

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

FF
4/19/71

269

K

In the Matter of
WAYNE STATE UNIVERSITY
and

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

WAYNE STATE UNIVERSITY
PROFESSIONAL AND ADMINISTRATIVE
ASSOCIATION

On March 15, 1971 the undersigned, Leon J. Herman, was appointed by the Employment Relations Commission as its hearings officer and agent to conduct a fact finding hearing relevant to the matters in dispute between the above parties, pursuant to Section 25 of Act 176 of Public Acts of 1939 as amended, and the Commission's regulations. Accordingly, and upon due notice, hearings were scheduled and held on March 19, 23 and 31, 1971 at McGregor Memorial Conference Center, Wayne State University, Detroit, Michigan.

Kenneth M. Smythe, Attorney; George Gullen, Vice President, University Relations; Thomas Priemer, Assistant Director, Personnel; J. Don Marsh, University Relations and George J. Morosan, Director Personnel Services, represented the University.

Wally Webber, Technical Office and Professional Service Department, UAW; Chalesta Barelay, Staff Representative, UAW; Maurice I. Long, President; George W. Crockett, Jr. Director; Russ Wichterman, Vice President; Ida Searles, Secretary; Regina O'Neal, Executive Board Member; David Eagloski, Executive Board Member; Maggie Canty, Executive Board Member, and Anthony Trojan, Senior

Wayne State University

Assistant Analyst, appeared on behalf of the Association.

The upper echelon staff of the University is divided into four basic groups:

Group A includes tenure teaching faculty.

Group B consists of the academic staff, including counselors, librarians and admission staff. All are non-teaching employees working 12 months a year.

Group C consists of the professional and administrative staff, including such operations as computer applications, public relations, institutional research, production of instruction media, student admissions, registration and records, payroll systems plus the gathering, analysis and presentation of administrative data.

Group D consists of executive and administrative officers such as President, Vice President, Secretary and Deans of the University.

Wayne State University Professional and Administrative Association falls into Group C. The Association was formed on October 24, 1968. It was recognized by the University as a collective bargaining group on September 18, 1970. The Association and the University have been bargaining upon a first collective bargaining Agreement since November 18, 1970. It is apparent that both parties have bargained in good faith, since at the time the petition for fact finding was presented to the Employment Relations Commission only three issues remained unresolved. These issues consisted of (1) Professional Leaves, (2) Overtime and (3) Salaries.

At the third hearing in fact finding the parties announced that they had reached a definite agreement on the second issue of overtime and withdrew the matter from consideration of the fact finder.

The parties made full oral presentation of their respective positions through a number of witnesses. They presented approximately 60 exhibits in support of their positions. Both parties filed post hearing briefs to support their respective contentions.

With respect to the issue of Professional Leave, the Association likens it to the sabbatical leave program for the teaching faculty. It argues that members of the Professional and Administrative Association are engaged in highly specialized activities. It is essential that they improve their knowledge and keep abreast of current trends in their profession. Their inclusion in Group C as a major category identified as "Academic Personnel of the University", as they are described in official proceedings of the board of Governors on October 24, 1968 should qualify the members for the privilege of comparable leaves for professional advancement.

The Association declares that it is not seeking a new benefit but merely to retain a benefit which has always been available to its membership under past practice and policy. It is shown that Larry Silverman, an Audio Visual Technician, received sabbatical leave from October, 1967 to October, 1968 and that Sherman Wilson, director of Audio Visual Production, received like leave in 1959. The Association contends that these grants of leave established a

practice and policy in the past which should be continued in the future as a fringe benefit. The fact that so few people took advantage of the Professional Leave privilege in the past does not alter the fact that it was there to be utilized if the employees so desired and should continue to be available to them. It should be granted over and above the various types of leave which are authorized in the proposed contract between the parties because the listed leaves are accorded all employees of the University, whether or not they are of professional or academic status.

