

11/17/69 FF

James R. McCormick

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## STATE OF MICHIGAN

## DEPARTMENT OF LABOR EMPLOYMENT RELATIONS COMMISSION

MICHIGAN TECHNOLOGICAL UNIVERSITY,

- and -

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES AND COUNCIL 7  
AND LOCAL NO. 1166RECEIVED  
NOV 21 1969STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
MEDICATION DIVISION  
DETROIT OFFICEFACT FINDER'S REPORTFor Michigan Technological University:William M. Saxton, Attorney, Paul  
B. Sullivan, Staff Assistant for  
Labor Relations, Bill Eilola,  
Budget Director, Wayne Torgeson,  
Director of Housing, E. J. Koepel,  
General Manager of Operations and  
Jack Mills, Operations Manager,  
Physical PlantFor the Union:Douglas Hiltunen, Staff Representa-  
tive, Walter Soumis, President of  
Local 1166, Robert J. McCarthy,  
Steward Local 1166, George Hiltunen,  
David Kalliainen and James Campioni  
members, and Tony Kroetsch, Staff  
Representative

The above-entitled factfinding proceedings came on for  
hearing before the undersigned, a Fact Finder duly appointed by the  
Employment Relations Commission, at Houghton, Michigan, on October 23,  
1969, pursuant to a Petition for Factfinding filed by the Union and  
an Answer to said Petition filed by the University.

On the basis of the evidence presented at the hearing, in-  
cluding extensive documentation in support of the respective positions  
of the parties, the undersigned makes the following findings and  
recommendations for a settlement of the dispute.

Michigan Technological University

The significant outstanding issues which are responsible for the impasse in bargaining are the matters of wage rates, costs of living clause, and sub-contracting rights. At the outset of the hearing the undersigned Fact Finder explained to the parties that he would, in evaluating the positions of the parties on these three issues, take into consideration prevailing wage rates in public and private employment in the area, prevailing rates and working conditions in other areas of Michigan, the ability of the University to grant the Union's demand, and all other factors of an equitable nature reasonably bearing upon a just solution to this dispute. The undersigned further advised the parties that he would not follow the practice of automatically splitting the difference on the issues but would decide the issues entirely in favor of one or the other party in the event that he felt that fairness dictated such a solution. In past factfinding disputes, the undersigned has upon occasion found that the Union's wage demands were entirely justified and within the power of the public employer to grant, while the undersigned has also had occasion to conclude that the demands were entirely unjustified and that the public employer's position was entirely sound and necessary. Accordingly, I approached this dispute with no predispositions as to the fairness or reasonableness of the position of either party.

#### FINDING OF FACTS AND RECOMMENDATIONS

##### The Wage Rate Issue:

In 1965 the Union was certified by the Labor Mediation Board following a representation election, for a bargaining unit of the University's non-academic employees except for clerical, supervisory and part-time employees. In all, 55 classifications of work were included in this certified unit, ranging from stock clerks to skilled tradesmen,

to food service employees and maids. Collective bargaining contracts between the Union and the University were executed in 1966, 1967 and 1968. The current impasse is in connection with bargaining for a three year contract to run from 1969 to 1972.

The employees in this bargaining unit represent varying levels of skill in their work, and are compensated at pay grades ranging from 1 through 18. The present hourly rate for the 18 pay grades ranges from a low of \$1.81 to a high of \$3.68. The average wage for the unit is \$2.61. The University has, in its three year contract offer, proposed an across-the-board wage increase for all classifications in the bargaining unit of 26¢ per hour for the 1st year, 20¢ per hour for the 2nd year and 20¢ per hour for the third year. The Union insists upon an across-the-board wage increase of 26¢ per hour for each of the three years involved. Accordingly the parties are in agreement as to the wage increase for the 1st year, which would commence with the effective date of a new contract; however the parties are in sharp disagreement concerning the adequacy of the University's offer for the 2nd and 3rd years.

