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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
MEDIATION DIVISION

WESTERN MICHIGAN UNIVERSITY,

Employer

-and-

WESTERN MICHIGAN UNIVERSITY
CHAPTER, AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS,

Bargaining Agent

George Bowles /

REPORT AND RECOMMENDATIONS OF FACT FINDER

On May 28, 1976, the undersigned was advised by Mr. Robert Pisarski, Acting Director, Michigan Employment Relations Commission of appointment as Fact Finder in the dispute between the University and the Association. Earlier on April 23, 1976, through its attorney, the Association had filed an application with the Commission for fact finding listing seven issues in dispute.

The Issues Were:

a. Salary increase and increased fringe benefits for faculty members, including promotion increments.
b. Faculty security of employment including layoff and recall provisions.
c. Grievance procedure and binding arbitration of disputes between the parties.
d. Faculty participation in governance at the department level.
e. Application of past practices when not in conflict with contract provisions.
f. Agency Shop.

g. Inclusion of faculty in evaluation of administrators

Among other things, the Application set forth that the collective bargaining unit was a unit of the faculty certified by the Commission on March 10, 1975, following a representation election. The unit embraces 830 eligible employees. The Application also set forth that since May, 1975, the University and the Association have engaged in collective bargaining in an effort to reach agreement with approximately 45 collective bargaining sessions running through March 25, 1976. participated in by Mediator George L. Rickey. The Application recited: "Despite such good faith bargaining on the part of this bargaining agent and the efforts of Mr. Rickey as mediator, we have been unable to reach agreement upon the contract."

In its conclusionary paragraph the Application stated: "It is our opinion that if the facts in dispute and the recommendations of your fact finder concerning these issues were publicized, the opinion of the general public would be instrumental in helping the parties to reach agreement upon a contract."

As fact finder I communicated with counsel, for the parties, with respect to agreeable dates for the fact finding proceedings. The matter was set down for hearing in the Martin Luther King Room of the Student Center at the University on July 7 and July 8, 1976. Hearings were held on those dates and the parties were given a full opportunity to present proofs, both oral testimony and numerous exhibits; counsel also were permitted oral argument and the hearing was closed on July 8, 1976, to be supplemented only with letter-communications with respect to the budgetary allocation of the legislature to the University this same week.

APPEARANCES

For the University	For the Association
Robert A. Huston, Attorney	A. Robert Kleiner, Atty.

Dr. Stephen Mitchell, V.P. Academic Affairs
Dr. Barbara Sherman, Ass't. V.P. Academic Affairs
Dr. John Nangle, Instit. Research
Dr. Philip Denenfeld, Assoc. V.P. Academic Affairs
Robert Wetnight, V.P., Finance

Lynwood H. Bartley, Chief Negotiator
Joe Buckley, Neg. Team
Patricia Klein, Neg. Team
Arnold Johnston, Neg. Team
John Flynn, Neg. Team
Kathy Harrison, Secy.
Don R. Lick, President AAUP
Richard Harring, Neg. Team,
James H. Powell, Former Chief Neg. Team

THE POSTURE OF THE PENDING DISPUTE

The Application for fact finding noted that there were other issues still unsettled but set forth in the Application the central issues then stalemating the negotiations. At hearing the parties made presentations only on the enumerated issues.

The statute passed in 1954 by the legislature and found at Michigan Compiled Laws 423.25 says in part (Sec. 25) "Whenever in the course of mediation under Section 7 of Act 336 of the Public Acts of 1947 being Section 423.207 of the Compiled Laws of 1948, it shall become apparent to the Board that matters in disagreement between the parties might be more readily settled if the facts involved in disagreement were determined and publicly known, the Board may make written findings with respect to the matters of disagreement." The statute was patterned after a statute earlier passed by the legislature for the resolution of private public utility disputes not affecting interstate commerce through three member special commissions. The rationale of both statutes was that public disclosure of the positions of the parties and the recommendations of a third party would enable the disagreement to be more readily settled - the belief that public knowledge of a third party's recommendations for settlement would have persuasive effect on the parties themselves and add moral suasion to the Recommendations, particularly if the Recommendations were given wide publicity.

