

1574

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS DEPARTMENT

IN RE:

LOIGE 141, FRATERNAL ORDER OF POLICE
MICHIGAN STATE UNIVERSITY DIVISION,
PETITIONER,
and
MICHIGAN STATE UNIVERSITY

MERC CASE NO. L94 C-4034;
PUBLIC ACT 380 OF 1965,

FACT FINDER: J. W. SCOTT.

APPEARANCES: Mr. Samuel Baker, its Director of Employee Relations, appeared for the University, and R. David Wilson, its attorney, represented the Lodge.

WITNESSES: The above-named representatives who appeared for the parties gave evidence, and, in addition, Scott Beckner the current president of the Lodge, and George A. Groll, its past president, gave evidence for the Lodge while Bruce L. Benson, its Chief of Police, gave evidence for the University.

HEARINGS: The hearings in this case took place at the Employment Relations Commission's offices at the Victor Center in Lansing, Michigan, on April 20 and May 22, 1995.

MEDIATION: This fact finding case follows mediation meetings which took place in August, September, October and December of 1994.

EXHIBITS: Exhibits "B", "C", "D", and "E", were presented to the fact finder at the hearings.

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STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
MICHIGAN OFFICE

FACT FINDER'S REPORT AND RECOMMENDATIONS

I. THE STATUS OF THE PARTIES' NEGOTIATIONS AT THE COMMENCEMENT OF FACT FINDING.

The parties expired labor agreement consists in some thirty-eight paragraphs or articles, including a memorandum of understanding. The Lodge's application for these fact finding proceedings recites that thirty-two hours of mediation meetings preceded this effort, and that nine "issues", "must be resolved through fact finding..."

EXHIBIT
"A"

- A. I find and declare that at the first fact finding meeting, on April 20, 1995, the parties' representatives quickly agreed that there are only two issues which remained unresolved between them at the commencement of these proceedings. That agreement on the number of unresolved issues is evidenced in my letter to the parties' representatives dated April 24, 1995, attached to this report as Exhibit "A", the contents of which have not been protested as inaccurate by any party at any time.
- B. My letter of April 24, 1995, required the parties to prepare, present to one another and discuss with one another their final positions on the two issues open between them in the form of agreement language as it would appear in a final agreement concluded between them. That meeting and exchange took place.
- C. At the fact finding meeting of April 20, 1995, the University representative produced a letter dated February 24, 1995, addressed to the University's president and signed by the current and past presidents of the Lodge. That letter recites that the parties are prevented from coming to a final labor contract agreement by their differences on the same two issues identified by the parties' representatives at the fact

I, C., (cont'd.)

EXHIBIT
"B"

finding meeting of April 20, 1995, as the sole two issues open between them. The Lodge presidents' letter is attached, as Exhibit "B". There are just two issues open for settlement in these fact finding proceedings.

II. THE POSITIONS OF THE PARTIES ON THE OPEN ISSUES.

The Lodge will not agree to the University's proposal that the Lodge should agree to changes in the present system of supplementing the regular police patrol force by permitting the University to add to that force a dozen permanent part-time certified police officers for use on occasions when supplementation of the regular full time force is needed. That disagreement is one of the two separating the parties. The other issue arises from the University's refusal to agree to the Lodge's proposal that seniority should be the sole determinant governing assignment of police officers to any of the three shifts the officers can be assigned to, the first shift being the day shift.

A. THE ISSUE OF USE OF SENIORITY IN ASSIGNING SHIFTS.

EXHIBIT
"C"

EXHIBIT
"D"

The Lodge's final position on this issue is stated in the agreement language form I asked for in my letter of April 24, 1995, attached as Exhibit "A". The University's position is simply that there should be no change in the present rotational system through which all officers change shifts periodically. The Lodge's language proposal is attached as Exhibit "C", and the University's position is stated in a letter of its Chief of Police, dated April 26, 1995, and attached as Exhibit "D".

II. (cont'd.)

B. THE ISSUE OF SUPPLEMENTING THE REGULAR PATROL FORCE WITH PERMANENT PART-TIME EMPLOYEES.

EXHIBIT
"E"

The Lodge's position is that the present and long extant system of supplementing the regular patrol force must continue, since it says that the present sources of special event supplementation are adequate to the needs for supplementation. The University's position is stated in a letter of its Chief of Police dated April 26, 1995, and attached as Exhibit "E". The University's proposed language on the issue is contained in numbered items 1 - 5 of Exhibit "E", on the second page of the letter comprising the exhibit.

III. FACT FINDER'S RECOMMENDATION.

My recommendation to the parties for the resolution of their differences and the settlement of their agreement occurs at this point so that the commentary which follows can explain it in logical sequence.

