

Fact Finder: Stanley T. Dobry

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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY FACT FINDING TRIBUNAL

In the Matter of the Fact Finding between:

LAKE SUPERIOR STATE UNIVERSITY,

-and-

MERC Fact finding
Case No. G 85 G-765

LAKE SUPERIOR STATE UNIVERSITY
EDUCATIONAL SUPPORT PERSONNEL
ASSOCIATION, MEA/NEA

Stc

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Lake Superior State University

FACT FINDER'S REPORT AND RECOMMENDATION

I. APPEARANCES

For the Employer:

Michigan Association of School Boards
By: Bruce Bigham Association Executive Director

For the Association:

Sandra Walker Uniserv Director, and
Sandra Letson, MEA/NEA

II. INTRODUCTION

The present agreement expired on August 31, 1987.
The parties met on September 22 and October 13, 1987, with a
state mediator.

The employer filed a petition for fact finding
dated October 27, 1987. On December 7, 1987, the Michigan
Employment Relations Commission (hereafter "MERC") appointed
the undersigned as its statutory agent. A hearing was
scheduled and conducted on January 25 and 26, 1988. Exhib-
its 1 through 70 are primarily the employer's; numbers 101
through 156 are the Association's. Post hearing briefs were
exchanged through the fact finder.

As a personal note, the parties put together comprehensive presentations. This has facilitated understanding of their positions, and the meaning of the voluminous record which was created in two long days of hearing. It is my task to find and make principled recommendations based upon the facts as I find them to be.

Seven unresolved issues remain: (A) Article II, Reclassification of Building Attendants II from pay level IV to level V; (B) Maximum vacation accumulation for employees after 14 years of service; (C) Language relating to the present dental insurance provision; (D) Cap on the present longevity pay schedule; (E) Retroactivity; (F) Duration of agreement; and (G) Hourly rates of pay.

The employer, Lake Superior State University (LSSU) is a four year institution of higher education located in Sault Ste. Marie, Michigan. It has about 310 employees. The union, Education Support Personnel (ESP) represents approximately 104 support personnel, consisting primarily of full time employees. Their classifications and jobs vary, and can be divided into three groups: (1) clericals include secretaries, special clerks, Department Secretaries, bookkeepers, file keepers, etc.; (2) custodial and maintenance employees include building attendants, skilled trades, steam plant operators, plumbers, heating and cooling repair, carpentry, etc.; and (3) food service employees, who prepare 3 meals per day, do cleanups and set ups, catering, banquets, and run a snack bar.

This is the second round of bargaining between LSSU and ESP, following the decertification of AFSCME Local 1909 in 1985. The initial agreement between these parties was reached after approximately 15 months of negotiations, following the issuance of a fact finder's report.

III. THE MERITS

A. RECLASSIFICATION OF BUILDING ATTENDANT II POSITIONS

Position of the parties:

The association believes that Building Attendant II employees are improperly classified.

The employer disputes the jurisdiction of the fact finder, since the rules of negotiation limited the issues. This issue was not raised until August 17, nearly one month after the required exchange of proposals. The employer states that the record does not support the association's request on the merits. There is no evidence that the reclassification process has been invoked, and there is no basis to presume that this procedure will not fairly evaluate a request.

Discussion:

The employer's jurisdictional argument is denied. It is understood that the demand may be outside the scope of the agreement. However, since the adoption of a fact finding recommendation as a settlement is a voluntary process, technical constructions ought not to drive it. If there is a genuine complaint that should be addressed

through collective bargaining, then it should be addressed, not submerged.

The record, however, does not support the association's request. There is in place a reclassification process that may adequately address these problems. If the reclassification process proves unsatisfactory to the association, it can file a grievance. But there is no evidence that it is incapable of working, or that it is inherently unfair. After a request for reclassification has been processed, the parties will be in a better position to address the individual needs for reclassification, and any perceived infirmities in the process.

In short, to paraphrase John L. Lewis, late President of the United Mine Workers, 'if it ain't broke, don't fix it.' The fact finder recommends that the current contract language be kept in place, but that the association be granted the immediate right to file a request for reclassification, and grievances along the way should they become necessary.

B. MAXIMUM VACATION ACCRUAL

Positions of the the parties:

The association seeks an increase in the maximum vacation accrual:

"Maximum vacation shall accrue to employees in the bargaining unit as follows:

*during the first year of employment, one day per month or 3.7 hours per pay period.

*during second through seventh year of employment, 1½ days per month, or 4.6 hours per pay period.

*during eight through fourteenth years of employment, 1½ days per month, or 5.6 hours per pay period.

*after fourteen years, 2 days per month, or 7.4 hours per pay period. [Emphasis indicates change]

"Employees shall accrue vacation time in proportion to straight time hours paid each pay period. Vacation time shall accrue to employees on a bi-weekly basis. Unused vacation time shall not be accrued beyond thirty-six (36) days."

The employer proposed maintenance of the present benefit.