Fact finding is not arbitration. It is only advisory and non-binding. It is not mediation where the mediator attempts to

convince the parties in their enlightened self-interest to modify their positions and to effect compromises. Fact finding partakes of the nature of a quasi-judicial proceeding in that the parties make formal presentations, although no transcript of proceedings is taken. In addition to affording the parties full opportunity to make their formal presentations, through the cooperation of respective counsel and their clients, the fact finder did spend a short time with each of the groups at which time he was advised as to which of the issues were the more important to the disputants. No attempt was made by the fact finder to elicit from the parties in these private sessions their ultimate positions on the issues. Both the more formal and the informal session were of assistance to the fact finder in ascertaining the areas of disagreement and the bases or rationalizations of the parties for their positions.

The fact finder will not attempt to write or recommend to the parties elaborate contract language on the issues; their counsel and the parties are well able to draft language which best suits their specific relation. What the fact finder will attempt to do is to make certain recommendations on each of the issues listed with a view to breaking the bargaining deadlock. The parties are on dead-center now, having negotiated since May, 1975. They easily can become discouraged, and while highly motivated to settle, might find it very difficult themselves to frame compromises without loss of face or bargaining position. Not all labor disputes settle; some drift along rudderless and are never resolved. This dispute could be one of those, for the duration of negotiations has been a very considerable one. On the other hand, this is a first contract effort and a very difficult one in this University setting. Western Michigan University has enjoyed an excellent reputation among Michigan universities and there has been a high degree of faculty participation.

Perhaps it is the tragedy of size; that is, as universities become larger and this is now a university of some 20,000 students some personal contact is lost, close personal rapport weakened. Numbers tend toward impersonality. Also, in the growth of the university, there have been executive changes. One would be most presumptuous after a two day hearing to draw any conclusions as to why it appears the golden thread of close understanding somehow or other has been lost. If some closeness has been lost, distrust can follow whether it is rational or not. Stiffness in bargaining results and mutual understanding and confidence are difficult to achieve.

One must not be impatiently critical, or unsympathetic to the real difficulties the parties have. Administrators and faculty are highly intelligent and trained people; they think they have a contribution to make in all areas of university decision-making. They are highly motivated. They have strongly-held convictions, and do not find it easy to adjust to the give-and-take, the necessary compromises of collective bargaining.

Things will never be the same again. But they can be better under a new relationship and procedures arrived at through collective bargaining. One would be foolish to do otherwise than to recognize the realities of the situation. There is a question of power, not power for itself but power for what it will do for the University and the parties and the individuals involved. Changes of power positions or modifications of power settings do not come easily in any collective bargaining situation. They have peculiar difficulties in University education. A settlement here will not come easily. It will take not only the greatest skill but the highest resolve for settlement. Particularly is this true in a first contract context, but it is believed strongly by the fact finder that if the parties see fit to take a long look at the Recommendations, once they are able to give

and to take, to compromise on the pivotal seven issues, it is believed they will be encouraged to resolve the remaining issues.

ISSUE I. SALARY INCREASE AND INCREASED FRINGE BENEFITS FOR FACULTY MEMBERS, INCLUDING PROMOTION INCREMENTS

The Association requests an average compensation increase, base salary plus fringe benefits of 20.15% per unit faculty, retroactive July 1, 1975, for the fiscal year appointed faculty and to August 11, 1975, for academic year appointed faculty. The increase would apply to spring, 1976 appointments and summer 1976 appointments. The Association further requests an increase of 7% or an increase equal to the average increase for the University of Michigan - Ann Arbor, Michigan State University and Wayne State University of 1976-77 whichever is the higher for unit faculty beginning August 9, 1976, for academic year appointment and July 1, 1976, for fiscal year appointment. The increase would also apply to spring 1977 appointments and summer 1977 appointments. Promotional increments of $600 for promotion to assistant professor; $800 for promotion to associate professor and $1,000 for promotion to professor is requested.

The University granted a salary increase of 3.325% of base salary for eligible faculty retroactive to July 1, 1975, for eligible fiscal year appointed faculty and to August 11, 1975, for eligible academic year appointed faculty. The increase also applied to spring 1976 appointments and summer 1976 appointments of eligible faculty. The University stands on this salary increase as its full offer.

As to fringes, the University suggests the current fringe package of an average of 20.96 of adjusted salary continue through the balance of 1975-76 fiscal year and promotion increments at the 1974-75 rate, that is, $300 for promotion to assistant professor; $400 for promotion to associate professor and $500 for promotion to professor. Those eligible would be all bargaining unit faculty

except those faculty serving in the first year of a continuing appointment or faculty on continuing appointment whose salaries have already been adjusted for 1975-76.

