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FF 9/23/85  
WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

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DETROIT, MICHIGAN 48226

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STATE OF MICHIGAN

BEFORE THE DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

OAKLAND UNIVERSITY

-and-

Case No. D85 D-1261

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

FACT FINDING REPORT

The undersigned was originally advised that he would be appointed Fact Finder in this matter on September 2, 1985, and discussed the matter with William M. Ellmann, Chairman of the Michigan Employment Relations Commission, and began reviewing media reports of labor dispute between the parties. On September 3, 1985, after further advice from Mr. Sperka, the undersigned contacted the professional representatives of both the employer and the collective bargaining representative to arrange hearings and to get some idea of the issues remaining between the parties that were unresolved, which resulted in the withholding of services by some members of the collective bargaining unit.

These telephone discussions resulted in this Fact Finder coming to the conclusion that although there were nominally a large number of issues to be resolved, the parties were prepared to put aside a number of minor concerns and discuss the major issues without unreasonable delay to see if the major issues could be handled in a way that would increase flexibility of the parties in dealing with the minor issues.

After discussions with both parties, this Fact Finder became convinced that the representatives on both sides were possessed of great integrity and had an honest desire to arrive at an agreement which would permit the resumption of classes on a normal basis.

On September 4, this Fact Finder met with the Mediator appointed by the Michigan Employment Relations Commission,

Oakland University

discussed the bargaining posture of the parties and the interpersonal relationships, and was able to confirm his initial perceptions and develop a plan to expedite the collective bargaining process without depriving the parties of a full opportunity to be heard and to exchange ideas.

This Fact Finder met with the parties for approximately 3 hours and 35 minutes on September 4 and was able to reduce the number of issues under discussion --- initially at six, to four.

In meetings apart from the bargaining committees but with the professional representatives on each side, this Fact Finder was able to determine that the gap between the parties was nominally greater than was the actual final position gap likely to be.

With the cooperation of the professional representatives of the parties and the leaders of each of the bargaining teams, bargaining was reorganized, to continue during the night of September 4 and the early morning of September 5, with this Fact Finder agreeing to be available on call during the next 36 hours. This Fact Finder set formal hearings for September 6, 7, and 8, with a final opinion to be prepared on September 9 and published on September 10.

Late in the day, September 4, the parties agreed that the Fact Finder could affectively mediate some of the issues between the parties. (It should be noted in this regard that it was the parties that chose the word "mediate".) This created some concern in the Fact Finder's mind because of the restrictions that are contained in the Act relative to the role of a mediator and the right of the mediator to disclose matters learned by him during the course of the mediation.

In an electronically recorded memorandum, the parties agreed that they would waive the operation of the restrictive rules and if the combination of fact finding and mediation was unsuccessful, the Fact Finder would not be bound by the mediation rules and could use any information acquired during the mediation process as well as the fact finding process to arrive at findings of fact and make recommendations as to the ultimate contract.

This Fact Finder reached the parties telephonically at 9:20 a.m. on September 5 and determined that they had bargained until 5:00 a.m. on September 5 and expected to resume bargaining sometime after 11:00 a.m. on that day and probably would be in need of the Fact Finder's services on September 5.

The Fact Finder met with the parties throughout the afternoon of September 5 and, ultimately, during the early evening, was able to ascertain that the parties had reached a meeting of the minds on all of the issues, requiring only reduction of the

agreement to mutually acceptable language. This Fact Finder set a schedule for language review with the parties if they were unable to find mutually satisfactory language, to commence on September 6 at 11:00 a.m.

Some rather unique agreements were reached aside from the formal language of the collective bargaining agreement. These agreements not only had to do with the usual formal language with regard to general amnesty for those who had withheld services, but also had to do with a commitment by the bargaining committee members on both sides to endorse and recommend ratification and provided further for certain sanctions in the event that agreement was breached.

A ratification schedule was agreed upon and by 7:00 p.m. on September 5, and the collective bargaining representative was ready for an informational meeting with his membership to advise them that a satisfactory agreement had been reached.