To alleviate the University's concern that a contract clause on this subject would make it mandatory that the employees be granted such leave, the Association offered to modify its language to read "may" instead of "shall". The offer was not accepted by the University, but is reiterated and left open for acceptance. Since the granting of leave would be at the discretion of the University, it could not possibly create any conceivable hardship either in cost or production. The Association feels it to be unfair that its members should be deprived of a benefit they have previously enjoyed because they have now organized as a bargaining group and are engaged in collective bargaining with their employer.

The University strongly urges that the Professional Leave Program not be recommended. It considers the request akin to sabbatical leave, which is a program available to teaching faculty to enable them to do academic research. A percentage of their

basic pay is granted to teachers on sabbatical leave while performing a research function and not for the purpose of securing a degree. It is limited exclusively to academic research and is not apropos to the type of occupation represented by the Association.

It is further argued that the University may discontinue a class or substitute a lower paid graduate student as instructor when a teacher takes sabbatical leave. It would be a hardship to grant the same benefit to Association members, who have day to day jobs which must be carried on at all times. An Association member on leave must immediately be replaced by an employee at substantially the same rate of pay. The cost of replacing such employees would be so excessive as to create a hardship on the University.

Further the University questions the application of the philosophy of sabbatical leave to Association members. It has already granted leave time for a substantial number of reasons: excused personal leave; Military Reserve or National Guard service; excused absence; maternity leave; illness leave without pay; mandatory sick leave; jury duty; fractional time provision whereby an employee can work part time by agreement with his supervisor, to take time out to improve his professional status or increase his education; participation in professional organizations at full pay; time off for conventions for two representatives, not to exceed ten days in one fiscal year, at full pay in order to attend educational meetings or conferences related to collective bargaining; and a tuition refund program. This latter program provides for the refund of full tuition costs for four hours of credit courses taken in the University not necessarily job related, or for adult

education courses or applied management and technology which are job related. The University feels that any further granting of leave would be a substantial burden to the University and not of equivalent benefit to the employees. Furthermore no University or college in this state, as far as the University has been able to determine, grants sabbatical leave to employees of the type here involved.

As to the two employees who received sabbatical leave in the past, the University explains that they received these leaves before the present employee classification system was devised. None are presently classified as professional and administrative employees and none would be eligible for membership in this bargaining unit under current classification procedures.

The University therefore asks that the request be rejected.

The only purpose which a past practice could effect in a case such as this is to add weight to the proponent's argument that a clause of similar import should be incorporated in the pending agreement. It is of course elementary that no past practice can compel an employer to incorporate into a first contract a provision to which he objects, whether or not the provision includes a practice which has been of long standing. A practice becomes binding only when it has been instituted under a labor-management agreement and assumes by passage of time and acceptance by both parties the sanctity and dignity of quasi-contractual understanding. That is not true in this case.

Two isolated instances of the practice have been shown, one in 1959 and the other 9 years later in 1968. Even disregarding

the University's contention that neither recipient of the leaves would have been eligible for membership in this Association, the fact remains that two instances 9 years apart are not sufficient to establish a practice to which both parties intended to adhere. In the absense of such inference it must be ruled that no past practice existed which may affect the recommendation made herein.

It had not been controverted that no University in this state has adopted the practice of sabbatical leave for professional and administrative employees. These same classifications in private industry do not receive sabbatical leave. While such employees do receive occasional time off for specific purposes related to their professional advancement, these instances have already been incorporated into the proposed agreement. A sabbatical leave is intended for research by educators, not by persons in the situation which these Association members find themselves. Nor am I convinced that the allowance of sabbatical leave as requested would give the University any advantage to compensate for the additional cost involved. The Association's argument that the professional leave program would not constitute a financial burden to the University because it is (1) limited to 5% of employees with six years or more service, which is equivalent to not more than two persons at any one time, (2) limited to a maximum of six months duration at 70% of salary, (3) must be professionally related, (4) program does not begin until July, 1971, (5) it must be approved by the Professional Leave Committee and (6) it must be approved by the staff member's administrative head, is highly specious.