My recommendation is that these parties withdraw their remaining proposals and continue their practices of shift assignments and work force supplementation as those practices existed during the life of their expired agreement.

IV. COMMENTARY.

Any reader must be aware, and surely these parties must be presumed to know, that a fact finder in proceedings of this sort, which do not occur under Act 312 or one analogous to it, has no coercive power; these proceedings are simply an extension of the mediation process which the parties abandoned for fact finding. At the same time it must be obvious that in respect of the two issues here in dispute the parties have lived with the practices operative under those systems for years. And while the parties may well not prefer the systems they seek to change, they have

IV. (cont'd.)

not shown or claimed in these proceedings that the existing systems are unworkable or unbearable. I have no doubt whatever that shift assignments can be made on a strict basis of employee seniority; but that must have been true during the entire period of the relationship of the parties, which I understand is a period of at least twenty years. The Lodge points out that it represents other bargaining units where seniority is the determinant in assigning employees to shifts; yet this is not such a unit and never has been. The University responds that it deals with other bargaining units in which the rotational system obtaining in this bargaining unit is used. There is nothing in all of that which compels a fact finder, even one operating under Act 312, to conclude that a change in the present system of shift assignments should be recommended or compelled. And that must particularly be true in a case like this one where there is no quid pro quo to induce the University to agree to a change in the system which obtained under the expired agreement. I asked the University whether it would concede its position on the shift assignment issue if the Lodge would agree to the University's proposal on supplementation of the work force with permanent part time employees and the University said "no". I asked the Lodge if it would give up its shift assignment demand if the University gave up its proposal for use of permanent part time employees and the Lodge said "no". Clearly these parties continue to be at impasse on this issue of assigning shifts by strict seniority.

The basic position of the Lodge is that all of the members of the bargaining unit want seniority to control shift assignments; that such a use of seniority is "fair", that the Lodge is in pursuit of "equity" in proposing a seniority approach to shift assignments; that in addition to its assertion that others of the units it represents use seniority in the way the Lodge proposed. The University points out that if seniority were to govern shift assignments the most senior employees would permanently exclude junior employees from the first shift, since there are only ten

IV. (cont'd.)

patrol officers and a sergeant assigned to each of the three shifts and there are enough senior officers to accomplish that exclusion. The University adds that officers who wish to avoid the closer supervision available on the day and afternoon shifts could assign themselves permanently to the third shift. The Lodge responds that where the University assigns supervision is its own affair.

Nothing in any of this is helpful to a fact finder. Even under Act 312 nothing presented to me would require that either of these parties must yield its position on the issue of shift assignments, and the issue is not available as a quid pro quo.

Similarly, I have rung the changes on the question of the availability of the issue of the use of permanent part time employees by the University as a quid pro quo. The Lodge is not willing to permit the use of part time employees as work force auxiliaries on special occasions like football games in return for withdrawal of its demand on shift assignments, and the University will not make such an agreement in any case. The University is willing to give up its demand for permanent part time auxiliary employees only if that will settle the labor agreement, and it will not do that because the Lodge will not change its position on shift assignment seniority.

There is nothing peculiar in all of this except for the fact that the two open issues remain unsettled at a time when all other issues have been settled. Almost always parties come to impasse on economic issues, even though some other kinds of issues may accompany the economic ones. Really peculiar is the fact that the issues open here are about matters that the parties have agreed upon in the past for years during their relationship. Naturally parties may change their positions on issues as time goes on, but the question is why such issues as these should prevent the conclusion of an agreement when all other matters

IV. (cont'd.)

have been settled between them, including the economic ones.

It would obviously be absurd for these parties not to withdraw their proposals on the two open issues and sign their agreement on the settled provisions of their labor agreement, and the reasons that must be true ought to be obvious.

To begin with, I cannot coerce an agreement between these parties since I have not statutory or other powers to enable me to do that. Even if the parties could contrive a reason to repeat this fact finding and, indeed, do that a dozen times over with all of the expense that would entail, no fact finder can impose a settlement on these parties. As I have already said, this is not an Act 312 proceeding and no recommendation of a fact finder can bind these parties unless they agree to be bound; an agreement they may make if they choose to, but which they have so far refused to make.

In the absence of acceptance by these parties of my recommendation, or the withdrawal by the parties of their proposals on the open issues, the result will approach the absurd because neither party in their current situation can coerce the other. The University has already told the Lodge that it will not impose its language regarding the use of part time employees on the Lodge despite the impasse which has been reached on that issue. The Lodge, on the other hand, cannot impose on the University its proposal regarding the use of seniority in making shift assignments.