At 10:20 a.m. on September 6, this Fact Finder was advised that agreement had been reached as to all appropriate language, that copies of the agreement had been initialed or were being initialed by both sides, and that copies would be in the possession of the Fact Finder, as the representative of the Michigan Employment Relations Commission, before 1:30 p.m. At approximately 1:20 p.m. on September 6, initialed copies were delivered to this Fact Finder.

This Fact Finder is of the opinion that the agreement will, in fact, be ratified by both sides and that the parties will have a three-year contract in place.

I would like to note to the attention of the Commission that counsel for both the employer and the collective bargaining representative were exceedingly cooperative and made known their desire to remove from the picture any artificial barriers to agreement. They were helpful in realistically framing the issues and developing alternatives and, in the view of this Fact Finder, presented almost a textbook picture of rational advocacy without obstructionism. Without the enlightened views of the collective bargaining process by these advocates, it would have been impossible to move this process along as rapidly as it moved.

In spite of the fact that during the course of the bargaining process there were certain minimal events of mutual abrasion, the parties demonstrated respect for the persons and personalities of the people across the bargaining table, their sincerity and, most of all, the right to hold a different position. And although each side had a perception of the dynamics of the situation totally different from the other's, the parties were able to arrive at an agreement that is of the very

nature that any fact finder would be proud to recommend.

Thank you for the opportunity to serve in this most rewarding situation.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Walter S. Nussbaum", with a stylized flourish at the end.

WALTER S. NUSSBAUM

WSN/vam

Dated: September 12, 1985

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BUR. OF EMPLOYMENT RELATIONS  
DETROIT OFFICE

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BEFORE THE DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

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SUPPLEMENTAL FACT FINDING REPORT

This Fact Finder originally filed a Report dated September 12, 1985, in which it was reported that the parties had arrived at an amicable settlement of the disputes which were left at impasse at the close of mediation. At 7:00 p.m. on September 5, 1985, I was convinced that resolution was complete, subject only to the ratification process. I became even more convinced when, at approximately 7:50 p.m. on the same date, I heard on the radio that the parties had released a statement of settlement to representatives of the three major television stations and radio station WWJ.

Sometime on September 20, 1985, the parties came to the conclusion that after the manicure, there was still a hangnail on the last digit on the left hand, which had to do with how three days of work stoppage would be handled in the calendar.

This Fact Finder met again with representatives of the University and the collective bargaining agent, reviewed the available tapes and my notes, and still believes that the matter was settled on September 5, 1985.

So that there should be no misunderstanding, this Fact Finder reports as follows:

1. There was in place a work stoppage which lasted all of September 3, 4, and 5, 1985.

2. The parties recognized that the instructional days that were lost due to the work stoppage would have to be made up.
3. There was agreement between the parties that the most expeditious and least disconcerting method in terms of making up the days was to adopt the practice which has been common in educational work stoppage situations of extending the current term by the necessary number of days.

This Fact Finder has a specific recollection that both parties mentioned, at various times during the negotiation when the issue was raised, extending the term by three days --- there was no substantial disagreement between the parties as to whether that was both an appropriate and desirable method of resolving the lost days.

So there should be no further misunderstanding, although much of the discussions between the parties were recorded, not all of the discussions were recorded, and the taped portions are considered to be supplement to this Fact Finder's notes. This Fact Finder's notes clearly reflect that as of the close of bargaining on September 5, 1985, the extension of the calendar by three days was no longer an issue between the parties.

This Fact Finder recommends that in order to avoid extending the area of conflict and delaying the ratification of a generally acceptable agreement, the parties should agree, in writing, to extend the first semester calendar by three instructional days following immediately the days that were currently scheduled as of the time the work stoppage commenced, 12:01 a.m., September 2, 1985.

Respectfully submitted,



WALTER S. NUSSBAUM

WSN/vam

Dated: September 23, 1985