Discussion:

Vacation benefits vary within the university (Exhibit 62).

All other twelve month employee groups at LSSU receive 21 or 24 days annually, which are available at least 9 years earlier than the 21 days now granted the ESP unit .

Only 12 month faculty and top level executives within the Administrative/Professional group receive 24 days of vacation per year. Faculty on nine month appointments receive no vacation. Exempt and non-exempt staff within the Administrative/Professional ranks, hourly rated employees outside of the ESP bargaining unit, and ESP unit members presently receive a maximum of 21 days per year.

The university has objected to the consideration of "other state universities outside of the labor market." More will be said about this in discussion the wage issue. However, comparisons to them are a mixed bag, to say the least (Exhibits 63 and 107). Maximums range from 18 to 30 days. Of 13 state supported universities in Michigan, 11

were within the range of 20 to 24.¹ Excluding LSSU, the average maximum was about 22.2 days; average vacations at 15 years is around 21.33 days; 16 years 22.08 days.

Further, comparison to twelve month employees in the organized tri-county school districts is interesting. (Exhibits 59, 60, 61 and 154):

District	Years of service	Number of days (vacation/leave)
Brimley	after 5	15 days (maximum)/3 personal
Detour	after 10	15 days (maximum)/4 personal
I.S.D.	after 7	20 days (maximum)/3 personal
Pickford	after 15	1 day for each year of service to a maximum of 25/2 personal ²
Rudyard	after 15	20 days (maximum)/3 personal
Sault Ste Marie	15-19	23 days/3 personal
	20 and over	25 days (maximum)/3 personal
Whitefish	After 5	15 days (maximum)/3 personal
Average for Max.12.66		19.75 days maximum/3 personal

As proposed, the increase would have an immediate impact on 27 employees, at an annual cost of \$4,049.75, plus \$800.25 in wage driven fringe benefits, for a total cost of \$4,850 (See Exhibit 35).

There are several considerations:

(1) Achieving a reasonable maximum vacation accrual is a laudable goal. It rewards longevity, which maintains a base of experienced employees and a stable work force. This is in the employer's interest, and the employee's too.

¹In compiling this, Western Michigan University was assumed to have an average maximum of 22.5 days (Clerical getting 25 days; Food Service and Maintenance getting 20).

²Deducted from sick leave.

(2) As a first orbit of comparison, the fact finder believes that comparisons within the employer are valid. In making such comparisons, however, one must be mindful that there are legitimate distinctions between employees, e.g., how long they work each year.

However, it is the fact finder's belief that distinctions in fringe benefits -- like vacations -- should be based primarily upon length of service, and not upon job classification. The need for a vacation seems largely unrelated to the classification of a job. Distinctions between classifications should be delineated primarily in the base wage. To the extent one is creating class distinctions in fringe benefits, especially wage driven fringe benefits, then disparity in wages (or wage increases) has a compounding effect that increases the distance between the lower and higher paying jobs.

Moreover, the fact finder is applying the association's plea that these employees be treated as well as others at the university. My recommendation does not redress the totality of the disparity, but practicality and limitations for fiscal responsibility dictate that this be done incrementally.

(3) The union has not requested a change in vacation accruals earlier than the fifteenth year. It is fair to note that administrative/professional staff receive 21 days per year in their seventh year, a status unavailable to the ESP until their fifteenth year.

To conclude, an adjustment in maximum vacation days is justified.³ The fact finder adopts the union's proposed new language as his recommendation.

C. DENTAL

Positions of the parties:

The administration proposes to change Section 42, Dental, to add the following emphasized language:

"Effective 30 days from the date of ESP/MEA/NEA ratification upon submission of a written application, the College shall provide each full-time bargaining unit member and their spouse and single children dependents, as defined by the United States Internal Revenue Service, a dental plan in the same manner and to the same extent as the Faculty Association.

"The Employer reserves the right to select the underwriter with no reduction in benefits. All claims are subject to the provisions of the insurance underwriter. Any and all benefit disputes are expressly barred from the scope of the Grievance procedure and therefore from the jurisdiction of an arbitrator.

"If the employer increases the dental coverage benefit for the Faculty Association, it will increase the benefit for employees in the bargaining unit in the same manner and to the same extent during the term of this Agreement."

The Association states that the language was left out deliberately from the last round of bargaining, and was not an "inadvertent omission" as claimed by the employer. It is said that the clear and definite language that is in place outweighs any minor advance in conformity and "minor housekeeping" as urged by the employer.

³ As background, Part E of the current labor agreement states "the employer may elect to close down any and all of its operations and schedule vacations during the close down period." Thus, some of these vacation days are used for purposes such as covering Christmas break, without loss of pay due to a shut down.

Discussion:

The dental language was added after the fact finding in 1985, which was the culmination of 15 months of bargaining.

None of the existing insurance provisions (Sections 41-44) specify a particular insurance underwriter.