If they refuse my recommendation, or even to act in accordance with it without acknowledging it, the parties will be in the preposterous situation of having come to an entire labor agreement without having signed one and without having the leverage to produce an agreement containing the language they propose for the matters here at issue. The parties are headed for a

IV. (contd.)

result in which they have concluded a de facto labor agreement without having written and signed one. If the objective for labor agreement negotiations is to produce an agreement, sign it and distribute it to union members, as I am sure it is, these parties are aiming at a result which I have properly characterized as absurd and preposterous. They will have spent their efforts and their money to produce an agreement, will have produced one, will live together under it and will have refused to recognize the agreement resulting from their own efforts.

Parties to fact finding proceedings are responsible for their own reading of the fact finding process and the statutes governing it. They are responsible for the submissions they make to the fact finder as evidence and argument. I have already said that even if I were to analogize Act 312 I have had nothing presented to me that would require a recommendation which either party would accept if it meant conceding its position on one of the open issues. And on the open issues I see nothing inequitable in leaving these parties with a situation they have agreed to over a period of years, especially where, as here, no party has said that any part of the balance of the agreement they have made on other issues depends on their agreement on the two issues open in these proceedings.

The very thing that is solicited from a fact finder is the fact finder's opinion in reaction to arguments and supports for those arguments. And my opinion is that there is nothing compellingly fair and equitable about a proposal to require about two-thirds of the patrol officer work force to be permanently assigned to shifts which they may well not want to be permanently assigned to under a system which was not in operation when they were hired as patrol officers. Yet that change and the possibility of that result is what the Lodge proposes. I have seen no reason to recommend such a change. Seniority ought to be a powerful factor in employee assignments and benefits, but that was just as true when these parties negotiated in the past.


IV. (cont'd.)

Finally, let my recommendation, stated above at page 4, be well and truly understood.

My recommendation means that even though I find the parties to be at impasse on the open issues, the University is not to impose its position on the open issue of use of part time employees as an auxiliary work force on the Lodge.

My recommendation means that the parties are to withdraw their proposals on the open issues and they are to continue the shift assignment and work force supplementation practices which obtained under their expired agreement.

Acceptance of my recommendation means exactly that; acceptance of the recommendation stated at page 4 and elaborated upon in the two paragraphs immediately preceding this one on this page.



May 30, 1995.

_____, Accepts the recommendation.

_____, Accepts the recommendation.

JOHN W. SCOTT
Attorney & Counselor
14114 Riverview
Detroit, Michigan 48223
(313) 538-7438

April 24, 1995

Mr. Samuel Baker
Director of Employee Relations
130 Nesbit Bldg., MSU
East Lansing, Michigan, 48824

and

R. David Wilson, Esq.
Attorney
209 N. Walnut St., Suite A
Lansing, Michigan, 48933

Re: MERC Case No. L94 C-4034.
MSU & FOP Lodge No. 141.

Dear Sirs:

At our fact finding meeting of April 20, 1995, held at MERC's Lansing offices in the Victor Center the issues in dispute between MSU and Lodge 141 were reduced to two.

At that meeting I asked each of you to reduce to a labor agreement language proposal the positions of your respective parties on those issues and to do that with all possible speed so as to avoid further expense in arriving at a settlement of your labor agreement. Nor should that be in the least difficult, since you are well aware of those positions and of the full exchange you had on those positions in my presense.

The University will prepare language on the use of auxilliary personnel, and the Lodge will prepare language on the involvement of seniority in relation to employee shift assignments. Kindly contact me after you have met to discuss the language you prepare.

Sincerely Yours,



cc: M. Stiehl, MERC

00 - SHIFTS BY SENIORITY.

All employees of the Bargaining Unit shall have shifts assigned to them in accordance with the procedure outlined below.

- A. Shifts for the purposes of this Article shall be defined as follows:
- | | |
|-------------------|-------------------------|
| Morning Shift - | 7:00 a.m. to 3:00 p.m. |
| Afternoon Shift - | 3:00 p.m. to 11:00 p.m. |
| Midnight Shift - | 11:00 p.m. to 7:00 a.m. |
- B. Shifts shall be selected by the employees of the Bargaining Unit, pursuant to a procedure established by the employer, on or before each December 1st preceding the beginning of the shift periods, which shall commence and continue in accordance with the following schedule: January 1st, May 1st and September 1st. The effective dates may be adjusted to coincide with the twenty eight (28) day schedule, but are to be maintained in as close to four (4) month intervals as is possible. The shift selection shall be made for all three (3) shift periods.