There are two basic rationalizations or supporting theories for the Association proposal: (1) That the increases will bring the University back in line with other universities and (2) that the increases will enable the faculty to regain lost purchasing power.

The underlying argument of the Association is that Western, in numbers, in the range of programs offered and in excellence, is next in line of all Michigan colleges and universities to the so-called Big Three, University of Michigan-Ann Arbor, Michigan State University and Wayne State University, and that compensation to faculty should so reflect. The statistical data offered in support of the Association's position shows Western standing 11th in 1975-76 and for the three previous years 9th in faculty compensation.

If the University offer were to become final it is claimed that Western would then stand 11th or 12th among the 15 Michigan colleges and universities.

The other rationalization is that of losses to the ravages of increases in the cost of living, an economic tragedy that is shown beyond any dispute. Public employees are generally disadvangaged since in most instances they do not have the benefit of escalator clauses in their employment conditions. The last five year increases in the cost of living have been from April, 1973 through April of 1976, annually 5.1%, 10.1%, 10.2% and 6.1% so that in April, 1976, the cost of living index with a base of 100 for 1967 stood at 168.2. Stated another way, from April, 1972 - April, 1976, there was an increase of 35.3% in the cost of living while salaries increased 18.7%.

This disadvantageous position of faculty because of increases in the cost of living, while undeniable, does not find easy resolution. To retrieve through April, 1976, for example, the Association and its members should receive in equity and good conscience an increase of 16.6%.

The economic data shows that in the past five years salaries have increased 2.9% - 6% while the consumer price index rose annually 5.1% - 10.2%. If one were to grant an increase that would bring the faculty even, on a theory of restoration of purchasing power, full professor would receive a 19.4%; associate professor, 20.6%; assistant professor, 20.1% and instructor, 24.6% Stated another way, the full regain of purchasing power of 1972-1973 would call for an increase of 24%. Further, the faculty group represented by the Association has not fa red as well as other employee groups so far as the total dollars of allocations or expenditures. From April, 1975-76 the cost of living increased 6.1%. Increases at other institutions in the 1975-76 year were Michigan State, 7.6%; University of Michigan-Ann Arbor, 4.7%; University of Michigan-Dearborn, 6.9%; Wayne State, 6.4%; Central Michigan, 2.9% and Oakland University, 6.0%.

But it is not this simple. The University is faced with grim economic realities, that is, it is subject to limitations of budget required by Lansing appropriations. It is not the beneficiary of endowments. Its statistics show that Western is third among the Michigan universities and colleges in budgets assigned to Instruction and second in Instructional Support and Libraries and 13th in other institutional expenditures, showing by Western's view, a disproportionate use of funds for faculty salaries and fringes. Further, its allocation from the legislature is considerably less per student that that of the so-called Big Three. Western's 1975-76 appropriation was $1,748 for each equated student as compared to $3,102 for Michigan, $2,625 for Michigan State and $2,828 for Wayne. Further, the University shows a

more favorable faculty student ratio; in 1974 only two campuses, enjoyed a more favorable ratio and only Michigan's Ann Arbor campus in 1975. So far as output, Western for 1975 was 11th among the 15 institutions in credit hours per day for full-time equated faculty, 13th in contract hours, 12th in student credit hours and 9th in class size.

Both parties have made some comparisons with respect to the insurance program. It appears as to this issue or sub-issue that individualistic arrangements have been made between the University and the several groups that are represented by labor organization. These distinctions have been made depending principally upon the choice of the employees in the group. It is believed that the wise course of action on this sub-issue is to allow the parties to fashion that program which best suits their individual needs.

On the economic data made available to the fact finder it does appear that the Association members presently have in some benefits less liberal provisions.

The matter of faculty compensation cannot be easily answered or rationalized on the basis that the state is not committing sufficient funds for university education at Western. The value judgment that is made by the legislature may not place a proper assessment, some believe, upon university needs as compared to other needs in the state. But to say that a different or better allocation of state resources might have been made is not to relieve responsibility for doing that which under the proofs offered will do essential justice in the case.