The present dental provisions require the ESP be given a "me too" as to any increase in dental benefits for the faculty. Similar provisos exist for hospitalization, life and long term disability insurance. The portion of the proposed language which identifies the right of the employer to select the underwriter, in essence constitutes a clarification which logically accompanies the duty of the employer to parallel the plan specifications provided to the faculty.

The remainder of the proposed language addresses matters which rest outside of the employer's control. By way of illustration, any claim submitted by an employee which is rejected by the underwriter is a matter between the employee and underwriter. Any such dispute would not be within the arbitrator's authority at present, since the insurance underwriter is not party to the arbitration provisions of the master agreement. To this extent, the second and third sentence in the proposed new paragraph constitute a clarification, not a substantive change.

Moreover, to suggest that the dispute is not subject to the normal grievance procedure, including arbitration, is not to suggest that the employee or the union is

without remedy. Plainly, since these disputes are not within the arbitrator's jurisdiction, they are the proper subject of a court proceeding, should the underwriter fail to cover losses within the scope of the coverage. Moreover, the employer itself would be liable, if the contractually required coverage was not provided by the underwriter.

Additionally, the fact finder has adopted, as a general principle, the notion that this bargaining unit is not deserving of second class treatment. Therefore, it ought to have the same language restrictions as other units.

To conclude, the employer's position is adopted as the fact finder's recommendation.

D. CAP ON LONGEVITY

Positions of the parties:

The ESP seeks to increase the present longevity pay system cap from \$13,000 to \$15,000.

The association says this is an emotional issue, which represents a measure of the employer's recognition of the worth of long time employees. The \$10,000.00 cap reflected a dollar amount approximating the average salary at that time. Accepting the employer's proposal of no change would further diminish the longevity concept, and erode the deteriorating labor relations between the parties. Although these university employees may not have advanced degrees, they are entitled to dignity and respect.

The employer maintains that the cap was not intended to reflect the average annual salary of unit

members -- the existence of cap language negates such an inference. No other employees at LSSU receive longevity pay. A comparison of longevity plans in the relevant labor market reflects the ESP plan already exceeds all reasonable expectations. Therefore, the cap should be maintained.

Discussion:

75 ESP employees are eligible for longevity pay. Costs of the proposal are \$4,750 (See Exhibits 55 and 114). The employer maintains, however, that wage drive fringe costs of \$795 should also be included, the total cost being \$5,545 to increase the cap from \$13,000 to \$15,000.

Only the ESP unit receives longevity pay plan.

The present cap yields maximum payments ranging from \$260 to \$1,040. The ESP proposal would provide maximum benefits of \$300 to \$1,200 (See Exhibit 55).

It would therefore appear that this longevity plan is the best in the tri-county area. Many of the employers have no longevity plan, although a number of them are unorganized or at least unaffiliated. In most instances, these plans yield maximum payments of \$500-\$600 (Exhibits 56 and 57).

The record is devoid of any proofs regarding longevity plans for other state supported universities.

Therefore, based upon the comparables in the record, neither labor market considerations nor internal comparisons within the university support an increase.

This is not a new question. This provision has a history, succinctly laid out by Fact finder Barry Brown (Exhibits 44 and 113), who stated:

"The fact finder believes that when the \$10,000.00 cap was adopted 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."

The supposed correlation of maximum wages and longevity is the crux of the association's position.

The 'manageability' of the longevity pay expenditure is at least open to question. The employer is expending \$30,490 for longevity payments (Exhibit 55).

More significantly, this issue does not exist in isolation.

It must be understood in relation to the wage package, as it is a specialized form of compensation. The result here, and in Barry Brown's decision, must be put into the context of achieving a settlement with a wage structure acceptable to both parties.

It must also be related to the compensation of other employees of the university. This is a form of compensation unavailable to other employees of the university. Expansion of this benefit would foster the wrong-headed notion that these employees should be treated differently than other employee groups. In principle, the fact finder

disagrees with that: the union gets both the benefit and the burden of that triumph.

Finally, putting more money into longevity obscures the basic fact of a wage increase, by putting it into a different category.⁴

For all of these reasons, the fact finder does not recommend an increase in longevity. The language should be maintained as is.

E. RETROACTIVITY

Positions of the parties:

The employer asserts that any wage increases should be limited to those persons presently on the pay roll at the time of the agreement.

The association proposes that the contract in its entirety be retroactive to September 1, 1987.

Discussion:

It is undisputed that the employer was required to pay an additional \$9,372.62, as a result of the 1986 settlement, for retroactive pay and benefits for employees who were no longer on the payroll (Employer Exhibit 53). This was inclusive of longevity and retirement benefits.

⁴This encourages other parties to overlook or ignore the totality of the wage increases. By concentrating attention on wages at one bargaining session, then longevity the next, a party can effectively use disparate changes in comparables to "whip saw" results that are not warranted.

During this round of negotiations, two employees have left the bargaining unit due to resignation and retirement.

The history of this relationship is that the parties have taken inordinately long to resolve their disputes. This proceeding is no exception.