The foregoing procedure shall apply to all employees of the Bargaining Unit that are subject to shift duty. If the Department desires to have a K-9 officer on each of the defined shifts, then shift selection shall occur on the basis of seniority within the group of K-9 officers. If one or more of the K-9 officers, subject to the separate procedure, is a sergeant, the sergeant must select among all of the other sergeants in the Department. Thereafter, the K-9 patrol officers will make their shift selection from the shifts that remain on the basis of seniority.

The sergeants of the Bargaining Unit that are subject to rotating shifts shall also select shifts by seniority in accordance with the procedure described herein, but shall do so as a separate group and the right to priority for shift selection shall be based upon the sergeant's seniority in rank. The most senior sergeant having the right to first choice. Shift selections for patrol officers shall be based upon seniority in the Bargaining Unit. Again, the most senior patrol officer having the right to first choice.

Community police officers shall make their shift selections as a separate group on the basis of Department seniority.

Employees may trade shifts, provided thirty (30) days notice is given and provided management approves. This provision will not be used for the purpose of circumventing this Article.

Probationary employees may be placed in any shift assignment by the employer during the first year of employment.

MICHIGAN STATE UNIVERSITY

DEPARTMENT OF POLICE and Public Safety
Committed To Courtesy and Excellence

87 Red Cedar Road
East Lansing, Michigan 48824-1219

M E M O R A N D U M

TO: Mr. Sam Baker
Director
Labor Relations

FROM: Bruce L. Benson
Police Chief and Director



DATE: April 26, 1995

RE: Seniority Issue, FOP Contract Negotiations

Sam: As you know, one of the two unresolved issues in the FOP contract negotiations is the FOP demand for shift assignments on a seniority basis. I am very much opposed to this, based upon my knowledge from police training and educational programs over the years, my discussions with other police chiefs and observance of police departments across the country, and my personal experience of working for seventeen years in a city police department which emphasized seniority over merit and professionalism. My main reasons for opposing any further seniority consideration in our Department are as follows:

- 1) Our current system at MSU Police and Public Safety works very well. We must realize that there is no perfect system for assigning police officers to cover 24 hours per day, including weekends and holidays, 365 days per year, with every police officer always being completely satisfied with their current work schedule. That is the nature of police work everywhere, and it is no different at MSU. MSU officers have a great deal of input into their shift assignment, however, and the current system does a good job of meeting the needs of the MSU community, the officers and the Department. A recent review of shift requests for a one-year period, conducted together by management and union representatives, shows that 80% of the requests were filled by the officers' first request, and 8% received their second choice.
- 2) Officer seniority is currently used for order of layoff, for pay step increases each year to the fifth level, and for a one-year minimum requirement to compete for promo-

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Memo to Sam Baker
Seniority Issue

tion to the position of Sergeant. I feel that these uses are appropriate. Perhaps it would be more meaningful to stretch the five pay step increases to every other year over a ten-year period to make that appropriate use of seniority more pronounced.

- 3) The strong direction of the Department is toward continuing professionalism. The Department's value slogan, developed with employee input, is, "Committed to Courtesy and Excellence." I expect our police department and police officers to be more professional than average police departments and officers. We take a great deal of pride in the fact that our recruitment and promotion standards are very high, including a four-year college degree; our training is more extensive than any area department; our police equipment is first-rate; our police department facilities are first-rate; and our officers' compensation is above that of other area police departments. Our turnover is very low, but when we do have police officer vacancies, it is common for officers from local departments to apply, and we have hired some of the best officers from other local police departments. In this climate of real professionalism, pushing constantly to remain elite in our field, shifting from any emphasis on merit, service and productivity toward seniority would be a step backward. One police textbook I used to teach a criminal justice course made a distinction between police officers who are "professionals" vs. police officers who are "jobbers." Professionals are concerned about good working conditions and compensation for themselves and their families; but they have a strong interest also in helping others, accomplishing things worthwhile, and being part of a distinguished professional occupational group. Jobbers, on the other hand, look at their employment merely as a job, a means to a good paycheck, whether as a police officer or worker on a factory assembly line. Our MSU Police department strongly emphasizes professionals over mere "jobbers", from initial employment interview through retirement.
- 4) Our current system, while seeking officer input and doing a good job of meeting officers' personal needs under the constraints of 24-hour shift work, also serves our MSU

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Memo to Sam Baker
Seniority Issue

community very well, and that is the reason for our organizational existence. We have been successful in serving our community, providing excellent customer service, and being innovators and standard-setters in our field. One reason for this success is our emphasis on merit, meeting community needs, and being flexible and creative, rather than emphasizing assembly-line priorities such as how long someone has existed with the Department. Our officers are rewarded well by MSU, and we provide excellent service to MSU.

