

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FACT FINDING

*In the Matter of the
Fact Finding Between:*

WAYNE STATE UNIVERSITY

-and-

MERC Fact Finding Case No. D02 D0609

POLICE OFFICERS LABOR COUNCIL

**FACT FINDER'S REPORT,
FINDINGS OF FACT AND RECOMMENDATIONS**

APPEARANCES:

For Wayne State University:

Alexandra S. Matish, Asst. General Counsel
A.L. Rainey Sr., Director, Labor Relations
Bruce Gluski, Labor Relations Specialist
Bill L. King, Chief of Police
Tony Holt, Police Captain

For Police Officers Labor Council:

Thomas R. Zulch, Attorney
Mark Douma, Attorney
Michael Mandjack, POLC President
Matthew Gavins, POLC Sec-Treas.
Raymond J. Whithall, POLC Ch. Steward
Nancy Ciccone, POLC Research Analyst
Jerry Caster, Field Representative

General Background

Wayne State University is an urban university located in uptown Detroit, Michigan, having a student enrollment of more than 30,000 students. The University employs a certified police force of approximately 25 officers who have police powers and are armed. Their function is to provide a variety of police services within the University campus and environs. As testified, these officers provide the same police functions as do Detroit police officers.

Over the years, the police officers have been represented by the Michigan Police Officers

Labor Council.

Current Bargaining History

The Labor Council and the University have had a series of collective bargaining agreements covering the police officers employed by the University. The latest contract covered the period from October 1, 1999 through September 30, 2002. The parties commenced bargaining in September, 2002 for a successor contract. Apparently, through the efforts of mediation, the parties did reach a tentative agreement on all issues, including economic issues on April 8, 2003. The tentative agreement as to economic issues was:

Economics

Year one (10/1/02-9/30/03), effective starting 3/1/03 = 2.75% ATB

Year two (10/1/03-9/30/04, effective 10/1/03) = 1.0% ATB

Year three (10/1/04-9/30/05), a 'wage only' reopener may be invoked by either party during the 60 day period prior to 10/01/04.

No reduction in vacation or illness accrual rates for newly hired officers.

Benefits Changes (effective 3/01/03)

Follow all AAUP benefit changes effective upon programming of pre-tax benefit changes. This would include pre-tax parking when available.

Medical insurance

- Changes in HMO/PPO plans
 1. \$10.00 co-pay for office visits
 2. \$5.00/\$10.00 co-pay for prescription drugs
 3. Mail order prescription drug option
- Addition of new vendor, Community Blue PPO
- Change in cash-in-lieu of medical benefits to \$100/month from \$60.

Dental Insurance

- Implement underlying PPO which results in a higher level of benefits
 1. Sealants for dependent children
 2. Orthodontia limit increased 50% of up to \$2,000 life time maximum
 3. Routine x-rays coverage increased to 100%
 4. Class 2 benefits (oral surgery, endodontic, periodontic and restorative) coverage increased to 90%
- Eliminate 6 month waiting period for new hires.

Life Insurance

- Supplemental options increased to 1, 2, and 3 times salary up to a maximum of \$500,000.

This agreement failed ratification by the membership. As a result, there were further negotiations and mediation with no agreement being reached. Thus, the instant petition for fact finding was filed on October 16, 2003 by the Local Council, listing the issues in dispute as:

Article 12 - Work Assignments, Scheduling and Overtime.
Compensatory time
Rotation of job assignments

Article 14 - Vacation
Increase vacation accrual rate to 7.8 hours for employees with ten (10) years seniority

Article 18 - Cleaning Allowance
Increase allowance to \$50.00 for uniform personnel and \$25.00 for all other employees.

Article 21 - Tuition Assistance Program
Institute an educational/tuition assistance program for children and spouse of deceased officers

Article 27 - Illness Bank
Add one (1) personal business day at five years seniority, and add two (2) personal business days at ten (10) years of seniority.
Definition of 'immediate family' to include domestic partner, to include the use of 'special needs days.'