The University's proposed wage agreement would provide a pay range for the 18 grades of \$2.07 per hour to \$3.94 per hour for the first year, which represents increases for the first year of from 7% to 14% depending upon the class involved. The average increase, being from \$2.61 to \$2.87, represents an increase of 10% for the year. The University's second year offer of 20¢ per hour would increase the pay grades from a pay grade number one salary of \$2.27 per hour to a pay grade number eighteen wage of \$4.14 per hour constituting a range of from 5% to 9% annual increase. The "average" employee would go up from \$2.87 per hour to \$3.07 an hour, amounting to an increase of 7% for the second year.

The University's offer of an additional 20¢ per hour for the third year of the life of the contract would bring the 18 pay grades up to a range of \$2.47 per hour for pay grade 1, to \$4.34 per hour for pay grade number 18. Again the range would be from 5% to 9% increase over the second year, depending upon the classification involved; the "average" employee in the unit would go up from \$3.07 to \$3.27 per hour, representing slightly under 7% increase over the second year. The present wage rates for each of the 18 pay grades, and the rate which would be paid for that grade for each of the three years of the proposed contract as offered by the University, are set forth below:

<u>Pay Grade</u>	<u>Presently Hourly Rate</u>	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
1	1.81	2.07	2.27	2.47
2	2.04	2.30	2.50	2.70
3	2.20	2.46	2.66	2.86
4	2.30	2.56	2.76	2.96
5	2.38	2.64	2.84	3.04
6	2.41	2.67	2.87	3.07
7	2.56	2.82	3.02	3.22
8	2.61	2.87	3.07	3.27
9	2.68	2.94	3.14	3.34
10	2.79	3.05	3.25	3.45
11	2.88	3.14	3.34	3.54
12	2.98	3.24	3.44	3.64
13	3.07	3.33	3.53	3.73
14	3.18	3.44	3.64	3.84
15	3.27	3.53	3.73	3.93
16	3.41	3.67	3.87	4.07
17	3.58	3.84	4.04	4.24
18	3.68	3.94	4.14	4.34

In support of its claims, the Union has submitted to the undersigned statistics showing the standing of this University in comparison to other state colleges and universities in Michigan for a number of the bargaining unit job classifications. For example, the Union shows that for the Baker classification it has compared this University with 8 other state colleges and universities. The Union contends that 2 of said institutions pay Bakers less than this University, while 6 pay Bakers higher than this University. Unfortunately, in each instance where the other institution of higher learning has a flexible rate range for each job classification, the Union has chosen to rely upon the maximum paid to that classification. For example, if a particular college pays its Cooks anywhere between \$2.00 and \$2.50, the Union would choose \$2.50 as the relevant rate for purposes of making comparisons with Michigan Technology University. This automatically distorts the pay rates at the other institutions, and makes this University look bad by comparison. The Union, when questioned by the attorney for the University, was unable to say how many, if any, of the employees at the other institutions were currently receiving the maximum rate for their particular classification. For a long time this University also had a flexible rate scale for each of its 18 pay grades. However it recently converted to a flat rate for each of the 18 pay grades. Therefore, the only really correct way of making a comparison would be to compare the median average pay for a particular classification at the other colleges with the single rate paid at this University. I am unable to make such comparisons based upon the material provided to me by the Union. I hasten to add that I do not mean to be overly critical of the Union's preparation for the hearing in this connection, since obtaining averages for each classification at the other colleges and universities would have been a back breaking job, probably beyond the Union's resources.

However there is another problem with these statistics provided by the Union: namely that the Union compares the pay rates at the other colleges with the rates which are presently in effect at Michigan Technological University rather than with the rates which would be paid if the Union accepted the offer of 26¢ per hour across-the-board for the first year. Since the Union and the University are in agreement that 26¢ per hour is adequate for the first year of the three year contract, I would like to be able to make comparisons between what is being paid at the other schools and what the employees here would receive if the 26¢ is added to their present wage rates. It might well be that the present wage rates are below par, while the wage rates with the additional 26¢ per hour would be highly competitive.

