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Fact Finder: Sandra G. Silver

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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

IN THE MATTER OF:

MICHIGAN STATE UNIVERSITY,

Employer,

-and-

Fact Finding Case Number:
L-87-F-473-M

CLERICAL TECHNICAL UNION OF
MICHIGAN STATE UNIVERSITY,

Union.

Sandra Silver 1-19-88

Subject: Wage reopener.

Hearing Dates: September 21, 1987 and November 16, 1987

Appearances:

Employer

Samuel Baker, Director

James Nash

Union

Bradley Raymond, Attorney

Harold Schmidt

Michigan State University

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STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
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LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

BARGAINING HISTORY

The collective bargaining agreement presently in effect was signed on September 22, 1986. The contract covers the period from April 1, 1986, to March 31, 1988. Included in the contract are a number of letters which are pertinent to the instant matter. By letter of agreement dated June 5, 1986, signed by the Union on that date and by Michigan State University on September 23, 1986, the matter of wages would be reopened in the final year of the agreement. The letter reads as follows:

"The parties shall reconvene upon receipt of that portion of the Classification Study regarding the consultant's reports on classification structures and completion of wage data. Should the reports be received prior to February 1, 1987, the contract between the parties shall be reopened regarding the CT salary scheduled included in the reports, but, any implementation of the salary schedule may not occur prior to February 1, 1987. Reports received after February 1, 1987 will cause the contract to be reopened upon receipt of the reports. The effective date of the implementation of the salary schedule shall begin from the date of receipt of the reports. Should the reports not be received by May 31, 1987, the parties shall negotiate a school year wage adjustment to be effective April 1, 1987.

If, after thirty days of receipt of the consultant's recommendation, the parties are not in agreement, Mediator Freda Mills Obrecht will be called in to assist the parties to resolve the agreement.

Such involvement by the Mediator may be postponed by mutual agreement of the parties.

At such time as the consultant makes its recommendation to the parties, the Mediator shall be invited to hear the consultant's recommendation, and shall be given a copy at that time."

The parties had agreed to hire a consultant to do a classification study and salary schedule in 1983. The purpose of the study was to achieve "comparable equity". The agreement to undertake the study was memorialized in a letter of agreement dated September 22, 1983, which reads as follows:

"Michigan State University management and the Clerical Technical Union recognize the need for programs of classification, salary and evaluation which will establish and maintain equitable internal and external patterns of comparability.

To this end, the parties agree to seek external assistance to conduct a jointly-funded classification study. The maximum cost to the Union for this study will be \$62,500.00. The parties further agree that the study will be used as a basis for a relative-market survey for establishment of wages through the process of collective bargaining.

Guidelines for these programs will be mutually developed and based on the outlines submitted by the University on September 12, 1983."

That letter appears in the current collective bargaining agreement, and is the study referred to in the letter of June 5, 1986.

Michigan State University submitted a request for proposal (RFP) without consultation with the Union, and an unfair labor practice was filed. This matter was settled, but problems continued. The matter was taken to arbitration before Arbitrator Alan Walt, who ordered Michigan State University to promptly proceed with the study as agreed upon in September, 1983. The parties finally selected a consultant in 1986. The consultant

firm of Peat, Marwick, Mitchell and Company were selected, but it was time to begin bargaining on the new contract.

Because the study was not yet complete, the parties agreed to a wage reopener for the last year of the contract, presuming that the classification study would be complete at that time. The classification study was not completed by February 1, 1987. The Union proposed that negotiations for the wage reopener be deferred until the study was complete, but that wages would be retroactive to April 1, 1987. Michigan State University rejected this proposal, and negotiations for the wage reopener continued.

On June 9, 1987, a Union proposal was made for a salary increase of seven percent, and adjustments made to the minimum and maximum salary levels. The proposal was allegedly made based on comparable salaries both at Michigan State University and with the State of Michigan employees. Some of this was based on data provided by Peat, Marwick in the ongoing study. A negotiation session was held on this Union proposal on June 30, 1987, and Michigan State University took the position that it could not be prepared to negotiate until after the University budgetary process was completed in July, and the classification study submitted.

On July 8, 1987, the Clerical Technical Union submitted a petition for Fact Finding with the Michigan Employment Relations Commission on the wage reopener. Peat, Marwick also completed the salary portions of the classification study. The parties met in early September, and Michigan State University offered a three percent wage proposal. The Union responded to this proposal that

a salary structure based upon the Peat, Marwick study be adopted. This was opposed by Michigan State University, which took the position that the study had been received but not formally adopted, and that no negotiations could be based on that study.

Hearings began before the Fact Finder on September 31, 1987. Matters were adjourned and bargaining continued.

On November 6, 1987, Michigan State University submitted a written proposal for a five percent wage adjustment, but with new eligibility limitations. The Union counter-proposal called for a six percent wage adjustment, and a procedure to implement the classification study. The Union also asked for another six percent increase on January 1, 1988. The matter remained unresolved, and a second day of hearing was held before Fact Finder Sandra G. Silver on November 16, 1987. Sworn testimony and exhibits were submitted into evidence. Briefs were submitted by both parties.