In a comparison with other Michigan colleges and universities one finds the following: Western increases from 1972-73 through 1975-76 were a total of 22.2%; for the latter three years for the University of Michigan 18.5%; for the four years Michigan State University 25.7% and for Wayne State University 30.7%; for Eastern the latter three years 21.1%. For the four year period

Central shows 22.5% and Oakland 30%. On the whole of the evidence then, so far as comparisons with Michigan colleges and universities it is found as a fact that not only has the faculty suffered and sustained substantial losses in purchasing power because of the rise in the cost of living but on a relative basis, the faculty has not fared as well as faculties of other colleges and universities, for the most part, for which comparisons are available. While size, of course, is not the only criterion, it is one of the considerations in making comparisons, and the size of Western, some 20,000 students, is a factor in its favor in a comparison with the University of Michigan, Michigan State and Wayne State Universities. Other considerations do obtain including the range of curricula, student-faculty ratio and so-called productivity.

During the week of hearings the legislature made an appropriation and representatives of the parties have interpreted the legislative action to the fact finder by an exchange of letters.

It is a claim of the Association that if all the monies available by its analysis were used for increases in the year 1976-77, an increase of 19.7% would be possible, and if 54% of the total University budget were used plus $550,000.00 otherwise available an increase of 12.47% would be possible.

The University's analysis is otherwise. The actual net appropriation 1976-77 reflected in the legislative action is $409,672.00; the new money is $571,672.00 but it is reduced by a forced reduction of $162,000.00. The University analysis shows that a 6.2% increase for fiscal 1976-77 for all employees would be available through so-called new money.

In summary, the 1975-76 increases for the University of Michigan-Ann Arbor and Dearborn, Michigan State, Wayne State, Oakland University, Central Michigan, and Eastern Michigan University averaged 5.6% while those for the Big Three averaged 6.2%. The cost of living increase for the year was 6.2%. For the year July 1, 1976 to July 1, 1977, it is a safe estimate that it will be at least 7%.

On page 3, summary point (4) of the University's economic brief, this is said: "Western's average compensation for full-time faculty for 1975-76 is 6.5% below the state average."

The salary differential between Western faculty and the faculties of other Michigan colleges and universities, under the economic proofs of both parties, is clearly unacceptable. This inequitable differential must be changed, and a start on changing it must be made now.

Weighing all the economic data carefully, particularly those statistics set forth above, it is recommended: (1) For 1975-76, an increase of 8.5% inclusive of the increase already granted, and should the parties negotiate rank increments and fringe increases the increases in both salary, rank increments and fringe benefits shall not exceed 8.5%. The increase shall be retroactive to July 1, 1975. (2) For 1976-77, a salary increase of 7% exclusive of any negotiated rank increments and/or increases in fringe benefits.

ISSUE II. PAST PRACTICES

This issue is a difficult and highly charged one since the parties are attempting to evolve a transitional procedure from the existing system where there has been a high degree of faculty participation to a formalized accommodation from the past to the future. It is important that the past practices provision not be so vague and indefinite and so difficult of final determination even by a third party that it will be productive of interminable dispute.

The present arrangements within and among the several departments are diverse. It is a safe guess that no one in the University could readily set to writing all of the past practices of all of the departments and the University in its myriad of functions.

A carelessly drawn or overbroad past practices provision would not serve the interests of the parties; indeed it would not conduce to the protection of the rights of the Association members nor to the smooth functioning of the University in its service to students and the general public.

The Association proposed the following: "The parties agree to continue all past practices concerning faculty rights, privileges and terms and conditions of employment except as expressly modi-

fied by this Agreement or by mutual written consent; where the terms of this Agreement and past practices are in conflict, the terms of this Agreement shall govern." We would recommend approval of this paragraph as an introductory paragraph.

The Association has also suggested the following language: "Past practices shall be interpreted as all practices which were last in effect throughout the University as of January 6, 1975. Past practices shall include but not be limited to faculty participation in the formulation and implementation of educational policies program development, personnel decisions and governance throughout the University."

We find this language overbroad and almost certain to cause constant controversy that would be disruptive of the relationship of the parties and not serve the interests of either. There must be some delineation and limitation.

We would recommend the following language:"As used in this Agreement the term "past practices" of the University refers to those practices and those policies in writing and approved by the President and the Board of Trustees and those Faculty Senate policies and practices approved by the President and the Board of Trustees of the University, as of January 6, 1975. The issue of whether or not in a given case an established practice or policy of the University has been followed, as defined above, will be subject to the grievance procedure including arbitration.

In the event of conflict between the terms of this Agreement and policies and past practices as defined above, the terms of the Agreement shall control.

The Agreement shall supersede any contrary or inconsistent terms contained in any individual full-time faculty member's contract heretofore in effect, and all future full-time faculty member's

contracts shall be made expressly subject to the terms of this agreement."

