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STATE OF MICHIGAN
DEPARTMENT OF LABOR
LABOR MEDIATION BOARD

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

In the Matter of
WAYNE STATE UNIVERSITY

-and-

MICHIGAN STATE EMPLOYEES UNION
AFSCME - AFL - CIO
Local No. 1497

On February 6, 1969 the undersigned, Leon J. Herman, was appointed by the Labor Mediation Board 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 Board's regulations. Accordingly, and upon due notice, a hearing was scheduled and held on February 21, 1969 at McGregor Community Conference Center, Wayne State University, Detroit, Michigan

Kenneth M. Smythe, Attorney; J. Don Marsh, University Relations; Richard Collins, Director of Building Services; J. Thomas Priemer, Employee Relations Manager; and Thomas Geggie, University Attorney's office, appeared on behalf of the Board of Governors of the University.

Clair Otis, AFSCME Staff Representative; Joe King, Council 7 Staff Representative; John Zupan, Vice President, Local 1497; Ellis E. Farrar, President, Local 1497; and J. D. Halloman represented the Union.

Wayne State University

The parties in this matter have been negotiating for an extended period of time for a new contract to cover the employees in the bargaining unit. Through the able efforts of Mediator Leo Cadwell, the parties reached written agreement, executed as of January 4, 1969 upon all the matters to be included within their new contract, with two exceptions. These were:

1. What should be the effective date of Article XII, Sub-paragraph (a) which establishes new lunch schedules for approximately 24 employees in the following classifications:

Groundskeeper
Handyman
Laborer
Tree Trimmer
Vehicle Operator

2. Whether shift pay shall be added to vacations effective July 1, 1968, or January 4, 1969.

The intrinsic and basic factor in controversy in both issues is the matter of retroactivity to July 1, 1968.

The parties agreed to submit these two issues to binding fact-finding.

A reading of the contract thus far reached presents no pattern upon which an answer to these two issues could be predicated. New work hours for mail clerks, animal laboratory technicians and twenty-six other employees became effective January 4. The clause covering time off for union delegates, a uniformity clause, and a new employee hiring rate were also made effective January 4. On the other hand, a clause providing for binding arbitration of pending grievances and a Sunday overtime provision were made effective July 1, 1968.

An effort by this fact finder to mediate the dispute between the parties was ineffectual.

ISSUE NO. 1

The Union explained that other employees in the bargaining unit, such as animal laboratory technicians and others, worked an 8-hour day with one hour for lunch and that the university has, in the past, compensated the employees for half of their lunch hour. The 24 employees listed worked eight hours with a half hour unpaid lunch period. The Union contends that in equity the men should be paid for this half hour from July 1, 1968, although it is willing to accept payment from October 24, 1968 which was about the date the issue was first presented to the Board of Governors for inclusion in the contract.

The University contends that to pay this half hour lunch period retroactively would cost it approximately \$10,000.00, for which no provision was made in its budget. By the time of first presentation of the proposal in October the University budget had already been submitted to Lansing for approval. The budget, as approved in Lansing, makes no allowance for the retroactive half hour pay in such gross amount and has no contingency fund against which it could be drawn. Even with the amount reduced by limiting retroactivity to October 24th, it would still have no source from which to pay without seriously curtailing other contemplated services.

The paid lunch period is common in industries where continuous operations over 24 hours is essential. This is the case, for example, in steel mills, where furnaces are run continuously. It is there customary to allow 15 paid minutes for lunch during an eight hour turn. The employees are allotted no fixed lunch time. They seize upon a lull in work time to eat

lunch. Employees not on three shift operations, however, are given fixed lunch periods, and are not paid for lunch time. The paid lunch period is in general applicable only to round the clock operations. Apart from this, paid lunch periods are a rarity in industry.

The employees here are not engaged in round the clock work. The Board of Governors has acceded in the new contract to a paid lunch period, but has escaped additional cost by reducing their working time to 7-1/2 hours. It has no way of reducing its operating cost with respect to retroactive payments. Bearing in mind the exceptional nature of paid lunch periods in one or two shift operations where continuous production is not involved, and mindful also of the stringency of the University's financial restrictions, I am persuaded that retroactivity should not be granted in this situation.

I recommend that the effective date of Article XII, Sub-paragraph (a) be January 4, 1969.

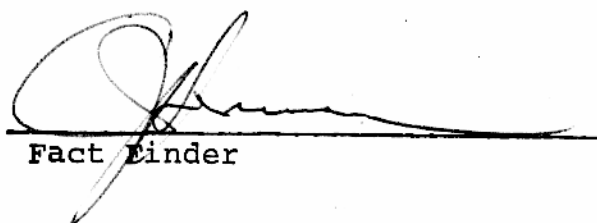
ISSUE NO. 2

The second issue does not present the same unusual situation. It is a customary practice to pay employees for their vacations on the basis of the actual hourly rate received by them in the base period. In this base hourly rate, shift premiums are normally and customarily included. The University is aware of this. It has in the past included the shift premium in computing holiday pay. There is no consistency in disallowing the shift premium for vacation pay. I am inclined to the belief that the University would have to include the shift premium in computing vacation pay even though no specific allusion were made to it in the agreement. While the agreement is not explicit on this point, it is almost axiomatic that

vacation pay conform to the regular hourly rate. If that rate includes shift premium, the vacation pay must correspondingly include it.

Had it been possible to compromise these issues, I would have preferred to relieve the Board of Governors of the burden of computation of shift premium for vacation payments for the period from July 1, 1968 to January 4, 1969 because I believe the bookkeeping involved would cost more than the gross amount payable to the employees. The employees individually will receive very small amounts. Nevertheless, the fact that the cost of computation would be burdensome to the Board of Governors does not justify a refusal to pay sums of money which employees have clearly earned and should have received in due course.

I therefore recommend that shift premium pay be added retroactively to vacation pay for the period from July 1, 1968 to January 4, 1969.



Fact Finder

Southfield, Michigan

March 10, 1969