The Union also has provided information concerning the rates paid for each classification by the State Civil Service Commission. However in each instance the Union has only indicated the range spread paid by the Civil Service Commission rather than specific hourly rates. For example the Union indicates that for the classification of Baker Civil Service has a range spread of \$1.02. This means that there is a variance of as much as \$1.02 between what the lowest paid bakers and the highest paid bakers under Civil Service are receiving. That information throws literally no light upon the question as to what the prevailing wage rate under State Civil Service is for the classification of Baker. As another example the Union has provided me with the knowledge that the State Civil Service range spread for food service employees is 45¢ per hour. Again this merely means that some food service employees under Civil Service are making as much as 45¢ per hour more than others. However it tells me nothing as to whether the average State Civil Service food service employees is making \$2.00 per hour or \$3.00 per hour.

Finally, the Union offers figures concerning the wage rates of head custodians, custodians, bus drivers, and janitors at the Portage Township Schools and the Hancock High School, local Public employers in the immediate vicinity. When the 26¢ per hour increase is added to the Michigan Technological University figures, it appears that the employees in this bargaining unit are competitive with the Portage Township Schools and the Hancock Schools. For example, Portage Township School Bus Drivers receive \$3.09; Hancock Bus Drivers receive \$2.80; and University Bus Drivers receive \$2.88. However if the 26¢ per hour which they are bound to receive as a result of this contract is added, the University Bus Drivers will be receiving \$3.14. This will put them above the Portage and Hancock competition. Custodians at Portage and Hancock receive \$2.75 per hour and \$2.95 per hour respectively. While custodians at the University, even with the additional 26¢ per hour will only receive \$2.64 per hour, the University contends that the custodians in public schools are comparable to building attendants at the University. University building attendants, with the additional 26¢, will be receiving \$2.94. This means that they will be competitive again.

A great amount of research went into the University's preparation for this fact finding hearing. In fact the University literally overwhelmed the Union with statistical data from other universities and from a multitude of private businesses and non-profit institutions in the Copper Country area. While not "overwhelmed", I find the thrust of the University's comparative figures very persuasive and not adequately answered by the Union. It may well be that the Union could have rebutted some of the statistical information submitted by the University, but the Union did not in fact do so and a hearing in a matter of this kind cannot be dragged on indefinitely while parties present counterfigures and rebuttals. Accordingly, I must make my

findings and decision in this matter based upon the available information. On the basis of this available information, the undersigned is forced to conclude that the 26¢ per hours across-the-board increase for the forthcoming year will put Michigan Technological University in a reasonably favorable competitive position with other colleges and universities in the State of Michigan. Comparison of the rates paid at this University with those paid for comparable jobs in hotels, restaurants, offices, hospitals, factories and other institutions in the Copper Country area, as submitted by the University, reveal that the 26¢ per hour wage increase will put the University in a highly competitive position with regard to other potential employers in the area.

In his budget message concerning educational expenditures of the State, the Governor recommended employee compensation increases in colleges and universities averaging 6.9%. As the figures above bear out, the 26¢ offer for the first year ranges between 7% and 14% for various pay grades, and the average employee would receive a 10% increase, considerably above the Governor's recommendation. The 20¢ per hour offered by the University for the 70-71 year and the 71-72 year would provide wage increases varying from 5% to 9% for the various pay grades, with the average employee receiving approximately 7% for the second year of the contract and 6.9% for the third year of the contract. Therefore, to the extent that the Governor's budget recommendations are a consideration here, it must be said that the average Michigan Technological University employee, who would receive a 10% wage increase this year, would be doing considerably better than what is recommended by the Governor. The Governor makes of course no recommendations for the following 2 years, so there is no way of knowing whether the 7% and 6.9% averages which would be received by the University's employees (assuming a 20¢ per hour increase) would compare with the