ISSUE III. GRIEVANCE PROCEDURE

An adequate procedure is extremely important to the functioning of the collective bargaining contract. It is even more important in the first year administration of a contract, since ready access to determination by a third party of certain questions will conduce to the assurance that both parties have that there will be finality to dispute and debate. A grievance procedure provides procedural due process. Parties must be most careful in delineating the jurisdiction of the arbitrator and leaving only to third party determination matters properly within the scope of third party determination.

The parties here have made most complete presentations, and it is not the intention of the fact finder to provide a full and complete write-up for them of a grievance procedure culminating in arbitration. Rather, we will make certain specific recommendations as to the content and leave to the parties the task of drawing the particular language which best effectuates their intent.

As to definition of a grievance the fact finder recommends:

"A grievance is a dispute involving a claimed breach, misinterpretation or improper application of the provisions of the Agreement or the past practices and policies as hereinbefore defined, that is, "those practices and policies in writing and approved by the President and the Board of Trustees and those Faculty Senate policies and practices approved by the President and the Board of Trustees of the University, as of January 6, 1975."

In general, the proposal of the University more closely fits the industrial model familiar to labor relations specialists. The Association proposal suggests a sort of dual system. The fact finder considers it would be preferable to have a single system

that is set forth in the collective bargaining instrument.

As to specific provisions suggested by the Association, the following are recommended: (1) As to representation by counsel, it is recommended that at any stage of the proceedings, the parties be permitted to have counsel present. (2) As to the University providing the cost of a taped record, it is suggested that it would be advisable to avoid a record by tape or otherwise at the earlier stages of the proceedings. Such a provision would tend to inhibit discussion and freedom of exchange, which is not in the best interests of the settlement process. There is something to be said for records at that stage of proceedings where a third party is brought in for determination of a grievance, and it is believed that the fair procedure would be a joint sharing of the costs of the record. (3) The quality of evidence in arbitration is a matter that concerns both the professional arbitrator and the parties. The use of interrogatories or depositions would tend to enhance the quality of the evidence and would be preferable to the use of hearsay which otherwise might be the only available proof. This is not to say that the arbitrator would be bound by the rules of evidence and could not receive hearsay, but it is a suggestion that the quality of the evidence could be improved by use of either interrogatories or depositions. (4) It is recommended that provision be made that an individual faculty member or group of faculty members within their constitutional rights and the statutory law may present a grievance or grievances so long as an adjustment is not inconsistent with the terms of the agreement. This is the general law. (5) As to time limits, we find the Association's suggestion that a time limit of 180 days be allowed for actual filing after the discovery of the bases of a grievance is most unwise.

Staleness of claims is a bugaboo in any kind of dispute resolution and, in fact, staleness is one of the reasons for statutes of limitation in the general law. We would think that a time limit

of 60 days would be adequate and would make for expeditious investigation and resolution of a grievance.

(6) As to privacy or confidentiality, it would seem appropriate at the earlier steps of the grievance procedure to respect privacy since there may be disclosures that the parties do not wish to make public. Of course, at the last stage of the grievance procedure before arbitration, it would be difficult to enforce confidentiality and privacy and even more so in arbitration.
(7) As to the right to the use of subpoena, it is recommended that this be contained in the contract, consistent, of course, with prevailing state law. With reference to other issues that do arise with respect to the operation of the grievance procedure and arbitration such as lay-off, recall, re-appointment and governance at the departmental level, these matters will be discussed elsewhere in the Opinion.

ISSUE IV. FACULTY SECURITY OF EMPLOYMENT INCLUDING LAY-OFF AND RECALL PROVISIONS

Contractual protection on lay-off and recall goes to the essence of the security which is sought by those who organize and negotiate collective bargaining instruments. A systematic and orderly procedure for lay-off and recall is imperative if the collective bargaining instrument is to be a viable and living document.
It is both natural and reasonable that employees seek provisions that would tend to mitigate the severity of a reduction in force.

The parties have already done much productive bargaining on this important issue. The fact finder will speak only to major points of difference.

The Association proposal provides a more specific and complete procedure with enumeration of those things that must be done before lay-off including among others, the training of faculty, reduced load with reduced compensation and early retirement.

It is believed that specific contract language is best left to the parties who are both experienced and sophisticated as to the internal workings of the proposed system or systems.

The University has suggested student-faculty ratio as a sufficient cause for lay-off or re-assignment while the Association proposes a re-opener clause when changes result in either a relative or absolute reduction in the size of the bargaining unit.

