

RECOMMENDATIONS OF FACT FINDER

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STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS

In the Matter of)
)
University of Michigan,)
Ann Arbor, Michigan)
)
and) Michigan Employment Relations
) Commission
) Fact Finding Case No.D86 E-1336
Local 547, International) Nathan Lipson
Union of Operating)
Engineers, AFL-CIO)
Detroit, Michigan)

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

APPEARANCES

Employer

William P. Lemmer, Attorney
Gordon Stevens, Chief Engineer
Don Thiel, Manager - Benefits
Robert J. Henry, Personnel Representative
Armando A. Lopez, Personnel Office - Plant Operations
Bruce B. Pringle, Personnel Department

Union

David Meldman, Attorney
Philip Schloop, Business Manager
Ron Chapman, Chief Steward - Flint
Robert Adams, Chief Steward - Ann Arbor
Nick Daley, Chief Steward - Dearborn
Ron Parrish, Assistant Steward - Ann Arbor
Pete Ehrlich, Alternate Steward - Ann Arbor

Michigan, University of (FF)

FACTS OF THE CASE

The parties' last collective bargaining agreement had a term of August 1, 1984, through September 30, 1986, but on October 13, 1986, said agreement was extended "for an indefinite period of time", provided neither party served a notice of termination. The parties bargained and engaged in two mediation sessions in their attempts to negotiate a new contract, but were unsuccessful. Thus, on October 30, 1986, the Union Filed a Petition for Fact Finding with MERC, alleging that, "All Issues except wages, health and dental care provisions, and shoe allowance have been resolved", and that, "the parties have agreed to submit the outstanding issues to fact-finding".

Thereafter, the undersigned was appointed as Fact Finder and fact finding sessions ensued on May 15, and 22, 1987. In addition to the issues set forth in the Petition, the Employer raised two unresolved grievances, taking the position that the issues therein should be considered in addition to the matters indicated above. Accordingly, the Fact Finder considered all disputed matters, in some instances obtaining the parties' agreement and in other instances independently reaching the conclusions stated below.

RECOMMENDATIONS

I. Wages

It is recommended that wages for the forthcoming collective bargaining agreement be established in accordance with attached Appendices A and B.

II. Health and Dental Insurance

It is recommended that outstanding insurance issues be handled in the forthcoming collective bargaining agreement on the basis of attached Appendices C and D.

III. Shoe Allowance

It is recommended that shoe allowance be handled in accordance with attached Appendix E.

IV. Term of Agreement

It is recommended that the forthcoming collective bargaining agreement remain in force through November 30, 1988, as indicated in attached Appendix F.

V. Grievance No. E-84-13, David J. Fischer

During the fact finding hearings it was determined that the David Fischer Grievance of March 6, 1987 involved factual disputes which could not be then presented. It was also determined that the Grievance did not involve contract interpretation issues. It was accordingly decided that said Grievance should not be resolved by the Fact Finder, but subsequently handled by the parties.

VI. Grievance No. E-84-14, Terry Homan

The March 16, 1987 Grievance of Terry Homan should be denied as indicated in attached Appendix G.


Nathan Lipson, Fact Finder

Dated this 22nd day of June, 1987
Ann Arbor, Michigan

Schedule A

WAGE Schedules

Effective October 1, 1986 the wage schedule shall be as follows:

	Start	3 mos*	6 mos	12 mos	18 mos	24 mos	30 mos**
E-1	9.51		9.91	10.32	10.75	11.49	12.25
E-2	11.49		12.25				
E-3	12.25			12.68			
E-4	12.68		13.11				
E-5	13.11			13.62			
E-6	13.62		14.35				
E-7	14.25		14.98				

APPENDIX A

Schedule B

Effective November 1, 1987 the wage schedule shall be as follows:

	Start	3 mos*	6 mos	12 mos	18 mos	24 mos	30 mos**
E-1	9.99		10.40	10.85	11.29	12.06	12.86
E-2	12.06		12.86				
E-3	12.86			13.31			
E-4	13.31		13.77				
E-5	13.77			14.30			
E-6	14.30		15.07				
E-7	14.96		15.73				

* Or completion of probationary period, whichever
 first is the later.