The two employees who are on leave must be replaced at full cost while the people on leave will receive 70% of salary. Although the program does not begin until July, 1971 it will begin to cost the University substantial sums as of that time. The approval of the Professional Leave Committee and the staff member's administrative head may be a preliminary requirement, but refusal to grant the leave may well become a costly item if grievances are filed in protest.

The Association argues that the University's investment in the employee's professional improvement will pay significant dividends because of the additional skills he would bring back and that it is therefore to the University's advantage and best interest. This argument has not found a welcome reception by the University. Even assuming that it were for the best interest of the employer, it is still up to the employer to decide whether it wants the additional skills at such cost. The University has indicated very clearly that it has no desire to pay for such increased skills. I do not believe that it should be forced upon the University.

I recommend that the Association's request for professional leaves be denied.

The University has proposed a 5% step increase as of July 1, 1970 and has offered a \$16,000.00 equity fund to correct maladjustments in the salary schedule. It further offers a 3% adjustment of salary on January 1, 1971, a 5% step increase on July 1, 1971 and a 3%

salary adjustment on January 1, 1972.

The Association has accepted the step increase proposals of 5% on July 1, 1970 and July 1, 1971. It also has accepted the \$16,000 equity fund for adjustment of inequities in salaries. In addition, however, it asks a 6% adjustment of salary as of July 1, 1970; a 4% adjustment on January 1, 1971 as against the University's offer of 3% and a 6% adjustment on July 1, 1971 together with a second year \$23,000 equity fund for correction of salary inequities. At January 1, 1972 the Association asks that a 4% adjustment of salary be paid rather than the 3% offered by the University.

In support of their respective positions both parties have filed numerous exhibits to compare proposed salary scales with those of other Universities in the state and of private industry and to show comparisons between the various skills of the Association members with those in other areas.

The Association argues that the University's wage proposal, which is substantially the same as that put on the table at the inception of negotiations, is patently unfair and that higher wage adjustments are both economically feasible and morally justified. It contends that the 5% step increases offered by the University are normal increments which would be paid in any event. The University does not include a salary increase as of July 1, 1970 and offers only 3% adjustments on January 1, 1971 and January 1, 1972. These increases are far below the increases in cost of living reported by the United States Department of Labor.

The Association feels that the normal step increases are

consistent with established practice and of the normal incremental concept. They have no relation to a salary adjustment.

The 3% offer by the University for 1971 and 1972 "falls woefully short of compensating employees for this increase in living costs either in their in-pocket wages or, equally important, in moving their rate ranges upward as is normally customary."

The University has granted two 5% general wage increases to secretaries and other staff employees. The first is retroactive to July 1, 1970 and the other effective July 1, 1971. Two 5% step increases were granted in the second period in addition to a longevity pay plan. The upper echelon of University officials also have received substantial increases. The average increase of that group in 1969 amounted to \$1,753 as against an average increase for the members of this bargaining unit of \$995. The average increase for the excluded group in 1970 amounted to \$1,460, substantially more than is tendered to these employees.

It is further argued that the University is well able to meet the Association's salary request. While there has been a reduction in the State of Michigan's allocation of funds to the University, that allocation represents less than 50% of the University's source of funds. Furthermore, 12% of the Association members are paid from other than state appropriated monies. The 1969-70 financial report of the University shows a surplus in the General Fund of \$1,435,074. In addition, the financial report confirms the existence of an account labeled "Reserve for compensation adjustments" with a balance in excess of \$600,000.

In its 1971 request to the legislature for a budget allocation the University included an item of cost to cover increases in salaries. It supported its salary demands by explaining that unionization of employees had become a cost factor and that "Detroit is the highest cost of living area in the State". It specifically provided for compensation increases significantly higher than the University has offered the Association members.

A survey by the Association indicates that salaries in other fields have been increased at a far higher rate than is proposed to this Association. The police and firemen of the City of Detroit received 11% increases. The automotive companies granted a 13% increase plus cost of living and improved fringe benefits. Salaries paid in similar classifications in Detroit industry and by the City of Detroit and the Detroit Board of Education are substantially higher than those offered to this group.