Student-faculty ratio is a fixed, discernible criterion and is appealing as a contract undertaking since it is manageable. It is arguable that other standards or criteria could be added. The Association's suggestion of a re-opener is not recommended. Not only would the re-opener lead to prolonged debate, but it would place the Association in the position of deciding which of its members would be laid off. The sounder approach from a collective bargaining standpoint is to leave the ultimate decision to the University with as clear and specific criteria as the parties are able to delineate.

Time limits on notification have also been the subject of recommendations by both parties. The Association, for example, has recommended an advance notice of 18 months for tenured faculty members. Certainly, tenured faculty members are entitled to additional notice protection and it is realized that it is a difficult undertaking to relocate in the present job market. 18 months notification seems much too long, and the fact finder would recommend a notice of 10 months.

There has been sharp disagreement in respect to the University proposal on economic exigency. The University proposes simply that the standard be: "When in its judgment Western determines it is economically necessary to do so." The Association counters with a suggestion for third party review, indeed, judicial determination as to whether economic necessity exists.

The fact finder is of the strong opinion that resort to a court of law or for third party arbitration to determine economic necessity would be most inappropriate. At first instance, a third party determiner would have the problem of criteria -standards to determine economic necessity which would necessarily open up a whole range of many complex issues of University financing and internal operations. This is a thicket in which the parties should not, it is believed, allow a third party to enter. We are not persuaded, however, that the University's definition of economic necessity is either sufficiently clear and ample and would recommend that the parties write a better definition of economic necessity.

As to the Association's suggestion that work load and productivity be considered, the presentations, either oral or by briefs, were not so persuasive as to afford the fact finder with evidence that convinces him that these concepts are yet so specific and clear as to provide ascertainable standards that are workable in a collective bargaining instrument.

Finally, it is recommended that the question of whether or not prescribed procedures for lay-off, recall and re-appointment have been followed be subject to third party arbitration under the grievance procedure.

ISSUE V. AGENCY SHOP

The Association theorizes that funded by contributions from all employees in the unit, the bargaining agent is able to represent them more effectively and is better able to establish a long range of harmonious relationship with the administration.

The University in its counter-proposal suggests that all present members of the Association continue their membership to the extent of paying regular dues or service fees, and that all bargaining unit faculty hired after the date of the agreement shall either

join the Chapter and pay dues or service fees.

The Association proposal does not do violence to establish systems to underwrite the cost of a program calculated to benefit all within a given group. Everyone, or almost everyone, pays state and federal income taxes, social security and group medical and health insurance whether or not individually we like those programs and the use of the monies provided. Furthermore, in Article IX, Section 1 of the by-laws for the Senate of Western Michigan University approved December 6, 1973, it was provided: "Faculty fees shall be assessed on all faculty members and shall be collected by whatever method the Senate shall determine. Appropriate sanctions for non-payment of assessed fees shall be determined and imposed by the Senate." Faculty Senate Handbook and Directory (page 28)

In the state of Michigan the agency shop may be negotiated into a collective bargaining contract. The agency shop clause is found now in at least 13 universities and community colleges in Michigan. Also, at Eastern Michigan, Wayne State and Saginaw Valley Community College, there are proposed agency shops.

What really is the issue here is the so-called grandfather clause proposed by the University. The University has been in a period of retrenchment and some faculty persons were terminated this year because of budgetary and programatic difficulties. We cannot foresee the future, and we hope that it will be one of expansion but we cannot be sure. The college population in the late 70's and 1980's is debatable.

We must look to the actual composition of the faculty within the bargaining unit. Of 152 faculty terminated in November, 1975, 52 were on continuing appointments, only 6% of the total unit of 839 members have been hired since August, 1974; of these 52 only 42 were re-hired for 1976-77, and of these, 21 were re-hired on one year appointments with one year terminations effective April,

1977. We also note that the University is looking toward a higher student-faculty ratio. In totality, we cannot see too big a change in the faculty within the unit. In effect, then, in this University, where hiring is infrequent and where most new faculty are hired as temporary employees, the University proposal is not persuasive.

There are presently 437 paid-up members in a bargaining unit of 839 or 52% membership. By way of comparison, of less than half the faculty belong to the union and a referendum was added on the agency shop issue; more than 60% of the faculty approved the fair share concept.

