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*Western Michigan University*  
*-and-*  
*Michigan State Employees Association*  

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Case No. L98 L4001

STATE OF MICHIGAN  
COMMISSION  
LABOR RELATIONS  
DETROIT OFFICE

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***In the Matter of Fact Finding  
between  
Western Michigan University (WMU)  
and  
Michigan State Employees Association (MSEA)***

**Case No. L98 L4001**

**Appearances**

**Employer**

Kevin McCarthy, Attorney  
Laureen Summerville, Director  
Phil Roekle, Manager  
George Jarvis, Manager

**Union**

Brandon Zuk, Attorney  
John Denniston, Pres  
MSEA  
Jeff Landers, Mechanic  
Tom Maida Maintenance  
Frank McKenzie,  
Operator

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***Issues: Wage Reopener<sup>1</sup> for affected units. Hourly wages, shift differentials, uniform allowance and longevity.***

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**Background**

The petition for fact finding in this matter was filed on February 5, 1999. On March 23, 1999 the undersigned was appointed as hearing officer and on April 26 he was able to confirm Monday, August 16 as the date for the hearing.

The hearing took place as scheduled at the Employer's place of business in the Trustees' offices located in Western Michigan University's Bernhard Center. The fact-finding session was recorded and copies of the tapes were provided to both parties. Sworn testimony was taken from witnesses and briefs were submitted. This report sets forth the finding, that the fact finder arrived at, based upon the parties' testimony, exhibits and briefs.

This case involves a unit of twenty-seven employees who are employed primarily in six classifications covered by five labor grades.

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<sup>1</sup> Joint Exhibit 1 is the contract between the parties. A §5, p. 143 specifies the wage reopener.

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The represented classifications are Mechanic III, Mechanic II, Mechanic I, Operator III, Operator II, and Operator I. The labor grades range from J-1 to J-5 and are applied across classifications.

### The Union's Proposal

The Union proposes an eight per cent (8%) increase and a two per cent (2%) lump sum bonus for members of the bargaining unit. This increase is based upon the Union's belief that MSEA members have received pay increases over the past five years that are substantially below the increases awarded employees in other bargaining units whose wages are paid by the Employer.<sup>2</sup> The Union further believes that MSEA members at Western Michigan University are paid less than persons in similar positions at comparable institutions.

The unequal pay situation was first fostered, the Union believes, when MSEA employees left their employment with the State of Michigan, where the unit was previously housed and became employees of Western Michigan University. At the time, in 1994, they were given the option of seeking jobs elsewhere in the State under Civil Service or of staying with the Power Plant at Western Michigan University. As an inducement to remain with the power plant, the State provided them with a five and a half per cent (5.5%) increase.<sup>3</sup> Subsequently, the Union believes, the Employer divested unit members of this gain by holding power plant increases below increases awarded other employees over the succeeding five year period. The Union submitted Exhibit 7 in partial support of this claim.

Table 1. Based on Union Exhibit 7 Modified to Show Increases from 1994-1999

Manager	Old Rate	Begin	Amt Incr	1999 Rate	%Incr
John Goes	\$67,000.00	7/1/94	\$18,000.00	\$85,000.00	27%
George Jarvis	\$49,536.00	7/1/94	\$18,756.00	\$68,292.00	36%
Russell Northey	\$46,061.00	7/1/95	\$ 8,937.00	\$54,998.00	19%
Averages	\$54,199.00		\$15,231.00	\$69,430.00	28%

Also in support of the claim, the Union submitted its first exhibit, which analyzes wage, increases by employee group.

Table 2: Data Taken from Union Exhibit 1

Year	Prof/ Clerical						
	AAUP	Admin	Tech	AFSCME	Exec	Chairmen	Police
1994	3.50%	3.55%	3.65%	2.70%	3.45%	3.00%	2.70%
1995	3.00%	3.25%	3.35%	2.70%	3.00%	3.00%	2.70%
1996	4.50%	4.65%	4.75%	2.70%	4.50%	4.50%	4.20%
1997	4.50%	4.65%	4.75%	3.75%	4.50%	4.00%	4.20%
1998	4.50%	4.50%	4.50%	4.00%	4.50%	4.50%	4.20%
1999							

<sup>2</sup> Union Brief, p. 1.

<sup>3</sup> Union Brief, p. 2.

It is noted that the above exhibit makes distinctions between those AFSCME employees who in 1995-6 received non-recurring increases (note italics) and those police employees whose increases (also in italics) averaged the amounts shown above over the three year period shown. Union Exhibit 2 shows that members of the MSEA unit received less money over the same time period.