APPENDIX B

MEMORANDUM OF UNDERSTANDING - SETTLEMENT AGREEMENT

The Wage Schedule includes the sixty cents (60¢) per hour premium (ref. par. 211) or the fifty cents (50¢) per hour premium (ref. par. 54), as the case may be, for certain employees. In those cases, the retroactive payment will not include the sixty cents (60¢) or the fifty cents (50¢) as the employee has already received that payment. The wage schedule, except as set forth above and below, is the only retroactive provision. All other new or amended provisions are effective with the ratification date of the agreement except reference paragraphs 148 and 148B which are effective May 19, 1987.

UM to IUOE
Article XXIX
August 26, 1986

Change Article XXIX to read as follows:

148 The Group Health Insurance Plan shall be as provided by the University. During the term of this Agreement no less than the Michigan Blue Cross/Blue Shield and the TIAA Major Medical schedule of hospital and medical benefits in effect at the execution date of this Agreement will be provided and maintained. The Plan may be amended, but not eliminated, by the University. In the event of any amendment that affects employees in the bargaining unit, the union will be notified at least thirty (30) days prior to the effective date of the amendment. The University will contribute, for coverage effective December 1, 1986, up to \$172.00 per month toward the cost of the group health care programs offered by the University and the employee will contribute \$42.00 per month for full family coverage if the total premium for full family coverage does not exceed \$214.00 per month. If the total premium exceeds or is less than \$214.00, the \$172.00 and the \$42.00 shall change to reflect one half the increase or decrease. However, the University contribution toward any group health care program selected shall not exceed the contribution toward premiums of the Blue Cross/Blue Shield and TIAA Major Medical plans for one person, two persons, or full family coverage. In addition, in the event any University employee group receives from the University monthly health insurance premium contributions for coverage effective December 1, 1986, in excess of \$172.00 per month, or equivalent consideration, the University shall increase its contribution level for employees of this bargaining unit to the same extent. No matter concerning the provisions of this article shall be subject to the Grievance and Arbitration Procedures, except for questions concerning compliance with the specific provisions of this Article, and whether or not the employee has coverage in accordance with terms of the Plan.

Section B No change

148A

Section C Group Dental Assistance Plan

148B

 The "Group Dental Assistance Plan" shall be as provided by the University. During the term of this agreement, no less than the United Benefit Life Insurance Company schedule of dental benefits in effect at the execution date of this agreement will be provided and maintained. In the event of any changes in the benefits, the Union will be notified prior to the effective date of the change.

149 No change

MEMORANDUM OF UNDERSTANDING - INSURANCE PROGRAMS

This confirms our agreement that effective December 1, 1987, the Union, on behalf of all employees in the bargaining unit and all employees who retire effective on December 1, 1987 or thereafter, may withdraw from all of the following:

Article XXVIII, Group Life Insurance
Article XXIX, Health Insurance
Article XXIX, Dental Assistance Program
Article XXIX, Prescription Drug Rider
Article XXX, Travel Accident Insurance
Article XXXI, Disability Plan

providing that the University is given written notice no later than October 1, 1987.

In that event Articles XXVIII, XXIX, XXX and XXXI are deleted from the Agreement in their entirety, effective at the end of the calendar day on November 30, 1987. No employee in the bargaining unit will be covered by those provisions thereafter. In turn the University, for the duration of the agreement and any extensions thereof, will pay to the Union \$9,776.00 each month beginning with the month of December 1987. Should the size of the bargaining unit increase or decrease from fifty (50) the amount of the payment will be adjusted up or down by \$196.00 for each employee increase or decrease beginning with the month following the increase or decrease. Payments to the Union will be made by the seventh day of each month.

THE UNIVERSITY OF MICHIGAN
Staff and Union Relations/Compensation
1052 Administrative Services Building
Ann Arbor, Michigan 48109-1432

May 26, 1987

Mr. Phillip Schloop
Business Manager
International Union of Operating Engineers, Local 547
24270 W. Seven Mile Rd.
Detroit, Michigan 48219

Dear Mr. Schloop,

On May 22, 1987, during Fact-Finding it was requested that the University clarify it's position on safety shoes. Please be aware that the University will reimburse employee(s) for the actual costs of safety shoes provided by the employee(s), not to exceed \$45.00 per employee, only when required to be worn by the University and upon receipt of satisfactory evidence of purchase. Such safety shoes provided by the employee(s) must meet University specifications as to style and material and/or applicable safety standards established by federal or state laws or regulations.

If you have any questions, please feel free to contact me.