Governor's recommendations for those years. Of course it is precisely in this area of the second and third years of the contract that we have the real dispute. Figures provided by the Bureau of Labor Statistics reveal that the average negotiated wage increase during the first half of 1969 amounted to 6.1%, although construction industry settlements averaged 14.7%. However the median first year wage increase under major settlements negotiated during the first half of 1969 came to 7.4%, reflecting medians of 6.6% in manufacturing and 10.1% in non-manufacturing industries. Annual medians - averaged out over the contract term, came out to 5.5% in manufacturing, 8.4% in non-manufacturing. These figures are of limited use since they encompass a vast number of industries in all parts of the nation. Nevertheless, they do reveal one significant factor: namely that in contracts running for more than one year, the negotiated wage increases for the later years tend to be smaller than the negotiated increase for the first year of the life of the contract. While that is not always the case, it is the general rule and is the situation in the University's 26-20 offer. In accepting such an offer, the Union is gambling that the inflationary spiral will not continue to zoom upwards as it has over the last year. There is some reason for optimism on that score, in view of the determined effort now being made by the Government to slow down the inflationary process. Accordingly, it is possible that the 7% and 6.9% wage increases offered by the University for the second and third years of this contract might be suprisingly generous. There is simply no way of knowing the answer to that at this time. The Consumer Price Index has sky-rocketed from 124.1 in January of 1969 to 128.7 in August of 1969. The August figure represents an increase in the consumer prices of 5.6% over a year earlier. Even if inflation should continue to

increase at the same rate of speed over the next three years, the wage increases offered by the University will still result in a net increase in the purchasing power of its employees.

According to the Labor Relations Reporter issue of October 20, 1969, Volume 72, No. 15, the median average wage settlement in contracts negotiated during the first three quarters of this year came to 22.2¢ per hour. During the third quarter of 1969 alone, non-manufacturing settlements posted an overall median of 20.3¢ per hour while non-manufacturing (including construction) settlements yielded a 24.9¢ increase. The construction industry by itself registered a median wage gain of 75¢ per hour in contracts settled during the third quarter of the year. This illustrates the point made at the hearing by counsel for the University, namely that construction industry wage rates are so inflated as not to be of much relevance in evaluating wage offers in other fields of employment.

The undersigned is not unaware that the wage rates of public employees by and large have tended to be behind comparable wages in private industry. This may well be attributable in part to the fact that public employees have not had enforceable collective bargaining rights to any extent until quite recently. However I do not see my position as being that of a righter of ancient wrongs which have affected the entire field of public employment. That must come about, and is indeed coming about, through the process of collective bargaining itself. A fact finder, in my opinion, should not make a recommendation which would represent a dramatic breakthrough in the particular industry, but ought to see to it that the employees involved are compensated in such amounts as is competitive with other public employers.

In the instant case, following that reasoning, I am compelled to find that the University's employees in this bargaining unit are, by and large adequately compensated by the 26-20-20 offer of the

University. This offer appears to give them pay rates comparable to what is paid in other State institutions of higher learning, in the local school systems, and in private and non-profit employment in the Copper Country area.

Both parties in this case favor an across-the-board approach to wage increases for all job classifications. This approach may be inherently unfair to some job classifications, since it does not seek to do equity on an individual job basis but rather to treat all classifications alike. However, the Union, as the certified bargaining agent of all classifications, has elected to proceed for an across-the-board raise, and the University's approach is identical. Therefore the undersigned will not recommend that the across-the-board approach be abandoned.

The Union, finally, argues that there should be no difference between employee wages at Michigan Technological University from those paid at all other State colleges and universities in Michigan, since all are primarily funded by the Legislature of the State. However, it was brought out at the hearing that many of the bargaining unit employees work for self-sustaining elements of the University, such as dormitories. These parts of the University are not primarily funded from the Legislature. In addition, each college and University in the State has been in the past treated as a separate bargaining unit for purposes of Union negotiations, and the bargaining unit involved here was separately certified after an election in which only Michigan Technological University employees were permitted to vote. Therefore, it makes sense to have separate wage scales for the various colleges and universities. I note also that the Board of Trustees of each institution must agree to collective bargaining contracts, rather than the State Board of Education or the State Legislature.

For all of the above reasons the undersigned Fact Finder recommends that the Union accept the three year wage offer made by the University in the course of bargaining.