**Table 3: Based on Union Exhibit 2 Salary Increase in Per Cent by Employee Group**

Year	AAUP	Prof Admin	Clerical Tech	AFSCME	Exec	Chairmen	Police MSEA
1994	3.50%	3.55%	3.65%	2.70%	3.45%	3.00%	2.70% 2.25%
1995	3.00%	3.25%	3.35%	2.70%	3.00%	3.00%	2.70% <b>2.50%</b>
1996	4.50%	4.65%	4.75%	2.70%	4.50%	4.50%	<b>4.20%</b> 3.00%
1997	4.50%	4.65%	4.75%	3.75%	4.50%	4.00%	<b>4.20%</b> 3.00%
1998	4.50%	4.50%	4.60%	4.00%	4.50%	4.50%	<b>4.20%</b>
1999							
	<b>20.00%</b>	<b>20.60%</b>	<b>21.10%</b>	<b>15.85%</b>	<b>19.95%</b>	<b>19.00%</b>	<b>18.00%</b> <b>10.75%</b>

It is to be noted, once again, that Union Exhibit 2 makes clear that some of the increases noted above are one time implementations (*italics*), others are averaged over the three year period from 96-98 (**bold**) while still others (MSEA, 1995) represent lump sum payments not rolled into the base wage rate. (**Bold Italic**)

Union Exhibit 3 shows that J-3s at Lake Superior State University earn considerably less per hour than do managers as do J-4s at Michigan Technological University. At Central Michigan University, on the other hand, Union Exhibit 3 shows only a slight differential between J-4s and plant supervisors at the lower end of the wage scale but a sizable difference at the maximum end of the wage scale. Where data are available, the same differences appear to be true for the average hourly rate.

The exhibit provides too little data for any meaningful analysis on the shift differential as well as for the uniform allowance. Nor does a clear pattern emerge on the matter of longevity. It should be noted that the fact finder looked only at Grand Valley State University, Lake Superior State University, Michigan Technological University, Central Michigan University and Ferris State in reaching these conclusions. The excluded institutions appeared dissimilar and no strong evidence is in the record that supports these institutions as comparable to what are largely state funded entities with, among other things, legislatively defined roles.

### **The Employer's Proposal**

Employer Exhibit 3 shows that the increases proposed by the Employer would place unit members second among similarly situated employees at comparable state institutions.

Table 5 Composite Based on Employer Ex. 3

<u>Selected Universities</u>		<u>Maximum Hourly Rates</u>					
		<u>Maximum Hourly Rates</u>					
		Mechanic III	Mechanic II	Mechanic I	Operator III	Operator II	Operator I
CMU	\$	18.06	\$ 15.77	\$ 11.00		\$ 15.77	\$ 12.11
FSU			\$ 15.52				
GVSU						\$ 16.61	\$ 14.34
LSSU						\$ 13.96	
MSU	\$	21.31	\$ 19.28	\$ 17.22	\$ 22.24	\$ 20.92	\$ 20.30
MTU	\$	17.96	\$ 14.63				
WMU (proposed)	\$	20.03	\$ 16.30	\$ 16.36	\$ 20.03	\$ 18.30	\$ 16.36
Average of Comparables	\$	19.11	\$ 16.30	\$ 14.11	\$ 22.24	\$ 16.82	\$ 15.58
Median of Comparables	\$	18.06	\$ 15.65	\$ 14.11	\$ 22.24	\$ 16.19	\$ 14.34

Although there are major gaps in the data, the Employer's proposal as presented in the above exhibit appears to the fact finder to improve the salaries of unit members to the extent that they will rank second among selected known comparables. In addition, the Employer's Exhibit 4<sup>4</sup> shows that increases in comparable jurisdictions range from two per cent to four per cent, the notable comparables being FSU, GVSU, LSSU, MSU and MTU. The Employer proposes paying unit members three per cent across the board and an additional two per cent as a non recurring payment. The latter is to be paid to employees as a lump sum. Added to these earnings is an overtime potential of some 7600 hours.<sup>5</sup>

Employer Exhibit 5 shows that Western Michigan University ranks second in enrollment among the selected comparables.

#### Closing Arguments by the Employer from the Employer's Brief

The Employer notes that it entered into a three year contract, running from November 1996 until November 1999 with MSEA. After wage increases of 3.0% were negotiated for the first and second years of the Agreement, a wage reopener was set for the third year of the contract, starting in November 1998. The parties were unable to reach an agreement through bargaining or mediation for a third year wage increase so they referred the matter to fact finding.

The Employer notes that its last offer was for a three per cent (3.0%) across the board increase. It was to become effective November 1998, along with a lump sum payment to all bargaining unit employees, equal to two percent (2.0%) of their gross earnings, including overtime earnings, over the previous twelve months.

The Union, the Employer continues, was inconsistent at the hearing. It reported in its opening statement, that its last offer was for an across the board increase of twelve percent (12.0%) plus a three percent (3.0%) lump sum bonus payment.

<sup>4</sup> Not shown in this report

<sup>5</sup> Testimony, Summerville. Union rebuts this claim as a non recurring incident.