Article 28 - Bereavement Leave
Definition of immediate family to include domestic partner.

Article 30 - Income Disability Program
Modify definition of disability to include, 'unable to perform the normal duties of a public safety officer.'

Article 31 - Medical Insurance
Include domestic partner in benefit

Article 33 - Dental Insurance
Include domestic partner in benefit

Article 34 - Retirement
Modify life insurance to \$7,500.00
Employer to provide and pay for retiree medical insurance coverage
Increase current sick leave pay-off to 50%.

Article 36 - Salary Schedule
Effective 10/01/02 six percent (6%) ATB wage increase
Effective 10/01/03 six percent (6%) ATB wage increase
Effective 10/01/04 six percent (6%) ATB wage increase

Article 41 - Emergency Closing
Modify to include electrical outages.

All economic issues to be fully retroactive.

The undersigned was appointed as fact finder by the Michigan Employment Relations Commission. A hearing was conducted on Monday, October 25, 2004.

The Criteria

The aim of fact finding is to guide the parties as to the terms and conditions which, in the view of a neutral, can be the basis for resolving the parties' dispute so as to enable them to reach a collective bargaining agreement. By tradition, the fact finder should apply certain criteria when making recommendations. The best gauge for determining the criteria is set forth in Act 312 of Public Acts of 1969 dealing with compulsory arbitration of police and fire disputes, whereby the Legislature has set forth in Section 9 the following criteria to be followed by Act 312 arbitrators:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the ages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.

- (f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Essentially, these criteria address the cost of living, the financial ability of the employer to fund the award, and comparables, both internal and with other similarly situated public and private employers in the geographical area involved.

The criteria set forth in Section 9 are just that - guides. Act 312 arbitrators and fact finders utilize this criteria as applied to a particular situation. There is no one criteria that is dominant over another. The application of a particular criteria depends upon the circumstances.

It is noted that in Section 9(h), the statute refers to criteria used by fact finders, not enumerated in Section 9. Among the criteria utilized by fact finders is the bargaining history of the parties, both past and current, as well as the "art of the possible," namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations. The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise.

As enumerated in Section 9, there is the comparables criteria. This means that both external and internal comparables must be studied, comparing similarly situated employees of similar employers and the pattern of negotiations among the employees of the employer. This comparable criteria, coupled with the bargaining history and the art of the possible, leads the way to a recommendation in the instant situation.

The Comparables

The current wage of police officers as of the last year of the 1999-2002 contract is as follows:

Minimum	\$36,367
Step 1	\$37,911
Step 2	\$41,334
Step 3	\$47,745

The Council argues that the external comparables should be Eastern Michigan University, Michigan State University, Oakland University, and the University of Michigan. The University takes exception particularly to Michigan State University, suggesting that Michigan State is in a different labor market. Recognizing this point, the wage history of the external comparables reveals the following increases:

<u>Unit</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Eastern Michigan	3.00%	4.03%	4.03%
Michigan State	3.00%	3.00%	1.00%
Oakland University	2.68%	3.33%	exp 9/30/02
University of Michigan	3.40%	9.77%	3.00%

As a result, the wage increase for Wayne State University in terms of base salary reveals:

<u>College</u>	<u>1999</u>	<u>Rank</u>	<u>2000</u>	<u>Rank</u>	<u>2001</u>	<u>Rank</u>
Eastern Michigan	\$40,065	5	\$41,680	6	\$43,359	6
Michigan State	\$47,523	1	\$48,949	1	\$50,417	1
Oakland University	\$45,032	2	\$46,238	3	\$47,778	3
University of Michigan	\$42,650	4	\$44,100	5	\$48,410	2
Wayne State (U/P)	\$45,004	3	\$46,354	2	\$47,745	4
Detroit	\$42,876	6	\$44,163	4	\$45,488	5

There is another comparable, and that is the Detroit Police Department. Based upon the last Act 312 involving the City of Detroit and the Detroit Police Officers Association, the following are the facts as to Detroit:

Exhibit II
Step Increment Schedule

Wages - Article 41

Effective 7/1/01 0%

Effective 7/1/02 0%

Wages - Article 41

Effective 7/1/03 5.0%

A. Police Officer hired prior to February 20, 1995.

	<u>7/01/01</u>	<u>1/01/02</u>	<u>7/01/02</u>	<u>1/01/03</u>	<u>7/01/03</u>
Start	No change	No change	No change	No change	\$36,159
After 1 year	\$	\$	\$	\$	\$38,480
After 2 years	\$	\$	\$	\$	\$40,800
After 3 years	\$	\$	\$	\$	\$43,121
After 4 years	\$	\$	\$	\$	\$45,441
After 5 years	\$	\$	\$	\$	\$47,762

B. Police Officer hired on or after February 20, 1995.

	<u>7/01/01</u>	<u>1/01/02</u>	<u>7/01/02</u>	<u>1/01/03</u>	<u>7/01/03</u>
Start	No change	No change	No change	No change	\$29,258
After Academy	\$	\$	\$	\$	\$30,258
After 1 year	\$	\$	\$	\$	\$32,959
After 2 years	\$	\$	\$	\$	\$36,660
After 3 years	\$	\$	\$	\$	\$40,362
After 4 years	\$	\$	\$	\$	\$44,063
After 5 years	\$	\$	\$	\$	\$47,762

The Fact Finder makes the point that Eastern Michigan University is not a good comparable because the percentage increases experienced at Eastern Michigan have been a "catch-up." Likewise, the University of Michigan's 9.77% in 2001 was merely a "catch-up" as the University of Michigan had fallen behind police departments at other universities, including Wayne State University.

By virtue of previous negotiations, Wayne State University police officers have been paid more than Detroit police officers, even though they are serving in a contiguous area serviced by

Detroit police officers, as well as being paid most competitively with other nearby university police departments.

The reason why the Wayne State University police officers have done well in comparison with the Detroit police officers and police officers at Oakland, University of Michigan and Eastern Michigan Universities is because there have been "pattern" bargaining for at least nine years at Wayne State University, whereby the base rates negotiated with the American Association of University Professors has served as a pattern for bargaining in the non-academic units. In particular, the Police Council has mirrored the negotiations with the Operating Engineers. This comes as no surprise as both are most critical employees. The police officers are needed for the public safety of the students. The operating engineers are needed to heat the buildings.

The following is a chart of recent settlements based upon the above mentioned pattern at Wayne State University.

<u>UNION</u>		<u>Average</u>		<u>CBA</u>	<u>Increase</u>		<u>Increase</u>		<u>Increase</u>		<u>Approx.</u>	
<u>Non-Academic Union</u>	<u>Total # of</u>	<u>Annual</u>	<u>Members</u>		<u>Exp. Date</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>	<u>Retro to:</u>	<u>period of</u>
POLC-Public Safety	25	\$45,119	9/30/05		2.75%*	1.0%*	Wage only reopener		TBD	TBD		
HERE, Local 24 Janitors	20	\$27,144	6/30/05		2.0%*	2.0%*	2.0%*		7/01/02	1.5 months		
Operating Engineers	66	\$51,392	9/30/05		2.75%*	1.0%*	Wage only reopener		3/01/03	4.5 months		
P&A L. 1979 Professional & Adm. employees	456	\$46,763	7/31/04		2.75%*	% inc. equal to non-rep. prof.- got 2%*	Contract negs began Aug. 2004		3/01/03	4.0 months		
AFSCME L. 1497 Custodians, Grounds- keepers	255	\$26,691	9/30/05		2.0%*; 1.0% bonus**	1.0%*	2.0%*; 1.0%* bonus**		3/01/03	3.5 months		
Staff Assn. Tech., Clerical, Prof.	631	\$28,782	7/31/05		3.3%*	2.0%*	1.0%*; 1.0% bonus**		8/01/03	2.0 months		
GDB & CTC	37	\$52,296	9/30/06		2.0* 1.0Bon	1.5%*	1.5%*	1.5%*	10/1/03	4.5 months		
Supv. Op. Engineers	7	\$67,123	9/30/06		3.0%*	2.75%*	1.0%*	Wage only reopener	10/1/03	4.5 months		
517-M Custodial/ Grounds Supervisors	13	\$36,264	9/30/00	3.0%* 3.0%* for	3.0%*	1.0% bon ** (partial	Contract negs began		10/1/00	6.0 months		