The Association has agreed with the University upon an equity fund of \$16,000 and has come to substantial agreement with the University on the allocation of the fund among certain of its members. The fund represents approximately 8% of the current payroll of the Association membership. It asks that for the second year of the contract an additional \$23,000 fund be established, equivalent to approximately 1% of the proposed total membership salaries, to further correct individual inequities within classifications.

The University conceded that it has had its final economic offer on the table almost since the beginning of the negotiation sessions. It explained that the amount of money available to the University for compensation increases is a matter of public knowledge, so there

is no point in seeking to hide it, particularly from a group which includes accountants with access to the University's financial records. The University, like other colleges and universities in this state and elsewhere, is undergoing a period of severe economic hardship. The University does not claim poverty, but has presented its exhibits in order to show vast sums of money are not available and that it is limited by the economic guide lines proposed by the Governor of this State. Rather than having a surplus, the University contends that it will end the year 1970-71 with a loss in revenue of \$1,469,503.

The Governor's recommendation for non-faculty compensation increases for the year 1970-71 was 6.4%, which includes roll up costs. The Governor's recommendation for 1971-72 is 6.5%.

The University contends that in consideration of its financial constraints, and in view of the restrictions placed upon the University by the Governor, its offer, when added to the 5% step increases, would result in fair and reasonable salary increases.

The equity fund of \$16,000 upon which the parties have agreed has, as the result of adjustments due to negotiated allocations among employees, increased to \$16,394. It is designed to abate current inequities in bargaining unit salaries. The University rejects the proposed \$23,000 equity fund for the succeeding year on the ground that the Association has presented no facts nor made any case which would indicate that such additional equity monies are necessary or equitable.

The university has made a survey of comparative salaries at universities in Eastern Michigan, Oakland, Michigan State and the University of Michigan on a job for job basis. It believes its

analysis indicates that the University is highly competitive and is paying a very good salary for the jobs represented by the Association. Even accepting the Association's presentation of comparative entry level salaries in other than education fields in the Detroit area, the proof is the University is paying salaries competitive with general employers in the Detroit area. The increases given to the secretaries and staff employees were necessary to compete with salaries paid elsewhere in the city. The University has found that it is almost impossible to compare salaries to those in other fields, even in the same classifications, because without job descriptions such comparisons do not have any probative value.

It is the University's position that its offer was reasonable, in that it keeps the University in a competitive position in the job market and that it extends to the employees in this bargaining unit a substantial wage increase.

I have carefully studied all the exhibits submitted by both parties. It would be pointless to prolong this dissertation by reciting all of the many subjects covered. In brief, I should point out that percentage increases in other fields are a poor method of comparison, because other factors may distort the relevancy of the increases as compared to this Association's demands. For example, the salary increases to the secretarial and staff group was necessary to make the pay scale sufficiently competitive to attract new employees into the system. Salaries paid to the upper echelon of executive and faculty staff again do not necessarily reflect the particular conditions or circumstances which may have made a higher or a lesser increase advisable.

Even in the occupations represented by the Association wage comparison is of dubious precision in the absence of full descriptions of job content. Job titles alone do not portray with any accuracy the actual work performed. Moreover, varying surrounding circumstances, such as pensions, fringe benefits, even job location create distortions which tend to render comparisons uncertain.

I do not question that the subdivision of salary demands and offers into generic classifications of "steps" and "adjustments" are well suited to the purposes of the involved parties. In essence, however, whatever the nomenclature, they connote in combination a salary increase. It is my function to recommend whatever salary increase appears justifiable in the circumstances, taking into account the nature of the work performed, salaries paid for comparable services elsewhere, escalation of the cost of living and the financial resources of the employer. I believe I can fulfill my obligation by treating and combining both groupings into a single salary increase recommendation. Subsequent negotiations should reduce the total proposal into proper proportions under each heading without undue difficulty.