Subsequently, the Employer notes, Union President, John Denniston, testified that the Union's last bargaining position was an eight per cent (8.0%) across the board increase and a two percent (2.0%) lump sum bonus.

It is undisputed, the Employer argued further, that the pay increases received by bargaining unit employees in this period exceeded the cost of living increases. The Employer went on to cite data from the CPI and to rely upon testimony from Witness Summerville. The average of these increases (using a 3% figure for Michigan Tech), is 2.33% the Employer noted. The Employer then argued that its wage increase offer is in excess of this average, even without consideration of the proposed 2% lump sum payment.

The Union, the Employer notes, proposed the University of Michigan and Wayne State University as comparable employers. These universities, the Employer countered, awarded power plant workers 3.0% and 2.8% respectively.<sup>6</sup>

Continuing in rebuttal, the Employer pointed out that Union President, Denniston testified that he was aware of no comparable bargaining units that had received 1998 pay increases of eight per cent, seven per cent or even five per cent.

The Employer added that the hourly rates paid to the members of this bargaining unit are competitive with the rates being paid to employees doing similar work at comparable universities and notes that WMU's pay rate is the second highest among rates paid by comparable institutions in both median and average pay rates for the comparable classes of employees. The Employer offered a composite table detailing the following:

Table 6: Rankings of WMU and Selected Comparables				
Classification	WMU Rate	Average Rate	Median Rate	WMU Rank
Mechanic III	20.03	19.11	18.06	2 <sup>nd</sup> of 4
Mechanic II	18.30	16.30	15.65	2 <sup>nd</sup> of 5
Mechanic I	16.36	14.11	14.11	2 <sup>nd</sup> of 3
Operators				
Classification	WMU Rate	Average Rate	Median Rate	WMU Rank
Operator III	20.03	22.24	22.24	2 <sup>nd</sup> of 2
Operator II	18.30	16.82	16.19	2 <sup>nd</sup> of 5
Operator I	16.36	15.58	14.34	2 <sup>nd</sup> of 4

In addition to the above, the Employer cited testimony by Summerville which noted that in more than one instance, employees in selected classifications may actually earn more than their respective managers who are salaried and excluded from overtime pay provisions. (The Union rebutted by noting that the confluence of factors that resulted in this situation is not, by any means, expected to repeat.)<sup>7</sup>

In addition, the Employer notes, bargaining unit members receive compensation in the form of certain fringe benefits. These include: Medical Leaves of Absence (p.57); Personal Leaves of Absence (p.57); Military Leave (p.59); Union Leave (p.60); and

<sup>6</sup> Union Exhibit 4, p. 3 and Employer brief.

<sup>7</sup> This rebuttal was repeated during our conference of Monday, October 4.

Family and Medical Leave pursuant to federal law. In addition, the Employer notes further: protective clothing is furnished by Western Michigan University (p.78); safety glasses are provided by WMU where they are required (p.78); an Employee Assistance Program is made available to employees (p.79); and free parking is provided in faculty/staff parking lots (p.103). The Employer points out, in addition, that a tuition discount and tuition remission program is available to employees and their spouses/dependants. A 75% tuition discount is given to employees, and a 50% tuition discount is given to their spouses and dependents (p.104).<sup>8</sup>

The Employer presented arguments as well relative to jury duty, paid sick leave, annual leave, bereavement, hospital/medical insurance, long term disability among the fringe benefits which members of the unit receive.

### **Closing Argument by the Union from the Union's Brief**

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This fact finding concerns a wage reopener for the 1998-99 year of an agreement covering power plant operators at Western Michigan University, the Union notes. The Employer, the Union continues, proposes a three per cent (3%) base wage increase, along with a two per cent (2%) lump sum payment. The Union notes that its last proposal was for eight per cent (8%) along with a two per cent (2%) lump sum benefit.

The Union seeks a substantial increase, it argues, because pay increases granted unit members have lagged behind increases awarded members of other bargaining units, and increases awarded supervisors over the past five years. A substantial pay increase, argues the Union, would put MSEA's members in line with persons doing the same or similar work at comparable power plants.<sup>9</sup>

From fiscal year 1994-95 through 1998-99, the Union contends, other bargaining units have received aggregate pay raises ranging from a high of 21.1 percent for the Clerical/Technical unit, to 15.85 percent for the AFSCME unit. While MSEA, with the present year excepted, argues the Union, has received only 8.25 percent in the aggregate.<sup>10</sup> Moreover, it continues, Exhibit U-7 shows that the managers responsible for the power plant operation have received aggregate increases well above this amount: John Goes, Director, Fiscal Plant, has received increases totaling twenty-four percent; George Jarvis, Manager, Power Plant, the Union continues, has received increases

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<sup>8</sup> Page numbers refer to Joint Exhibit 1.