It is held as a fact that the Association has made out a strong and compelling case for the agency shop without the grandfather clause in order to insure adequate financing. It provides representation to all under legal mandate to do so and should be encouraged to provide quality representation for all. We find no philosophical difficulties with the proposition that all should pay a fair share. Those who reap the benefits, along with active members, should pay their fair share.

We take note that this has been an extremely long period of contract negotiations requiring legal representation; that there are always office expenses and costs of communication among members and other chapters. The negotiating team for the Association has carried a heavy and a long burden. Their time has been donated.

In a way, the MERC decision to exclude temporary faculty from the bargaining unit has created the practical problem. In 1975-76 there were 68 people on temporary appointment or 7.5% of the total faculty. These people perform the same work as those in the unit but receive lower pay. They most certainly need representation. While not legally bound under the certified unit to represent the temporary employees, the Association feels an obligation to do so.

It would certainly make for unity if it represented the temporary employees. Furthermore, the temporary appointments may become continuing appointments.

There is another reason that an agency shop should be granted or should be recommended as requested by the Association. The first year of contract administration after the negotiation of the first contract is an extremely important year. It is the year when the parties begin to develop their own common law of labor relations practice and policy - when they begin to get some sort of stability in their relationship, and hopefully learn to relax a bit with each other, with a view to making of the relationship an effective vehicle for the general good of the University. During that first year the Association should not be bedeviled with the constant problem of financing. Its energies in the interests of the parties and the general public should be directed rather, to administering the contract fairly and vigorously. Therefore, in the best interests of both parties and the general public, under the facts of this particular case, it is recommended that the agency shop that is requested by the Association be granted by the University.

ISSUE VI. FACULTY PARTICIPATION IN GOVERNANCE AT THE DEPARTMENT LEVEL

This is an issue of great sensitivity and the highest importance to the future of the University and the welfare of the unit members.

Indeed, there has been a high degree of participation by faculty in governance at the University as evidenced by the contract proposal of the University. Running through the proposals of the Association and the University are praiseworthy motivation and sincere desire to serve the best interests of the University and the general public. We do not view the Association proposal as anything in the nature of a "power grab", but rather a proposal

calculated to insure meaningful participation in areas where faculty believe that they have not only at stake their own professional lives but something to contribute to the enrichment and development of the very best in educational procedures and practices. The University's proposals are a quest for the best.

There is much history here. We have seen and reviewed the University's compilation of official policies and practices under "University Policies and the Faculty", a rather massive effort cooperatively between the Faculty Senate and members of the University administration. There are also statements in the Undergraduate Catalog and the Schedule of Classes. In January, 1972, the President of the University expanded and elaborated upon the role of the faculty to insure broad faculty participation including an ongoing review of policies and practices within the departments. Thirty six of the University's academic departments have developed and adopted constitutions, by-law or similar documents describing departmental decision-making. Some 23 deal with the role of faculty in the department decision-making, 28 specify the faculty role in making new appointments, some deal with termination, dismissal, lay-off and recall, 10 delineate specific professional responsibilities of faculty, 22 deal with various aspects of work load or teaching assignments, 27 specify promotional policies, 28 specify something for tenure, 6 refer to faculty leave, 14 delineate appeal and grievance procedures, 31 describe participation of faculty in the nomination and recommendation of selection and/or removal of department chairpersons or heads, 20 describe the way decisions are to be made by faculty in regard to curricular offerings and departmental degree requirements, 17 provide for participation and departmental budget requests, 17 consider merit components to salary determination.

There has been a recently revised tenure and promotion policy statement. At the hearing testimony was taken as to the detailed

procedures for example, in the selection of a chairman of a department in certain departments of the University.

So the issue clearly emerges: It is not a matter of faculty participation for that has long, long been the case at Western. The question is the extent of faculty participation, whether it be beyond that of recommendation or whether it moves to the point of actual decision.

We have already dealt with the thorny question of past practices and the pandora's box that that situation creates unless there is tight language tying down that which the parties have actually agreed to, in the collective bargaining instrument. We perceive a similar problem here; the principle of participation is accepted but the language limiting and governing the degree of participation so far as decision-making is most important.

Of the functions outlined by the parties those in respect to appointment of faculty, re-appointment, tenure, promotion and selection of departmental chairpersons or removal of departmental chairpersons would seem to be the most difficult and sensitive. There is a place for recommended use of impartial third party determination. Third party determination is the contractual implementation of the concept of the impartial decision-maker - the concept that there should be a way provided to avoid simply a review of a decision by the same person or persons who made it in the first place. However, in this context, it is the considered view of the fact finder that it would be unwise and unworkable to inject a third party in the ultimate decision-making.