The fact finder does not believe that it is appropriate to make the worth of work depend upon the existence of an employment relationship at a subsequent time. In effect, an employee could be penalized because retirement fell at a particular point in the bargaining cycle. The decrease of final average salary could adversely affect an employee's retirement pay for years to come. This is unfair.

Further, effectuating the employer's demand would provide a built in incentive for settlements to be delayed.

Therefore, the fact finder adopts the association's position on retroactivity as his recommendation.

F. DURATION

Positions of the parties:

The association urges that the contract be limited to one year, 1987-88, since it is the administration's fault that the contract was not settled earlier. Since the administration has proposed only "ludicrous and unreasonable" wages for the second year, no settlement is appropriate or likely. To extend the contract beyond one year at this point is to change the rules in the middle of the game.

The parties had stipulated to an agenda for negotiations that limited the number of issues. This stipulation was premised upon the concept that it would be for a one year contract. Extending the contract now would deny the union the right to negotiate on other issues which should be redressed. Finally, the exhibits, the testimony and the bargaining history establish that neither year of any contract acceptable to the employer would be fair or equitable to the ESP members.

The employer counters that a two year agreement is an essential component in promoting a sense of labor and economic stability within the university. The ground rules did not call for a one year contract. The history of agreements shows two year contracts are the norm, having been reached in four of five cases since 1978 (Exhibit 66). Prior to 1978, these were primarily two year contracts according to the testimony. A two year recommendation is essential, given the time necessary to agree to and implement it. This is particularly true if further negotiations with a state mediator are necessary. Further, the university will be busy negotiating a contract with the faculty in the summer of 1988. The issues of health care predetermination and employee performance evaluations can be addressed elsewhere.

Discussion:

The parties have over the past few years been in a perpetual state of conflict over their contract. The

failure to resolve these issues, with resultant bargaining, confrontation, and fact finding, has strained the relationship.

Most of the association's opposition relates to the specifics of an agreement, not to the duration. These are matters within the jurisdiction of the fact finder, and within the power of the parties to cure based upon adoption of the fact finder's recommendation. The assumption here, however, is that the recommendation must be economically realistic.

The parties could agree to permit negotiations on a limited number of subjects during the contract term. They could also resolve the pending grievances and unfair labor practices, which are on relatively minor matters. In doing so they would shelter the harmony and benefits engendered by a fair settlement from the danger of renewed sniping -- the equivalent of industrial guerrilla warfare. These side issues are small when compared to the larger picture.

Therefore, the fact finder recommends that the contract term be for two years.

G. WAGES

Positions of the parties:

The ESP proposes a total of 60¢ per hour increase in pay for the period September 1, 1987 to August 31, 1988. 10¢ was identified as a "settlement factor" which would be applied permanently to the salary schedule.

The employer proposes a 28¢ per hour increase in pay for the period September, 1987 to August 31, 1988, and an additional 24¢ per hour increase in the second year of the proposed two year agreement (limited to employees on the payroll on the date of ratification by the LSSU Board of Control -- that issue is decided separately in the retroactivity section, page 14).

Discussion:

1. Costs

Although there is some dispute relative to the total dollar cost of the parties respective wage proposals (Compare exhibits 35 and 145), there is no essential dispute regarding the percentage increases generated by the proposals. The employer's proposal reflects approximately a 3.6% increase in salary expenditure for the 1987-88 contract year, and 3.1 % for the 1988-89 contract year. The ESP proposal constitutes a 7.8% increase for the 1987-88 contract year.

A graphic comparison of the parties position on the costs of increases on the 1986-87 base, would help:

	ESP Position	LSSU Position
ESP 1ST YEAR PROPOSAL ⁵	\$129,792	\$135,270 + \$26,730 wage driven fringes ⁶
LSSU 1ST YEAR PROPOSAL	\$60,569	\$63,126 + \$12,474 in wage driven fringes

There is no apparent dispute that a 1% increase on the wage schedule constitutes a 7.7¢ per hour increase in pay.

2. Ability to pay

The Employer has admitted its present ability to pay either its proposal or the union's (Exhibit 150). It maintains, however, that long range trends require fiscal restraint, and portend difficult times for the university.

The intricacies of accounting are difficult to comprehend. Their abstraction, however, does not make them any less real. The university, after all, is not the federal government and cannot simply print more money, or borrow indefinitely from the Saudis with no prospect of ever repaying the debt.

From the 1985-86 fiscal year, there was a decline of reserves in 86-87 of \$277,157 (Exhibit 34⁷). However, current funds revenue, the University's collective sources

⁵The difference between the \$129,792 and the \$135,270 is likely attributable to the ESP use of averaging in costing proposals.

⁶7.5% FICA + 9% retirement = 16.5%

⁷The 1986-1987 fiscal year is the last fully audited financial report available.

of income, have declined from a high of 16.8% in 1982-83, to a predicted 1.7% in 1988-89.