Assuming for purposes of simplified computation a salary as of July 1, 1970 of \$10,000 and applying the percentages proposed by the University, the offer to the Association members would result in a salary increase of 6.58% for the first year.

The same calculations based on the Association's proposal would provide a salary increase of 11.35% in the first year. To avoid undue strain upon a limited mathematical capacity, I further assume that these percentages will carry into the second year of the pending agreement.

I accept as factual that the University is in serious financial straits. It is faced with a seven figure deficit this year. While it included substantial salary increase requests in the budget submitted to the legislature, its legislative allocation was so considerably reduced that whatever intentions it harbored at the time concerning salary increases require second thought. A substantial segment of its income is derived from other sources, and some of these sources are the fount from which a number of Association members are paid, but the University is forced to consider its overall financial package in determining the extent of salary increases. The University does not plead poverty, but it does show that its ability to pay is circumscribed by the reduced funds available to it. This is a predicament which the Association must recognize. Salaries can be paid only from available income. The University is a state supported agency, at least in part. The state's economic climate must be included as an essential factor in the resolution of salary increases.

On the other hand, the employees suffer even more immediately from the increases in cost of living. They have families to support, children to educate, homes and cars to maintain on fixed incomes. The 6% annual increase in the cost of living affects them seriously and directly. They should not be expected to reduce their scale of living to ease their employer's fiscal problems.

It is conceded that the University offer of 6.58% is designed to comply with the governor's proposed 6.5% guideline. It is noteworthy that the State Civil Service Commission and the legislature have been less compliant. They have approved increases to state employees of 8.2%. It is further of note that the University's offer barely exceeds the year's increase in cost of living, with

almost no allowance for future escalation.

All factors considered, I am of the opinion that the Association members should be granted an increase of 8%. The increase should be made retroactive to July 1, 1970.

The employees should also be given an increase of 8% on July 1, 1971 for the second year of the pending agreement.

As to those employees who share in the equity fund of \$16,394, I believe in fairness that the 8% increase should be superimposed as of July 1, 1970 upon the salaries so adjusted.

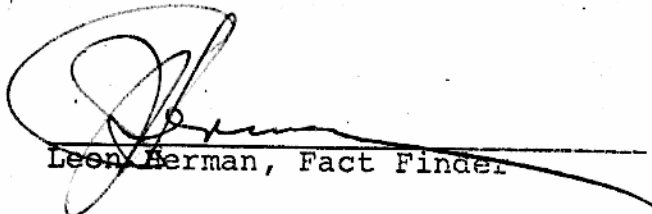
I do not recommend the establishment of a \$23,000 equity fund at the commencement of the second year of the contract. For one thing, no proof has been offered to sustain the justice of the demand. In the second place, inequities should be eliminated by the \$16,394 fund established this year. The provision in the proposed contract for posting of new job openings, giving the employees presently on the staff the first bidding rights, should eliminate inequities in the future which might result from outside hiring. Nothing has been presented to me which would indicate that the \$23,000. fund is a fair or reasonable request.

In summary, I recommend:

- 1) The Association's request for Personal Leaves should be denied.
- 2) The Association request for an equity fund of \$23,000 as of July 1, 1971 should be denied.
- 3) The employees represented by the Association should be granted a salary increase of 8%, retroactive to July 1, 1970.
- 4) The employees represented by the Association should be granted a further increase of 8% as of July 1, 1971.

5) The increase of 8% to employees participating in the \$16,394 equity fund shall be superimposed as of July 1, 1970 on their salaries as adjusted thereby.

I would like to express my sincere appreciation to the parties and their witnesses for the full and complete manner in which their positions were presented and for the courteous demeanor in which they conducted themselves throughout the hearings. I sincerely hope that my recommendations will meet with mutual acceptance and that the parties may conclude their agreement promptly.



Leon Berman, Fact Finder

Southfield, Michigan

April 19, 1971