- 5) Our Department is not a large agency, and we have about thirty police officers working uniformed shift assignments within the Police Division. Included within that number are a number of special assignments which must be split up to provide around-the-clock coverage on all three shifts. These special assignments include K-9, Field Training Officer, Community Police Officer, officers assigned as dispatcher, and the small number of Sergeant rank positions. These special assignments involve a great deal of special training and other investment by the Department, and they are needed on all three shifts. It would be unworkable and unproductive, in our working environment, to assign the remaining patrol officers merely on the basis of seniority.
- 6) My general experience with other police departments, including seventeen years as a police officer in the Flint Police Department, shows a general tendency regarding shift assignments by seniority pick. The more veteran and experienced officers generally select the day shift and the midnight shift, with those few officers who are supervisory problems often gravitating to the midnight shift where there is less supervision and management. Newer, less experienced officers are then collected on the afternoon shift, and in reality this often means that the Department's female and minority officers are bunched together on this afternoon shift. This system of segregation is not beneficial for the Department, for the community, nor for the officer group in general.
- 7) I believe that our current shift system is very flexible for our police officers' special personal needs -- far more flexible than a seniority shift pick system. This Depart-

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Memo to Sam Baker
Seniority Issue

ment has a long history of emphasizing the value of continuing education, and we are able to accommodate the special needs of officers working on advanced degrees. We are, after all, working in the environment of an educational community. We are also able to accommodate special requests of officers at selected times, such as a shift assignment so the officer is at home in the afternoons to help with special problems with an adolescent child, or a shift assignment to accommodate the officer being able to attend their child's last season of high school basketball or band. This also includes officers being able to trade shifts under such special conditions, which would not take place in a seniority shift pick system.

As MSU Police Chief, for the reasons above, I feel very strongly that our current shift system does a good job of meeting the needs of our MSU community, our police officers and our Department, while shifting to a seniority system would be a regressive step toward mediocrity and inflexibility.

BLB/db

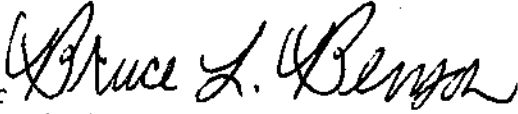
MICHIGAN STATE UNIVERSITY

DEPARTMENT OF POLICE and Public Safety
Committed To Courtesy and Excellence

87 Red Cedar Road
East Lansing, Michigan 48824-1219

M E M O R A N D U M

TO: Sam Baker
Director
Employee Relations

FROM: Bruce L. Benson 
Police Chief and Director
Department of Police and Public Safety

DATE: April 26, 1995

RE: Part-Time Police Officers

Per our recent discussions, I am providing information on the impact of hiring part-time police officers to serve the MSU community. I would indicate that there are two important areas. The first area deals with the assurances which have been provided (in writing) to the F.O.P.

Since becoming the Police Chief at MSU in 1986, the University has been faced with serious budget cuts. Despite that, Vice President Roger Wilkinson has shown his continued support and we have actually increased the number of sworn personnel from 46 to our current level of 51. It is clear from recent budget reviews, that it is unlikely we will be getting any additional resources.

On average, the Department handles about 300 special events which require the assignment of police officers. This can range from 1 to over 90. In situations requiring the assignment of more personnel than we employ, officers are hired to assist from area police agencies.

Including court and special event over-time, it is not unusual for our officers to work more than 400 hours of overtime in a year. Forced overtime is a major complaint, which has been expressed to me often since I came to this Department. We almost always patrol in one-officer cars, and our presence of some events and activities is minimal at best.

The University has given a commitment to holding tuition increase to the level of inflation and the use of part-time officers is one

method to actually expand our police resources and services without diminishing our full-time officer compliment.

I view part-time officers as a solution which is a win-win for both the University and the F.O.P.

In order to accomplish this, I provided the F.O.P. with a number of assurances which I would like to outline.

- 1) No part-time officer would replace any full-time officer. If confronted with a police lay-off situation, all part-time officers would be separated before any full-time police officer.
- 2) No more than twelve (12) persons, certified as police officers, will be used as part-time officers.
- 3) Part-time officers will be used to fill partial overtime positions, only if it is necessary to draft full-time officers for that assignment. They may be used to augment current staffing levels for event assignments.
- 4) Part-time officers will work in conjunction with full-time officers at special events, as a second person in a car, etc. A part-time officer will not be assigned to work alone on patrol or at a special event assignment.
- 5) Persons selected as part-time officers, will meet the same top standards as our full-time officers, including character and educational requirements.

BLB/db