For 1986-87, state appropriations were 43% of current funds revenue, the single most important element. Trends in general fund state appropriations have dropped from 12.2% gains in 1983-84 to a projected 0% in 1988-89. The appropriation decreased in 1987-88, and no increase is projected for the next fiscal year. The employer anticipates an appropriation cut for 1987-88 (Exhibit 23), and the loss of the Kinross Correctional Educational program (Exhibits 27 and 28). Kinross is important because the university can use it to defray some of its fixed costs against an outside source of revenue. A recession is predicted for Michigan in 1988-89 (Exhibit 20). The University's capital appropriation for 1986-87 was eliminated (Exhibit 21). It is also apparent that state appropriations are only one factor in the university's financial picture, and wage increases historically have not been in lock step with them (See the chart on page 12 of the union brief).

Tuition represented 19% of 1986-87 income (Exhibit 34 and 157). Regretfully, that income has been reduced (Exhibit 23). There has been significant student attrition, as reflected by reduced student credit hours (Exhibits 25, 26, and 157). This latter figure is subject to some dispute, as "full time equivalent" student enrollment is shown as declining from 1985 to 1986, and then recovering to the 1985 level in 1987 (Exhibit 157).

Housing and related food operations are 14% of income. These figures have been stagnant, with only a 1.3% annual increase since 1985-86 (Exhibit 29). Room and Board students have declined from a high in Fall 1984 of 935 to 875, Fall 1987 (Exhibit 25). Initial enrollments are low; drop outs from the dorms have been heavier (Exhibit 30):

	Beginning	5th week figure	Decline	Percentage
1987-88	821	796	25	3.05%
1986-87	840	823	17	2.02%

Salary and benefits to ESP members are a significant portion of both the General and Auxiliary Funds. Total compensations costs for 86-87 was approximately 2.3 million, 11.8% for the general fund and 16.9% for the auxiliary fund.

Putting it all together, it appears that expenses should exceed revenue by \$84,084 for 1987-88. Part of the reason will be a dramatic increase in the internally charged medical and dental premiums of \$120,000 over the prior year, which amounts to roughly 1% of the general fund budget.

The inescapable conclusion is a weak current funds revenue estimate for 1987-88, amounting to a 4.1% increase from the prior fiscal year. A mere 1.7% increase is predicted for 1988-89 (Exhibit 32). The dominant cause is a declining state economy.

The counterbalance to this bleak picture, however, is how the administration views it, in a tangible way, when dealing with the demands for wage increases by other groups of employees.

3. Internal Comparisons

The administration maintains that internal comparisons within the university are irrelevant, given the diversity of the three primary employee groups.

The association says that a direct comparison is relevant, since all sets of employees work for the same employer and are subject to the same factors, such as inflation as registered in the consumer price index.

It is entirely true that the faculty and top level executives have academic preparation and experience, and work on 9 or 12 month appointments on schedules that are different from the ESP group. There is no natural correlation requiring that ESP members be treated exactly as the head of the English Department or the Labor Relations Director. There are limits to such comparisons.

As a first orbit of comparison, any honest analysis must look at raises granted by the Lake Superior State University to other employees. The employer should have some discretion to run its shop and set wage rates at a level necessary to attract and keep required talent. However, it should be treating all of its employees relatively fairly, if not exactly equally.

For the year 1987-88, the faculty received an increase of approximately 6.56%, increasing average faculty salary from \$26,000 to \$27,505 (Exhibit 147).

For the same year, administration costs increased an average of \$1.07 per hour, that being a 7.83% increase (Exhibit 145). The members of the administration bargaining

team were given individual yearly increases ranging from a minimum of 8% to a high of 23.52% (Exhibit 143). The usefulness of the latter set of statistics is limited: at least some of those administrators/professionals had been given new job titles and duties.

But these statistics counter the administration's ability to pay assertions. Fiscal sacrifice ought to apply to all University employees, not just the lowest paid. If the university can afford 6.56% for faculty, should the ESP members settle for substantially less?

4. Labor Market Considerations/Comparability

The administration states the relevant labor market for custodial/maintenance, secretarial/clerical and food service employees is the tri-county area, including Chippewa, Luce and Mackinaw Counties. It includes both private and public employers who compete for the same type of labor. It states that consideration of other state universities "outside of the labor market" are irrelevant.

The Association maintains that comparisons to K12 districts are inappropriate, as the nature and extent of the work is significantly different, resulting in much higher job requirements than those found in K-12 district. The ESP sought comparisons to other state supported universities, and Big Bay De Noc Community College (on the other end of the upper peninsula). It urged comparison to the Sault Ste. Marie Public Schools, 'since they have approximately the same revenue base and budget, and employ the same number of

employees, in virtually the same economic environment.' The consumer price index and unemployment rates are identical. Settlements for Sault Ste. Marie Employees for 1987-88 ranged from 55¢ to 72¢ per hour, and for 1986-87 from 37¢ to 53¢.⁸

The employer has concentrated on the prevailing wage and conditions in the tri-county area. It notes, quite accurately, that the pool of applicants for the jobs in the bargaining unit are primarily from that area. 'We do not recruit statewide or nationwide for these positions, as we do for faculty and administrators.' It suggests that it receives an ample pool of applicants at the wages presently being paid (439 unsolicited applications for ESP bargaining unit positions during the period 1983-87 [Exhibit 42]), so

⁸The employer has written to object most strenuously to the consideration of the Sault Ste. Marie settlement, and the documents submitted by the Association which were attached to its brief. It correctly points out that the record was declared closed in January, before this settlement.

