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**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION**

**IN THE MATTER OF THE FACT FINDING BETWEEN**

CAPITOL CITY LODGE NO. 141 OF  
THE FRATERNAL ORDER OF POLICE  
LABOR PROGRAM, INC. AND MSU  
DEPARTMENT OF POLICE AND PUBLIC  
SAFETY NON-SUPERVISORY DIVISION,

Union

and

MERC Case No. L03 C-9016

MICHIGAN STATE UNIVERSITY,

Employer

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**FACT FINDING REPORT AND RECOMMENDATION**

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**Appearances:**

**For the Union:**

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**For the Employer:**

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MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LEGISLATIVE COUNCIL

## **REPORT**

The 36 members of the bargaining unit petitioned for fact finding on October 7, 2003. I was appointed Fact Finder on December 5, 2003, and a pre-hearing conference was held thereafter on December 15, 2003. A fact finding hearing took place on April 19, 2004, followed by the submission of post-hearing briefs on June 1, 2004. A comprehensive set of exhibits has been submitted by each of the parties, and extensive and well reasoned arguments have been presented. However, I will focus only on those areas that are germane to my recommendation and report. The issues include the jurisdiction of the Fact Finder to consider the Lodge issues, the length of the contract, personal leave time, weapons allowance and tuition reimbursement for dependents.

### **DOES JURISDICTION EXIST FOR THE CONSIDERATION OF THE UNION'S ISSUES?**

The Employer asserts that the Coalition of Labor Organizations (CLO) and MSU have ratified an agreement that includes this bargaining unit and pertains to health care and wages. Importantly, MSU argues that the agreement prohibits additional bargaining over matters "pertaining to base wages and salaries and other specified items." Article 5.D(2) states:

Except as provided herein for labor agreements effective on and after July 1, 2005, at no time during the life of this Agreement may the University or any agent of the Coalition bargaining units make any proposals regarding the health care plan as defined herein, or in any provisions related to base wages and salaries, the University's base retirement contribution, overtime compensation, shift differential, call-in pay, wage progression, sick leave pay out and vacation leave pay out during their separate collective bargaining negotiations.

The University and each bargaining agent shall be free to negotiate on all other matters for their respective union contracts effective on and after July 1, 2002. Failure to reach agreement on an individual union contract shall not invalidate the provisions of this Agreement for its term.

The Union argues that none of its contract proposals in this proceeding fall with the prohibitions contained within the above language, and that therefore the Fact Finder should make recommendations based upon all of its proposals.

In my recent Fact Finding in *Ottawa County Health Department and Michigan Nurses Association*, L02 D-9002, the Employer initially objected to the jurisdiction of the Fact Finder to consider, what it regarded as a decisional subcontracting issue. This objection was addressed to the MERC, which decided that I should consider the jurisdictional issue.

In this case, I am asked to rule upon a jurisdictional issue, without an Order from MERC directing me to make that ruling. Therefore, I am without jurisdiction to bar a Fact Finding issue, absent an order to do so from MERC. The Order that I have received from MERC directs me to conduct a Fact Finding on the issues contained within the petition. I am without jurisdiction to deny Fact Finding to the Lodge. It is the Commission, and not the Fact Finder, which determines if an issue is ripe for Fact Finding unless the MERC requests a Fact Finder to make that determination.

### **WHAT SHOULD BE THE LENGTH OF THE CONTRACT?**

The Union asserts that Coalition Agreement provides for a three year agreement; the University contends that four years are provided for in that Agreement. As noted above, either a grievance arbitrator or the MERC has specific jurisdiction to determine the length of the contract. However, I am nevertheless persuaded that a recommendation on this issue would serve the purpose of the Fact Finding statute, with the understanding that the ultimate issue is not for the Fact Finder to determine.

Sergeant Dan Beachnau, who negotiated the Coalition Agreement for the FOP when he was in that unit, testified that it was explained to the bargaining unit prior to ratification that a four year

contract was intended. Therefore, it is appropriate to apply a four year contract in this proceeding, since the bargaining unit apparently acted with the understanding that a four year agreement was contemplated by the parties.

### **LODGE PROPOSAL TO INCREASE PERSONAL LEAVE TIME**

The Union proposes to increase personal leave time for employees hired prior to July 1, 1984 from the current level of 64 hours to the increased level of 72 hours annually. For officers hired after July 1, 1984, it requests an increase from 24 hours to 36 hours. The University asks that the status quo be maintained.

The Lodge argues that its members are behind the Ingham County Sheriff's Department, who have 48 hours off, the Lansing Police Department, who have 40 hours off and the East Lansing Police Department, who have 32 hours off. Its proposal would put the officers ahead of the MSU sergeants and the Meridian Township Police, who both have 24 hours of annual leave. It is maintained that the cost of the proposed increase is modest in comparison with the difficulties faced by a law enforcement officer at MSU, which requires increased time off.

The University asserts that in regard to comparability, the Ingham County Sheriff's Department expects its officers to use personal time for family illnesses, whereas MSU allows an officer to use 64 hours of his/her sick time for that purpose. It is also argued that University officers have more vacation time that Lansing Police officers enjoy. MSU further maintains that other university police departments have inferior time off benefits, and that the MSU officers are favorable situated in regard to other MSU employees.

In Act 312 proceedings, where there is final and binding arbitration for statutorily qualified

officers, comparability usually requires a comparison by the type of department: public safety departments are measured against other public safety departments, deputies versus deputies, etc.. There can be a consideration of nearby departments in the same labor market, but the type of department is most significant. A review of other university police departments reveals the following on personal leave time, with 8 hour shifts assumed.