DISCUSSION

It is clear from the history outlined above that the classification study originally agreed to by the parties is inextricably interwoven with the negotiations and bargaining relationship of these parties. It is unquestioned that the parties agreed to undertake the study and to pay for it with joint funding. At the time of the fact finding, each party had spent in excess of \$60,000.00 for this undertaking.

Michigan State University obviously had second thoughts about its agreement to undertake the classification study, and through various procedures, stalled in proceeding. Arbitrator

Alan Walt issued an opinion in which he ordered Michigan State University to get moving on the study. In effect, this delay put the study back several years. The argument made at hearing that the study could not be a basis for wage negotiations because it has not been formally adopted by Michigan State University is weak in several respects. First, the agreement to undertake the classification study had no provision for adoption by either party. It presumably then would be received, accepted, and then implemented through negotiations by the parties. If Michigan State University is allowed to enter into such agreements with joint funding, and then choose whether or not it is acceptable, the financial burden on any union would be so great that it could consistently be used to break the union financially. This Fact Finder was extremely concerned that the Union had been drawn into the study, proffered heavy financial support, and then is faced with an employer saying that it was free to choose whether or not to adopt. The Clerical Technical Union is not a large union, and the financial cost must have been great.

The University, through the testimony and argument of Mr. Samuel Baker, referred at hearing to the difficulty of negotiating wages for the members of the collective bargaining unit because their positions were not properly classified. The classification of the work done by Clerical Technical Union members is obviously an important part of negotiating wages. If it is not clear what job an employee is performing, it is extremely difficult to determine an appropriate wage. The Employer in this case has objected to comparables with State of

Michigan employees as done by Peat, Marwick, which Michigan State University states are the highest paid clerical/technical employees in the area. That is an entirely different argument and an appropriate one for negotiations. The fact that the study uses that group (and other groups) does not mean that the study itself is invalid, but only that some other point of comparability might be negotiated.

Michigan State University has also objected to any inclusion of the Peat, Marwick's classification study on grounds that the letter of agreement of 1983 really wasn't incorporated into the collective bargaining agreement, but was only thrown in at the end. Even if this Fact Finder adopted that argument, the letter of June 5, 1986 which is clearly part of the 1986-1988 agreement and is undisputed, refers to the classification study and comparison wage data as a basis for the wage reopener.

This Fact Finder finds it totally incomprehensible how Michigan State University can now reject the study and state that it is under no obligation to implement it. The parties bargained for that study, and clearly intended to use it as a basis for the wage negotiation reopener. To exclude it entirely now from consideration would be to violate the bargain originally entered into by that letter of agreement of June 5, 1986. The Fact Finder does not know what proposals may have been dropped in order to achieve that bargain, and must uphold it now.

Also, as pointed out by the Union, Michigan State University has never pleaded poverty or inability to pay. Mr. Lockhart, of the University, testified to the absolute necessity of raising

faculty salaries to bring Michigan State University in line with other big ten collegiate institutions. However, the University did receive an increase for that purpose from the legislature, and there had also been increases in tuition and fees. This Fact Finder understands that every university in the country is faced with rising costs, rising tuition, and a need to maintain and improve the education offered its students. The job is extremely difficult. However, Michigan State University appears to have agreed to a five percent increase across the board for most of its unions for the time period under consideration.

If the faculty salaries must be increased to remain comparable, then this Fact Finder is hard put to understand why comparability is not a legitimate issue in bargaining with the Clerical Technical Union. The entire purpose of the study was to investigate comparables, determine job classification, and an equitable wage rate for those classifications. The payment of salaries to faculty may be more immediate and more affected by market factors, but that does not denigrate from the demands of Clerical Technical Union members which are also affected by the marketplace.

The Fact Finder has carefully reviewed all the Exhibits submitted by the parties, including the Peat, Marwick reports. However, the Fact Finder is unable to make a detailed finding on the report as she is without sufficient personal knowledge of these matters. The parties have purchased the study and now must negotiate "how" it must be implemented, not "if".

RECOMMENDATION OF FACT FINDER


The Union proposal calling for a six percent increase retroactive to April 1, 1987 is reasonable and soundly based on information in the classification study. The Michigan State University proposal appears to be based only on what has been given some other groups of employees. The Union proposal at least has the virtue of being related in rationale to the Peat, Marwick study.

The eligibility limitation placed by Michigan State University in its proposal is contrary to past practice. This Fact Finder recommends that a wage increase be retroactive to April 1, 1987, and would apply to any employee who was employed at that time, or hired subsequently. Why the employee, to receive this wage increase, would have to have been hired prior to November 5, 1987 escapes this Fact Finder and could result in groups of employees doing the same work and receiving very different wages.

This Fact Finder recommends that the demand for another six percent increase as of January 1, 1988 be denied at this time. There are annual progression increases in the Michigan State University salary structure which should be sufficient to carry the employees into the coming year and negotiations for a new contract.

Finally, this Fact Finder strongly recommends to the parties that they begin serious negotiations based on the Peat, Marwick study. No formal adoption of this study is necessary by Michigan State University since it agreed to fund and obtain the study.

That does not mean that every item in the study must be incorporated into the next collective bargaining agreement. It does mean that some rational classification process of the jobs held by the bargaining unit members occur, and that the information on comparability of wages must be considered in negotiating the next collective bargaining agreement.


Sandra G. Silver P26115
Fact Finder

Dated: January 19, 1988