The fact finder shares some of the employer's concerns: (1) the briefs and arguments were constructed in light of the record made; (2) admission of post hearing evidence limits the ability of one side or the other to cross examine, explain or counter particular evidence; and (3) the practice of admitting post hearing evidence, if it was available at the time of the hearing, is an invitation for one side or the other to "sand bag" the opponent.

Some of the exhibits, such as the "general fund revenue analysis" and "trends in current operating expenditures" for Sault Ste. Marie were available at the time of the hearing, and were not offered. The fact finder believes they should be disregarded.

However, this is not an adjudicative proceeding. My findings include recommendations. It is unrealistic to ignore an event subsequent to the hearing date, that plainly could have an impact on the expectations of the parties. The Sault Ste. Marie settlement is such an event, and neither the fact finder nor the parties can put their head in the sand and make it disappear.

that little increase is necessary -- especially in light of the fact that conditions in Chippewa County are depressed (in 1984, unemployment rates exceeded 20% and governmental united employed 42.9% of the civilian labor force).

The employer also correctly notes that a "labor market" has been defined as: "A concept used in labor economics to indicate the relations or interplay between the supply and demand for labor in a particular area."⁹ It accurately asserts that relevant variables in assessing the scope of the labor market area include geographic considerations, the type of labor involved, labor supply, labor mobility, and employee turnover. The employer has evidently overlooked that the definition states it "may also concern itself with the individual in a local area, a larger geographic area, or throughout the entire country."

However, in establishing a wage rate, many factors are involved, not just the prevailing wage in a "labor market." A labor economist would also ordinarily examine the wages paid in a particular industry and a particular occupation. Here, the common industry is state supported education in Michigan, and the employees presumably perform exactly the same functions at Saginaw Valley State

⁹Harold S. Roberts, Roberts' Dictionary of Industrial Relations (Revised Edition) pp. 264-265.

University¹⁰ that they perform at Lake Superior State University. While it is true that LSSU does not hire for these positions much outside the local area, that could also be said of General Motors when it opens a plant in Indiana -- most of the workers will be local. But LSSU, just like General Motors, is economically linked to its competitors, and does not exist in a vacuum. Its wages should be in line with those paid in the industry to a particular occupation.

Further, we are not establishing an initial wage rate. This bargaining unit was not created yesterday. The parties have voluntarily set the wage structure, dictating the worth of the job at a particular time.

It is ordinarily the fact finder's preference that historical data be provided, which would show the relationship of these wages to others in the comparables over a fair number of contracts. This provides a useful guide to relative worth, based upon the voluntary solutions of the parties in the past. Regretfully, the parties were unable or unwilling to provide such data here.

The association's assertion that there should not be a comparison to K-12 school districts in the tri-county area is absurd. It is true that there are differences in duties, and working conditions. However, those employees

¹⁰The Association provided data on some universities, but not for all employees. For example, the record contains information on Saginaw Valley's maintenance employees, but nothing on food or clerical employees. I have not cluttered the opinion with these references.

perform substantially the same kind of work as the ESP membership. One cannot take Sault Ste. Marie, a K-12 district, and ignore the other districts. However, any comparison ought to bear in mind that some of these districts are not unionized and are substantially different in funding and economic well-being. If it turns out that the College has been a wage leader compared to those districts, that leadership ordinarily should be maintained. Again, however, the employer did not provide historical comparative data in any meaningful quantity.

The parties have asked the fact finder to define the comparables that should be considered. That is relatively easy: (1) all state supported universities in Michigan; (2) all school districts in the tri-county area; (3) other employers, including private employers, with similar employees from the tri-county area; and (4) all employees who work for Lake Superior State University. For future reference, the parties should bring to a fact finding historical data, for at least ten years, showing the wages, percentage increases, and relative rank of the university for each year. Here, however, the parties failure to provide that history makes meaningful comparisons almost an impossibility.

The paucity of information in this record leaves it to the fact finder to make his best approximation. Wages should be set at a level that is fair to the reasonable expectations of the parties, and not inordinately high given

the employer's ability to pay. The fact that there is a low level of employee turnover in the ESP unit, an average of 9.3 years of service (Exhibit 40), does not itself justify holding down wage rates unreasonably.

Appendix A shows the comparison of ESP employees' hourly wages for 1987-88, compared to average hourly wages of the employer's proffered comparables (Exhibits 45-50, except for Sault Ste. Marie).

