that the overall costs of the economic package now demanded by the union would exceed all reasonable bounds and expectations



and it would likely cause the employer to have to decrease its reserves. Even though present reserves are at approximately \$3,000,000.00 these funds are largely earmarked for particular purposes or contingencies. More importantly excessive labor costs can inflate room and board charges, etc. and make the college undesirable for enrollment and then declining student population will harm the school and reduce the security of continued employment.

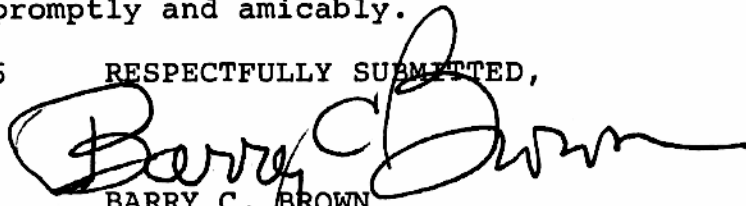
D. RECOMMENDATION:

The fact finder recommends a .40 increase (approximately 5%) on 7/1/85 and again on 7/1/86. There should be only two increases under this contract. It is recognized that the second year is 14 months in length. However this wage package would provide a substantial overall economic package. The employees will gain considerably over the rate of inflation. There will be some recovery of the reduced gains of 1983. On balance this settlement will provide realistic future labor costs for the college and it is consistent with the overall economic package now enjoyed by comparable bargaining units.

The fact finder has presented all that is set forth above in the expectation that his findings and recommendations will bring about a settlement and the adoption of a new collective bargaining agreement. It would clearly be in the public interest if this matter could be settled promptly and amicably.

DATED: September 10, 1986

RESPECTFULLY SUBMITTED,

  
BARRY C. BROWN  
Fact Finder