Cost of Living Issue:

The Union has proposed a very liberal cost of living clause. No such provision has existed in any prior contracts. From evidence obtained at the hearing it appears that two other State colleges have true Cost of Living clauses in their collective bargaining contracts. The undersigned is persuaded that the second and third year raises of 20¢ each year take into account the anticipated cost of living increases, and that therefore there is no justification for a separate escalator cost of living clause in the contract.

The undersigned has gone to some lengths in order to check out the accuracy of the contentions of the University made at the hearing to the effect that cost of living escalator clauses have lost favor within the last several years and are not contained in a very substantial percentage of contracts either in industry or in Michigan Public Employment. My investigations, including a check into the Labor Relations Expiditor, published by the Bureau of National Affairs, lead me to believe that the University is correct in this matter, and that cost of living clauses are not particularly in favor at this time.

However with the unprecedented inflation occurring this year it may very well be that such clauses will have to be incorporated into contracts in the near future. The Union is asking for an upward adjustment of 1¢ per hour for each three tenths of a point increase in the Consumer Price Index. Most contracts containing cost of living clauses provide for a 1¢ increase for each four-tenths or five-tenths of a point increase.

rather than the provision asked for here by the Union. Also, as illustrated by the University, the Union is asking only for an upward increase and has not agreed to or proposed any downward increase in the event of a deflationary spiral.

Sub-contracting Issue:

The 1968 -1969 contract contained no provision prohibiting the sub-contracting of bargaining unit work. It did contain a Section 22, concerning the subject of sub-contracting. Under Section 22, if the sub-contracting of work regularly and customarily performed by unit employees results in the displacement of regular unit employees, the University agrees to try to place the displaced employees in jobs that may be available in other operations on campus, provided that the employee has the ability to do the work. It also sets forth the layoff procedure in the event of sub-contracting of unit jobs. The Union maintains that it is absolutely essential that a strong prohibition on sub-contracting be written into the new contract between the parties. The University replies that the present language is appropriate. The Union would add the following specific language:

"present contracting and sub-contracting in existence (sic) shall not be affected nor shall it be expanded. All present employees shall be maintained and shall not be laid off as a result of future contracting and sub-contracting."

In essence this proposed clause would prohibit sub-contracting of unit work during the life of the new contract and would, as a correlary, prohibit lay offs as a result of any future sub-contracting. The proposed language is, in a sense, redundant, in that the first sentence prohibits new sub-contracting while the second sentence prohibits lay offs resulting from new sub-contracting. If no new sub-contracting is to be permitted, it follows that there cannot be lay offs resulting from future sub-contracting. Perhaps what the Union means

is that there shall be no future sub-contracting without the Union's consent, and that no one will be laid off as a result of sub-contracting to which the Union consents.

All of this raises the question as to just why the Union is so upset over the University's refusal to write a strong restriction on sub-contracting into the new collective bargaining agreement. The janitorial services in the University's new administration building were recently contracted out to a source outside of the bargaining unit. As of this time the maintenance work in the new Administration Building only involves approximately three full-time employees. Needless to say these specific jobs were not taken away from the bargaining unit, inasmuch as it is a brand new building which previously had no employees. On the other hand the jobs are clearly the kind of work done by members of this bargaining unit working for this University, and it is most likely true that the new jobs created by the opening of the Administration Building became a part of this bargaining unit by virtue of automatic accretion without the necessity of a representation election. The new building is located adjacent to other buildings on the University campus and there appear to be no factors justifying self-determination for employees in the new facility. The Union states its case in this language, set forth in the Brief filed at the hearing:

"If this type of procedure is followed in the future, all or a part of the members could be affected either through lay offs, demotions or (sic) can have a serious effect on their promotional potential.(what is to stop the University from contracting out all of its services?)"

The Union also points out that garbage removal was contracted out two years ago. Three unit employees were occupied in the garbage removal operation on a partial day basis. Finally, the Union called attention to the fact that about 15 laboratory technicians were involved

temporarily in a contracting out situation some time back. However that was clearly an isolated instance and has no long range bearing upon the bargaining unit problems.