Appendices B, C and D are a comparison of 1986-87 wages for state supported universities, indicating wages followed by rank.

6. "Settlement factor" demand

The so-called "settlement factor" is based upon an unfortunate remark that the university had saved \$158,194 in salaries because there was no settlement in 1985-86 (Exhibit 151). A significant part of that was not truly "saved" in 1985-86, but was simply shifted to 1986-87 as an accounting entry. The sums still had to be paid, the only question being out of which budget. The employer also had the use of the funds, and presumably earned interest.

But in a larger sense, the demand for a "settlement factor" is an attempt to reopen a closed issue: the wages for an earlier period. The fact finder is not disposed to do that, as these complaints were merged into the labor agreement when both sides signed on the dotted line of the last contract.

Conclusion on wages:

Universities are in a competitive business. They compete with private institutions for students, they compete with each other for students. It is apparent that the Board's offer is not competitive with recently settled contracts. This inflexibility in light of increases granted to other employees is unjust. It is equally apparent that the association's monetary demands are excessive, and not supported by the record, since cost and affordability must also be taken into consideration.

IV. RECOMMENDATION

The following is offered as a recommendation for settlement in its entirety. It is designed to take into consideration each of the parties needs, rather than its wishes. Disruption of the package destroys the balance of needs we are attempting to reconcile.

A. Reclassification:

The fact finder recommends that the current contract language on reclassification be kept in place, but that the association be granted the immediate right to file a request for reclassification, and grievances along the way should they become necessary.

B. Maximum Vacation Accrual:

The fact finder adopts the union's proposed new language on maximum vacation accrual as his recommendation.

C. Dental:

The fact finder adopts the employer's position on changes in the dental provision as his recommendation.

D. Longevity:

The fact finder adopts the employer's position, and does not recommend an increase in longevity. The language should be maintained as is.

E. Retroactivity:

The fact finder adopts the association's position on retroactivity as his recommendation. All changes in maximum vacation accrual and wages shall be retroactive to the commencement date of the new contract.

F. Duration:

The fact finder adopts the employer' position on duration, and recommends a two year contract.

G. Wages:

Neither party's position on first or second year wages is satisfactory, in light of the foregoing analysis.

Therefore, the fact finder recommends the following increases in base hourly wage:

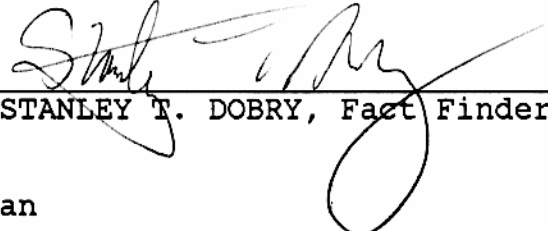
1987-88 School Year: 46.5¢ per hour increase

1988-89 School Year: 5.6% increase.

The first year recommendation is a reflection of the fact finder's belief that the university is faced with the necessity of financial constraint. Nevertheless, the legitimate expectations of the support personnel, and their continuing economic well being, cannot be forestalled forever. The Board of Trustees is expected to make all efforts and cuts necessary to finance the second year increase.

On the issues presented, reasonable persons could differ as to the outcome. However, there are real needs on both sides that need to be protected. The administration must be able to run the university; the support personnel deserves financial and job security. The interests of the employer and the union have been balanced herein. They have been weighed with a long term view of the best interests of the community, the university, and the bargaining unit.

Obviously, these are recommendations only. The parties can choose to ignore them and resort to economic warfare if they choose. It is gently urged, however, that these are rational and reasonable solutions to the problems which confront them. It is a compromise with reality. It is a basis upon which to work out solutions to their own problems, without winners and losers, and to renew their relationship upon a new foundation. The public would be well served if this advice was heeded.


STANLEY T. DOBRY, Fact Finder

Dated: March 29, 1988 at the
City of Detroit, Michigan

COMPARISON OF 1987-88 WAGES TO AVERAGE WAGE

	Secretarial/ Clerical		Food Service		Custodial		Maintenance	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Chippewa County Public Schools	\$6.64	\$8.28	\$5.68	\$6.73	\$6.82	\$7.73	\$7.44	\$8.55
All Tri-County Public Schools	6.07	8.18	5.32	6.72	6.59	7.79	6.92	8.50
Chippewa County Public & Private	5.64	7.72	4.65	5.27	7.10	8.64	7.10	8.64
Sault Ste. Marie Public Schools	9.07	11.37	8.71	9.05	9.63	11.05	11.22	11.40
LSSU Proposal	7.22	8.22	7.43	8.38	7.43	9.22	7.43	9.22
ESP Proposal	7.54	8.54	7.75	8.70	7.75	9.54	7.75	9.54