Keeping in mind these several considerations the following is recommended:

(1) STATEMENT OF PRINCIPLE. By virtue of the command of their disciplines, University faculty have as a unique resource the abilities to assist in governance of the departments in which

they will exercise their respective disciplines. Faculty, therefore, should participate in the governance of their departments in order to create and maintain harmonious relationships among collegues and to fashion and maintain the department in such a way as to make them maximally appropriate for instruction, research and other professional activities of the disciplines.

(2) AREAS OF FACULTY PARTICIPATION IN DEPARTMENTAL GOVERNANCE. Each departmental faculty shall determine, at a meeting of that faculty which areas of governance are to be participated in by the faculty of that department. By majority vote of the faculty each department will select those areas of departmental governance to be included in the Departmental Policy Statement. Those areas may include: departmental committee structure, the selection of departmental committees, terms of office of all departmental officers (excluding the department chairperson), departmental criteria for tenure and promotion, department tenure and promotion review procedures, departmental degree requirements, departmental curricula offerings, departmental program development and discontinuance, guidelines for departmental budget allocations, teaching assignments and class schedules, recommendations of new appointments to the faculty, sabbatical leave recommendations, personal leave recommendations, merit increase, and the recommendation for appointment and removal of chairpersons, heads or directors to the Dean of the College.

(3) THE DEVELOPMENT OF THE DEPARTMENT POLICY STATEMENT. Each department shall appoint a committee to develop a Departmental Policy Statement including those items agreed upon by the department faculty. The Departmental Policy Statement shall be ratified by the majority of the department faculty and so recommended by them to the Dean of the College and the AAUP Board.

(4) THIRD PARTY REVIEW. In respect to appointment of faculty,

re-appointment of faculty, tenure and promotion as well as selection of departmental chairpersons and removal of departmental chairpersons, the Association shall have the right and responsibility to make a recommendation in writing. If such recommendation is not accepted, the Association may make a second recommendation in writing within 60 days. The University shall have responsibility in each instance for final selection or final decision.

The question of whether or not in the given instance the contractual provisions have been complied with shall be subject to the grievance procedure including arbitration. The arbitrator shall be limited in his jurisdiction to determing whether the contractual procedures have been complied with and shall not be empowered to make the ultimate selection."

Admittedly, some contracts are more specific. There are those which require that the University, in writing, state the reasons for its action in rejecting a recommendation, but it is questionable whether or not the practice would be wise in that negative reasons would become a part of the record of the affected person or persons and be an impediment later to favorable action in that University setting or others.

The language suggested above is simple and not likely to be productive of unnecessary disputation.

If more elaborate language were thought desirable the following could be considered: "The standard for the exercise of the jurisdiction of the arbitrator is (a) whether the action constituted an error in the written procedures for handling such questions which substantially deprived the bargaining unit member of a fair hearing and/or (b) whether the decision is or is not supported by the evidence because of gross prejudice, capricious action or considerations violative of academic freedom which substantially deprived the bargaining unit member

of a fair hearing.

Fundamentally, what is desirable and what is attempted in this recommendation is to insure meaningful participation by the Association with ultimate power of decision-making in the University but with an assurance of procedural regularity and fair play.

ISSUE VII. INCLUSION OF FACULTY IN EVALUATION OF ADMINISTRATORS

This is an issue that should not stand in the way of an agreement if other issues are settled in this controversy. There is a question in the mind of the fact finder as to whether this is the sort of matter that should be handled within the context of a formal collective bargaining agreement at all.

There appears to be no disagreement, upon a review of the respective proposals on the proposition that administrators should be evaluated by members of the faculty within the bargaining unit, Western's final proposal calling for the evaluation of academic administrators holding faculty rank as well as administrative personnel of the departmental level. The nub of the dispute between the parties is the inclusion of administrators beyond academic administrators holding faculty rank.

Perhaps the best way to handle this problem to provide for negotiation of a policy declaration or statement rather than inclusion of detailed procedures under the collective bargaining instrument. It is our specific recommendation that evaluations not be made by faculty of administrative personnel other than academic administrators.

George E. Bowles, Fact Finder

Dated: July 22, 1976
Plymouth, Michigan 48170

**The fact finder wishes to commend counsel for the parties for their excellent preparation for the hearing, and for their perceptive presentations. More than 100 exhibits were prepared in advance of hearing and introduced into evidence.