Collective bargaining agreements can be divided into three categories on the subject of sub-contracting: those which restrict or prohibit sub-contracting of bargaining unit work ; those which are silent on the subject; and those which positively list the right to sub-contract work as one of the prerogatives of management. According to the Bureau of National Affairs Labor Relations Expeditors, page 576 , about 28% of the representative collective bargaining contracts surveyed contained some limitation on the right of management to sub-contract work. This survey was reported by BNA as of 1967, and the undersigned is inclined to think that the frequency of sub-contracting restrictions has increased since then, in light of the decisions of the courts on this subject. BNA states that the most common restriction is that sub-contracting is allowed only if Union labor is used or contract standards are observed. Another common provision permits sub-contracting only if the necessary skills and equipment are not available within the plant. Other contracts forbid sub-contracting if a lay off would result or if employees already are on lay off. Other clauses bar sub-contracting if it would be accompanied by an hours reduction. Some require that past practice be followed. Advanced discussion with the Union is required in some contracts, while certain apparel contracts require Union consent for any sub-contracting.

Arbitrators, by and large, are inclined to imply certain restrictions on sub-contracting of bargaining unit work even where the contract is silent on the specific subject of <sup>sub-</sup>contracting. The recognition clause and union security clause are often relied upon by the arbitrators to establish certain vested rights in the employees to perform work

within the description of the bargaining unit. In view of the leading U.S. Supreme Court cases of Fiberboard and Gulf and Warrior Navigation Company vs. Steelworkers, it can no longer be questioned that employees have a strong economic interest in the preservation of bargaining unit jobs.

In the instant case no one has, as of this time, suffered the loss of a job or a lay off as a result of the sub-contracting of work in the new Administration Building or in the instance of the garbage removal sub-contract. Nevertheless, the University is expanding and the bustling construction activity on the campus at the time of the hearing held by the undersigned is moot witness to the fact that there will be future opportunities for the University to sub-contract work in new buildings as they open. While there is no contention here and no evidence here that the University has sub-contracted for the purpose of avoiding dealing with the Union or of cutting wage rates, the undersigned is in sympathy with the concern of the employees that their position can easily be undermined by further sub-contracting of work in new buildings. The University maintains that the right to sub-contract work for the purpose of realizing a savings to the taxpayers is a management right. Whether or not such a right exists after an exclusive bargaining agent has been selected by the employees is a controversy which cannot be resolved in this report. To the extent that it may be a right, I conclude that it is one which may and ought to be waived or compromised in the situation presented here. These employees are legitimately concerned about the possibility of a calculated attempt to limit the natural growth of the bargaining unit by the use of the device of sub-contracting. As long as the University continues to insist upon its prerogative of sub-contracting out of work, there is going to persist an atmosphere of distrust of the University management by the employees represented by this Union. Whatever small gain could be achieved by the sub-contracting

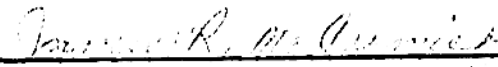


out of such services as maintenance and garbage removal and the like is far more than offset by the resulting poisoning of the relationship between the University and its organized employees. Accordingly, on the facts of this case, I recommend that the University agree to a strongly worded clause prohibiting all sub-contracting of work in categories included in this bargaining unit, during the three year life of the new contract, unless it is done after consultation with and approval by the Union. If, at the end of the period of this new contract, the University is able to document a case showing that the ban on sub-contracting has caused the University serious hardship, it will then be timely for the University to seek to renegotiate the clause. I am highly doubtful that such will be necessary, otherwise I would not have made the above recommendation.

#### SUMMARY OF RECOMMENDATIONS

In Summary, the undersigned recommends that the Union accept the offers of the University with respect to a three year wage package and that the Union abandon its demands for a special cost of living clause. On the other hand it is recommended that the University concede to the Union's demands for a strong prohibition upon sub-contracting of bargaining unit work during the life of the forthcoming contract. Upon receipt of this report, the parties are respectfully requested to meet and review its contents and to accept said recommendations and incorporate them into a collective bargaining agreement.

Dated: November 17, 1969.

  
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JAMES R. MCCORMICK  
Fact Finder