				2000-1	year adj. Jan 2004 End of 3.5 yr. CBA			
<u>Academic Unions</u>								
AAUP	1696	NA	7/31/05	2.0%*	2.0%*	2.0%*	3/01/03	None per Art. 12.C.4 setting of 3/1/03 date 3.0 months
				0.75% sel.	1.0% sel.	1.25% sel.		
				0.50% bon**				
GEOC	335	NA	2/28/06	2.0%*	2.0%*	2.50%*	3/01/03	

* - Across the Board

** - Not to Base Salary

It is also noted that, as to the pattern with the AAUP on base rates, there are some claims of certain incentives but these incentives are not universally applied to all AAUP members.

The facts also reveal that for 2004-2005, the operating engineers have negotiated a 2% increase.

When the Fact Finder recognizes that there is a pattern in bargaining and that this pattern in bargaining has resulted in an externally comparable wage rate particularly higher than the Detroit police officers, the University has made a strong case to continue applying the pattern to its police officers.

The Bargaining History

There came a time during negotiations when the police officers recognized the pattern of bargaining. Though their bargaining team might deny this, the fact is that a tentative agreement was reached on April 8, 2003, which is set forth at page 2 of this report.

This Fact Finder recognizes that this tentative agreement was not ratified. One of the reasons for the failure to ratify was the claim that it was not retroactive to the date the new contract would take effect, October 1, 2002. The University explained that the reason for this was that there was negotiated an improved benefit package; that the *quid pro quo* in negotiating this benefit package was an effective date, in terms of wages, of March 1, 2003 for the contracts that were settled with other bargaining units. Thus, the University makes a valid argument that

though there is a tendency to give retroactivity, this was an exception because the employees who accepted the March, 2003 date received an increased benefit package.

The Art of the Possible

What is the art of the possible? The Union came in with a proposed 3% wage increase for each of the three years. Yet, the Detroit Police did not get this, for example. No non-academic bargaining unit at Wayne State University received such a package. The Operating Engineers did not receive such a package. Such a package is contrary to the bargaining pattern at Wayne State University.

There was a time before the economic crunch overtook the State of Michigan that some bargaining units received 3% prior to 2002. But in current times, this is not the case. If the Police Council had any question about this, note that in an Act 312 proceeding, the City of Detroit Police Officers did not receive such a wage package. The Union's proposal is beyond the range of reasonableness and is not supported by any recognizable criteria. On the other hand, the tentative agreement failed ratification. Thus, there comes a time when both parties must take a long look at the situation and realize that, under the art of the possible, a middle ground must be found.

First, the contract will not be ratified by the Union unless there is retroactivity. There is justification for this retroactivity simply because the Union did not get the benefit of increased benefits when the other unions did. On this basis, the recommendation will be that the wage increase here be retroactive to October 1, 2002 but only to those members who are currently employed. If employees have left the University they shall not be entitled to any retroactive pay.

Second, to obtain the retroactivity, the benefits that were provided to the other unions will

be effective only as of the date of ratification of the contract for which this recommendation is being made. The 2.75% wage increase the first year of the contract is reasonable and is consistent with the Operating Engineers and the general pattern and, for this reason, the wage increase for the first year of the contract will be at 2.75% across the board, retroactive to October 1, 2002 with the exception noted.

There should also be a wage increase for the second year and, since the parties are already in their third year of the contract, there should be a wage increase for the third year. Based upon the pattern, the wage increase should be 2.75% retroactive to October 1, 2002, 2% effective October 1, 2003, and 1% effective October 1, 2004. This follows Operating Engineers' pattern and is supported by the comparables.