Institution	Personal Leave Hours
CMU	24 hours
EMU	36 hours
FSU	24 hours
GVSU	0
LSSU	0
NMU	12 hours
SVSU	24 hours
U of M	0
Wayne State	24 hours
Western	0

Therefore, a comparison to other university police departments would not support the Union's proposal in this matter to increase leave hours to 36. Also, the East Lansing Police Department, which patrols a contiguous area, is only at 32 hours. Therefore, the Association's proposal should not be recommended.

## **WEAPONS ALLOWANCE**

The Lodge is asking for \$500 per year to offset the cost of an "off duty" weapon. The current contract reads in a Memorandum of Understanding:

H. Should the University, for whatever reason, deem it necessary to specify an off-duty handgun, the University will issue such a gun. Should a sworn officer carry a handgun off duty, the officer must carry a University issued two (2) inch handgun. However, an officer may elect to carry his/her own handgun other than the department-issued handgun if the following criteria are met: (1) the handgun must be a comparable caliber and must be approved by the department; (2) the officer must qualify for training on his/her own time; and (3) the officer must use his/her own ammunition which must be approved by the department, unless their personal weapon chambers departmental ammunition.

The University argues that the Union is seeking a \$2,000 cash payment, which would violate the wage agreement found in the JHCC contract. It is maintained that the proposed increase would amount to an additional 1.03% in salary beyond that negotiated by the parties in the consortium agreement.

The Employer argues that it does not require an officer to carry an off-duty weapon. Further, it maintains that if an officer wants an off-duty weapon, it provides one free of charge.

The Lodge argues that off duty officers need to have a weapon for their protection, and that its proposal will help defray the cost of a second weapon. It notes that the Lansing Police Department and the East Lansing Police department have \$250 and \$230 gun allowances respectively.

A review of the evidence reveals that none of the 10 university police departments listed in the above table provide a gun allowance for their officers. Further, the two comparables cited by the Union provide half the gun allowance sought by the Lodge. Also, two of the four Union comparables fail to provide for a gun allowance.

The University provides a free off-duty gun for an officer. There hasn't been a showing that

this gun is inappropriate for off-duty use or that the cost of an alternative handgun would be \$500 per year. However, the Union does point out that an officer is required to purchase a holster, and possibly sustains other associated costs. Therefore, a one time payment of \$100 for the life of the contract, to cover a portion of the holster and associated costs for an off-duty weapon, is appropriate for those officers who use an off-duty weapon. The approximate cost of this one-time benefit is \$4,000 for the 40 officers within the bargaining unit.

The purpose of Fact Finding is to facilitate a settlement. The recommendations of the Fact Finder are not binding upon the parties. The recommendation on this issue is consistent with the purpose of fact finding.

## TUITION REIMBURSEMENT FOR DEPENDENTS

The Lodge requests an improvement in the contract's tuition reimbursement plan to cover 100% of dependent's tuition, capped at 16 credit hours. Currently dependents of officers receive a 50% reimbursement, which is the plan that is applicable to all other University employees.

The Lodge notes that benefits are not uniform for all University employees, and it suggests that its employees should be at the "leading edge" for this benefit. The following is cited as being comparable among other state universities and justifying the increase that is sought:

<u>University</u>	<u>Dependent Tuition Plan</u>
CMU	100% up to 6 credit hours a semester with a maximum of 24 credit hours/year
EMU	50% of undergraduate tuition waived on all credit
FSU	8 credit hours/semester for dependents
GVSU	spouses and dependents eligible for 50% tuition
LSSU	spouses and dependents eligible for 50% tuition
NMU	100% of tuition waived
SVSU	No information provided
U of M	None
Wayne State	Spouses and dependents eligible for 50% tuition
WMU	Spouses and dependents eligible for 50% tuition and required fee reduction for undergraduate courses.



The University argues that Lodge dependents are currently receiving the same reimbursement as faculty members. This is also true for the benefits paid to every other employee group within the University.

It is further asserted that the Lodge program would expand tuition use to any institution, and not just MSU, and therefore the University would not be receiving money back as it does for other employees. The Lodge's proposal is also said to remove the limitation on a bachelor's degree, which is present in the plan for other employees. The Union's plan far exceeds that of any of the comparables, according to the Employer. The Employer also notes that the Lodge's reimbursement plan is the best on the campus, with officers receiving 16 credit per years, with all other contracts allowing only 14 credits per year.

A review of internal comparability would not suggest a recommendation of the increased tuition benefit, because no other unit currently has an employee benefit that is at the level enjoyed by the officers. Further, external comparability would not require the increased benefit, insofar as most state universities have a dependent benefit that is at or below MSU's. Finally, and most importantly, cost data for the new benefit was not made available. It would not be expected that a benefit would be recommended in Fact Finding without knowing the potential cost to the Employer. Fact Finding is no different than collective bargaining in the sense that the cost of a particular item must be evaluated in terms of the cost of the overall package gained by the Union. Accordingly, the Tuition Proposal is not recommended at this time.

## **RECOMMENDATION**

### **1. Jurisdiction to consider Fact Finding issues.**

Jurisdiction exists absent an order from MERC prohibiting jurisdiction, or a direction from MERC for the Fact Finder to consider jurisdiction, followed by the Fact Finder's determination that jurisdiction does not exist.

### **2. Length of Contract**

Four years.

### **3. Personal Leave Time**

Status Quo

### **4. Weapons Allowance**

One time payment of \$100 for officers with an off-duty weapon.

### **5. Tuition Reimbursement for Dependents**

Status Quo

  
Mark J. Glazer, Fact Finder

June 26, 2004