Sincerely,



Bruce Pringle

cc: Nathan Lipson

APPENDIX F

UM to IUOE
Article XLII
September 18, 1986

ARTICLE XLII

TERM OF AGREEMENT

202 This agreement shall become effective 1987 and shall remain in full force and effect until and including November 30, 1988, and thereafter from year to year, unless written notice of termination is given by the University or the Union to the other party not less than sixty (60) nor more than one hundred twenty (120) days prior to November 30, 1988.

Executed this _____ day of _____, 1987

The Regents of the
University of Michigan

Local 547, International Union
of Operating Engineers, AFL-CIO

Appendix G

OPINION AND RECOMMENDATIONS OF FACT FINDER

In the Matter of)	
)	
University of Michigan,)	
Ann Arbor, Michigan)	
)	Michigan Employment Relations
and)	Commission
)	Fact Finding Case No.D86 E-1336
Local 547, International)	Grievance No. E-84-14
Union of Operating)	Designee Procedure Dispute
Engineers, AFL-CIO)	
Detroit, Michigan)	

APPEARANCES

Employer

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Pete Ehrlich, Alternate Steward - Ann Arbor

ISSUE

The jointly stipulated issue in this case is:

Was the Employer obligated to follow the designee selection procedure under the circumstances of this case?

FACTS OF THE CASE

On March 16, 1987, the Union filed a grievance on behalf of Terry Homan as follows:

"The University has unilaterally, arbitrarily, discriminatorily changed the requirements for and procedure to fill the Instrument and Controls Repairperson designee position, in violation of the contract (Article XIX, other appropriate provisions of the contract and past practice). Remedy: Repost and fill the position in accordance with the contract and make the senior person whole for any and all losses incurred."

The matter was duly processed by the parties but was not resolved. The Union stated its intention to arbitrate the matter, but the Employer took the position that the Grievance should be heard as part of Fact Finding, since resolution of the issue was required for a new collective bargaining agreement to result. Accordingly, the Grievance was argued before the Fact Finder on May 22, 1987.

The parties agreed that the following are the facts that govern the dispute:

1. On March 11, 1987, the Employer posted a "designee" position improperly. Two employees Terry Homan and Greg Shirtze signed the posting.
2. The instant grievance was filed on March 6, 1987, while the "designee" position was still posted.
3. On March 16, 1987, the Employer withdrew the "designee" posting, and did not offer a "designee" position to any bargaining unit employee. In the event the "designee" procedure had been followed, Grievant Terry Homan would have been the employee selected.
4. On April 20, 1987, the job was reposted as an E-4 position, but no bargaining unit employee bid on the opening.

5. On May 11, 1987, a non-bargaining unit person was hired for the job.

The following from the collective bargaining agreement that was in force is germane to this dispute:

"ARTICLE XIX

PROMOTIONS AND TRANSFERS

SECTION A. PROMOTION PROCEDURE

- 76 The factors in making a promotion shall be qualifications and plant classification seniority. Qualifications shall include a review of the employee's work record, other knowledge made known to the University regarding qualifications, physical capacity, predeveloped skills, knowledge and understanding of procedures and equipment, attention to duty and work habits. When it is determined that qualifications have been met, plant classification seniority of employees assigned to a classification in the next lower pay grade shall be the determining factor. Thereafter plant classification of employees assigned to each next succeeding lower pay grade shall be considered in the same manner. If none of the employees in a plant are promoted, then other employees in the seniority group shall be considered in the same manner.
- 77 A 'promotion' is defined as the transfer of an employee to a regular opening in a classification assigned to a same or higher pay grade within his own seniority group. A regular opening is an opening which the University knew in advance would exist for more than three (3) consecutive months, but shall not include any opening which is filled by an employee assigned as operational relief, regardless of duration. An employee assigned to the classification, Boiler Operator, who is regularly performing, or has performed continuously for one year or more, operational work in the Huron Street plant shall be considered for promotion in operational work in that plant prior to considering other Boiler Operators in that plant.
- 78 Prior to making a promotion, a regular opening will be posted in a plant for five (5) calendar days, except when a 'designee' or an employee with the most plant classification seniority assigned to the next lower pay grade in that plant is promoted.

In addition, the regular opening need not be posted when each next employee with the most plant classification seniority assigned to the next lower paygrade in that plant does not accept the promotion and the employee with the next most seniority is promoted. Non-acceptance of a promotion shall be in writing.