APPENDIX A

1986-1987
SECRETARIAL/CLERKS

	LSSU	OU	CMU	FERRIS	GVSC	NMU	UM FLINT	UM DEARBORN
Receptionist	\$6.73 3	\$7.07 1	\$5.90 5	\$6.73 4	\$6.82 2	\$7.73 *	\$7.44 *	\$8.55 6
Sales Clerk	7.15 2	6.67 3	* *	* *	7.54 1	5.84 5	* *	6.64 5
Typist I	6.94 4	7.06 3	7.54 1	* *	7.05 2	* *	6.23 6	6.65 5
Typist II	7.14 5	7.48 4	9.30 1	* *	7.54 2	* *	6.36 6	7.49 3
Typist III	7.47 6	7.86 4	10.02 1	* *	8.03 3	* *	7.80 5	8.14 2
Data Acc Clerk I	7.15 4	7.86 1	6.45 6	6.30 8	7.05 5	6.31 7	7.41 3	7.55 2
Data Acc Clerk II	7.47 5	8.26 2	* *	6.83 6	7.54 4	* *	9.52 1	7.79 3
Data Acc Clerk III	7.62 5	8.71 2	9.67 1	6.95 6	8.03 3	7.67 4	N/A N/A	N/A N/A
Secretary I	7.62 3	7.48 6	8.23 1	7.54 4(tie)	7.54 4(tie)	7.22 8	7.98 2	6.99 7
Secretary II	7.78 7	7.86 6	8.90 3	8.65 5	9.01 2	7.67 8	9.30 1	8.74 4
Spec Clerk I	7.62 4(tie)	7.86 3	8.23 2	9.02 1	7.54 6	* *	7.62 4(tie)	7.23 7
Spec Clerk II	7.78 7	8.25 3	8.90 2	9.58 1	8.03 5	7.22 8	7.87 6	8.04 4
Spec Clerk III	7.94 7	8.71 5	9.62 3	9.96 1	9.01 4	7.67 8	8.00 6	9.82 2
Library Tech Asst	7.94 5	8.25 4	9.35 1	8.50 3	9.01 2	* *	* *	* *
Print P. Tech	7.94 4	8.26 3	9.17 1	* *	* *	* *	* *	8.46 2

APPENDIX B

1986-1987

CUSTODIAL/MAINTENANCE

	LSSU	OU	CMU	FERRIS	GVSC	NMU	UM FLINT	UM DEARBORN
Sport/Utility	\$7.62 4	\$8.20 3	\$8.76 2	\$* *	\$* *	\$7.56 5	\$10.05 1	\$* *
Equip/Grounds	7.94 6	9.44 2	8.76 ¹¹ 5	7.85 7	9.33 3	10.16 1	9.04 4	* *
Building Attendant I	6.73 7	8.25 2	* *	7.82 4	9.22 1	7.28 5	8.19 3	6.93 6
Building Attendant II	7.31 7	8.46 3	7.65 5	7.82 4	9.22 1	8.68 2	* *	7.41 6
Building Attendant III	7.47 7	9.44 3	8.42 5	7.82 6	9.22 4	9.77 2	9.80 1	* *
Maintenance Mechanic I	7.47 4	8.20 3	8.56 2	* *	* *	10.06 1	* *	* *
Maintenance Mechanic II	7.75 3	8.78 2	* *	* *	* *	* *	* *	9.08 1
Maintenance Mechanic III	7.94 7	9.41 6	9.60 1	10.28 1(tie)	10.28 1(tie)	10.06 3(tie)	10.05 5	10.06 3(tie)
Maintenance Mechanic IV	8.25 7	10.21 6	11.41 3	10.28 5	11.18 4	12.13 2	* *	15.11 1
Painter	8.10 6	* *	8.76 5	10.28 4	11.18 2	12.06 1	11.02 3	* *
Carpenter/ Locksmith	8.94 8	11.21 1	9.93 6	10.28 4	11.18 2	10.06 5	11.02 3	9.04 7
Electrician	8.94 8	11.71 4	9.93 7	10.28 6	11.18 5	13.19 3	14.61 1	14.11 2
Steam Plant Operator	8.25 8	10.77 5	11.41 3	10.28 6	11.18 4	9.73 7	13.67 1	12.23 2

APPENDIX C

¹¹Highest wage for three different classifications. When the data contains reference to multiple wage levels, the highest has consistently been used.

1986-1987
FOOD SERVICE

	LSSU	OU	CMU	FERRIS	NMU	UM DEARBORN
Utility	\$6.73 4	\$6.50 5	\$6.85 2(tie)*	\$* *	\$6.85 2(tie)	\$6.93 1
Food Service I	7.31 1	6.99 2	6.11 4	* *	6.85 3	* *
Food Service II	7.47 5	7.66 3	7.65 2	7.12 6	7.56 4	8.35 1
Cook I	7.62 5	7.89 3	7.20 6	7.71 4	7.90 2	8.08 1
Cook II	8.10 4	8.45 2	8.38 3	* *	* *	9.04 1
Salad Person	7.78 3	8.25 1	7.95 2	* *	7.27 4	* *
Baker	7.94 3	8.13 1	7.95 2	* *	7.90 4	* *