In the interests of the art of the possible, the Fact Finder is making a modification in his recommendation for the police officers over the settlement with the Operating Engineers. The Fact Finder is providing for a 2% increase the second year of the contract, which seems to be within the realm of the art of the possible. Percentage-wise, it is the same as the Operating Engineers except that the 2% kicks in in an earlier year. These percentages would continue to keep the Wayne State University Police Department ahead of the City of Detroit Police Department and would continue to keep the Department competitive with Oakland University, Eastern Michigan University and the University of Michigan. No comparable is perfect. But when there is a pattern of bargaining as there has been for more than nine years if not longer at Wayne State University, and this pattern does result in a competitive pay raise, there is no reason to break the pattern. Furthermore, the University would not agree to do so.

In order to get the reversal of the percentages as outlined above, there is one other aspect

of the art of the possible. The University wishes to have a fourth year on the contract with a "me, too," consistent with what was settled with P & A Local 1979. The reason why the University asked for this is to have a reprieve from bargaining. The parties have bargained too long on this contract and, in the view of the Fact Finder, unnecessarily so. Therefore, recognizing the art of the possible, in order to get a contract, the recommendation will be a wage increase of 2.75% retroactive to October 1, 2002 for all current employees. The retroactivity provisions shall not apply to any employee no longer employed by the University. As of October 1, 2003, the wage increase shall be 2% across the board. As of October 1, 2004, the wage increase shall be 1% across the board. In exchange for this change in the percentages, the Union shall agree to a fourth year of this contract with a "me, too" provision as to the economic benefits obtained by Local 1979, Professional and Administrative Employees in said fourth year.

There is no disadvantage to the Police Officers Labor Council in agreeing to the fourth year of the labor contract. A review of the pattern of bargaining at Wayne State reveals that the Professional & Administrative Local 1979 had easily obtained favorable wage increases, including a 2.75% for the year 2003 and what seemed to be an equivalent to 2% for 2003-2004. Local 1979 represents the second largest non-academic bargaining unit at the University. This suggests, based upon its size and pattern of bargaining, that Local 1979 will receive the best offer the University can make. For this reason, such a "me, too" provision is in the best interests of the Police Officers Labor Council.

The Union may balk at a fourth year for the contract. If it does then the Union will not be entitled to the recommendation set forth herein. This is one whole package. Any suggestion by any member of the bargaining team that there be no fourth year would, in the view of the Fact

Finder, not constitute bargaining in good faith. The Union cannot have it all one way. This is a big change from the tentative agreement. It locks in certain benefits for the Union members. It keeps the Union members competitive with the Detroit Police Department and is consistent with the pattern of bargaining within the University and the comparable status with other university police departments, particularly in this time of economic hardship in the State of Michigan.

It is consistent with the art of the possible.

If the POLC at Wayne State University was subject to Act 312, this would be the result of an Act 312 award. It is a different package than agreed to on April 8, 2003. It is a realistic package. If the POLC does not accept this package then the POLC is running the risk of not getting as good a package as is proposed here. It is just that simple. To repeat, in order to get the package, the POLC must be willing to accept the fourth year of the contract. It is to the POLC's advantage to do so.

RECOMMENDATIONS

Based upon the above analysis, the Fact Finder recommends the following:

1. A wage increase of 2.75% retroactive to October 1, 2002, with the retroactivity not to apply to any person no longer employed by the University. Effective October 1, 2003, a wage increase shall be 2% for current employees only. Effective October 1, 2004, the wage increase shall be 1% for current employees only.
2. Effective October 1, 2005, there shall be a "me, too" provision as to economics, meaning that the economic improvements obtained by Local 1979, Professional and Administrative Employees, for the year beginning October 1, 2005 and ending September 30, 2006 shall automatically apply to the Police Council.

3. The benefit package given to other unions in October, 2002 shall be effective for the Police Council members at the time the contract is ratified by the Union.

4. The recommendation will not provide for any wage or benefit increases for any person no longer employed by the University as of the date of this Report.


GEORGE T. ROUMELL, JR.
Fact Finder

October 28, 2004