- 79 A promotion may be questioned through the grievance and arbitration procedures, but only by an employee in the seniority group in which the opening occurs who has bid during the posting period on a form provided by the University that he be considered for promotion to the classification in question and either (1) has greater plant classification seniority, or (2) is assigned to a classification in a same or higher pay grade than the employee selected for the promotion.

SECTION B. PROMOTIONAL TRAINING

- 80 In the event that the University selects an employee to be a 'designee' and be trained so the employee may become qualified for a promotional opportunity within a 'plant' (reference paragraph 63-7), an employee other than a 'designee' with the most plant classification seniority assigned to the same or next lower pay grade in the 'plant' shall be selected. An employee in the Huron Street plant shall have satisfactory experience as a Turbine Operator prior to selection as a 'designee' for training for Operating Engineer. An employee selected for training may reject the opportunity in writing. In such a case the employee other than a 'designee' with the next most seniority shall be selected. An employee who rejects such training will be eligible for selection again in accordance with these provisions.

- 81 An employee accepting the 'designee' status and the opportunity to be trained shall do so in writing. Notwithstanding any other provision of this Article, this acceptance confirms that the employee will be promoted to a regular opening in the classification for which he is being trained, providing qualifications have been met. The 'designee' employee may not reject the promotion without the consent of the University.

- 82 An employee who has been selected for training and does not successfully complete the training need not be selected for training again, unless the employee at his own initiative and expense, demonstrates that he is competent to be

reconsidered by attending and successfully completing related educational and vocational training program. An employee who does not successfully complete the training shall be returned to his former classification and pay grade.

- 83 It is understood that 'operations'; 'instrument and control repair'; and 'powerhouse repair maintenance' each, constitutes a separate series of promotional training opportunities. An employee who is selected and accepts training in one series need not be considered for promotion or training in the other series for a period of six (6) years following his latest acceptance of training within a series."

FINDINGS AND CONCLUSIONS

As the foregoing language indicates, the collective bargaining agreement provides not only for the filling of regular openings by promotion, but for promotional training, where there need not be a job opening, but where an employee can be selected for training. The parties have stipulated that on March 11, 1987, management mistakenly posted a promotional vacancy as a promotional training opening. The error was discovered before any applying employee was selected as a "designee", and the position was then reposted as a regular promotional opening.

The Union now contends that since management has taken the promotional training route and employees have applied for a "designee" opportunity, the Employer must follow through and select a "designee". If management reverses itself, as in the present case, the qualifying employee has been denied

the chance for training that the parties have bargained. By contrast, the Employer argues that an error was made in this case which may and should be corrected. There never was a training opportunity, and there was no obligation to follow through on an erroneous posting.

The contract suggests that, except for the original posting, which the parties have stipulated was in error, Article XIX, Section B did not come into play. Paragraph 80 begins by making it clear that the Promotional Training Section requirements exist, "in the event that the University selects an employee to be a 'designee' --- "(emphasis added). It is crystal-clear that no employee was selected as a "designee" in this case --- the process went no further than two employees applying pursuant to the posting.

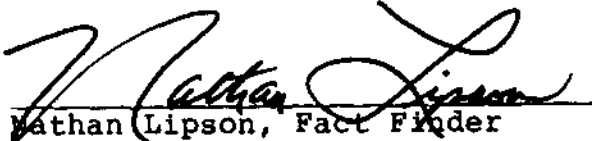
It is to be observed that the applicants gave up nothing in applying and were no worse off when management decided that there was no basis for inaugurating a training program. Paragraph 81 suggests that an employee attains vested rights as a "designee", only after selection which is followed by written acceptance of the status --- as has been repeatedly noted, neither step occurred in this case. Indeed, management never contemplated a training program and did no more than make a mistake in posting an opening.

The Fact Finder must make the general observation that it would be inequitable to require continued performance where the initial step was based on a mistake of fact or contract interpretation. Since those administering

contracts are human, errors may be expected from time to time. Even commercial contract law allows correction of errors or excuse of performance when material facts are not understood.^{1/} Thus, it would be illogical and unjust to interpret a collective bargaining agreement to require that a procedure be followed to conclusion just because a mistake was made in invoking the procedure.

RECOMMENDATIONS

For all of the above reasons it is determined that the University was not obligated to follow the "designee" selection procedures under the circumstances of this case.


Nathan Lipson, Fact Finder

Dated this 22nd day of June, 1987,
Ann Arbor, Michigan

^{1/} See, 17 AmJur 2d, Contracts Section 148.