<sup>9</sup> The Union explained that the power plant was transferred from the State of Michigan to Western Michigan University. Jobs performed by members of this unit were transferred along with the operation. Bargaining unit members had the option of seeking jobs elsewhere in the State of Michigan Civil Service, or staying with the power plant. As an inducement to stay with the power plant, they received a 5.5 percent pay increase at the time of their transfer from the State of Michigan to Western Michigan University; the 5.5 percent increase would have been what they received had they continued to be employees of the State of Michigan the Union contends. Had the transfer been effective the day after the fiscal year began on October 1, their base rate would have included the 5.5 percent increase, the MSEA President John Denniston testified.

<sup>10</sup> See Table 3.

totaling thirty-two percent while Russell Northey, Assistant Manager, Power Plant, has received increases totaling nineteen percent.<sup>11</sup>

The University's settlement with its faculty, the Union continues, will pay the faculty a total of 6.5 percent the first year, and an additional half percent merit increase that will be determined on an individual basis.<sup>12</sup>

The University, the Union argues, presented evidence that one year, some bargaining unit members made more money than the power plant manager or assistant manager. MSEA's witnesses testified, the Union notes, that high amounts of overtime were due to the renovation of the power plant. Now that renovation has been completed, it notes, overtime hours are much less than they were at the time these numbers were generated.

### **Fact Finder's Discussion on the Merits Based on the Evidence**

The question, which this report addresses, is whether the Employer should award increases to the unit in the amount of three per cent or eight per cent. The record shows that a three per cent increase will place wages in the respective classifications at WMU second among wages awarded similarly situated employees at comparable institutions. An eight per cent increase, on the other hand, would place the WMU wages first among wages awarded similarly situated employees at comparable institutions. The hourly wage increases of WMU employees would exceed the average hourly wage of such employees at comparable institutions by more than one and a half times (167%).

This increase, the Union believes, is warranted because MSEA members have received pay increases over the past five years that are substantially below the increases awarded employees in other bargaining units whose wages are paid by the Employer.<sup>13</sup> The Union also believes that MSEA members at Western Michigan University are paid less than persons in similar positions at comparable institutions.

The record supports the first claim but not the second.

While the record supports the first claim, the submitted proofs do not persuade the fact finder that an eight per cent increase is warranted to restore or establish parity. The Union's strongest proofs are set forth in Union Exhibits 1 and 7 shown in this report as Tables 1 and 2.

**Findings:** Although exhibits, one and seven, show the differences that the Union contends that they show, the fact finder notes that the classifications are dissimilar. The Union has not shown that the employer pays the employees in these classifications an hourly rate or salary that makes these employees the highest paid among similarly situated employees at comparable institutions. The Union also did not show that the

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<sup>11</sup> See Table 1. The fact finders figures differ. They are derived from dividing the total increase by the old rate.

<sup>12</sup> Union Exhibit 6.

<sup>13</sup> Union Brief, p. 1.



monies paid to these employees exceed the comparable averages of wages paid to similarly situated managers by one and a half times.

Yet, this is what the Union proposes for members of the mechanics and operators unit. An eight per cent increase would result in hourly rate increases which would exceed the hourly rates of similarly situated mechanics and operators by more than one and a half times. An eight per cent increase would make these employees the highest paid among mechanics and operators at the comparable institutions.

To carry its burden the Union had to show that employees in other classifications have been paid more than members of the bargaining unit which it represents, and that the wage increases paid to these employees exceed the wage increases paid to similarly situated employees at comparable institutions. The Union was able to show only that the members of the unit it represents received increases below those provided employees in other classifications. The Union was unable to show that these employees are paid above the market rate for their respective classifications. Nor did the Union pursue the restoration of parity issue beyond implying that such parity should exist. To meet this standard, the Union would have had to show that WMU maintains such a standard as an ongoing practice and awards all classifications the same per cent or across the board increase. This argument would have complemented the exhibits showing that organizational parity had been lost, if, in fact, such parity were ever in place. Given the facts as set forth in this record, the Union was unable to carry its burden.

The Employer, on the other hand, had the burden of showing that its wage offer is comparable to wages paid to similarly situated employees at comparable institutions.<sup>14</sup> In submitting the exhibits set forth in Tables 5 and 6 the Employer sustained its claims and carried its burden.

### **Recommendation**

The fact finder recommends implementation of the three per cent (3%) wage adjustment and the non recurring lump sum payment of 2% recommended by the Employer, effective November, 1998.

\_\_\_\_\_  
10/8/99  
Date

\_\_\_\_\_  
Edward J. Imptino  
Fact Finder

<sup>14</sup> The Employer was able to show that its proposal exceeded the CPI-U. Although it did not provide data on the CPI-W, during our conference meeting of October 4, 1999, it noted that the increase in the CPI-U exceeded the increase in the CPI-W.