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STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING BETWEEN:

ST. CLAIR COUNTY COMMUNITY COLLEGE,

EMPLOYER,

and

MERC Case No. D08 C-0350

ST. CLAIR COUNTY COMMUNITY COLLEGE, ESP/MEA/NEA

UNION.

FACT FINDER'S REPORT AND RECOMMENDATIONS

Hearing Location: St. Clair County Community College
Port Huron, Michigan

Hearing Date: September 11, 2009

Appearance:

For the Employer:

Kenneth Lord
Vice President Human Relations and
Labor Relations Chief Negotiator

Kim Heering
Assistant to the Vice President
of Human Relations & Labor Relations

Kirk Kramer
Vice President Administrative Services

Peter Lacy
Registrar

For the Union:

Gerald Haymond
MEA

Michelle Israel
MEA Uniserv Director

Sharri Justice
MEA Uniserv Field Assistant

Kevin Burns
MEA Intern

Donna Karser
President & Chief Negotiator

Melanie Gofton
Negotiating Team

Laurie Hampton
Negotiating Team

Sue Ten Brink
Negotiating Team

INTRODUCTION

The St. Clair County Community College MEA/Education Support Personnel Union is one of five Unions representing employees of St. Clair County Community College.[1] According to the Union in its Pre-Hearing Fact Finding Brief, the Union had been organized in 1980 and had negotiated master contracts with the College until the expiration of the current Master Agreement on June 30, 2008.

Negotiations for a successor agreement commenced on May 6, 2008, and according to the Union, eleven bargaining sessions were held up to the expiration date of the agreement on June 30. According to the Union, after June 30, 2008, nineteen additional bargaining sessions took place, two

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The other Unions who represent College Personnel include the Teamsters, MAHE, Career Plan and ELT. In its Pre-Hearing Fact Finding Brief, and throughout the hearing, the Employer made frequent reference to the fact that all of the other Unions, except the ESP, had ratified new contracts, with concessions that the ESP refused to consider or recommend to its membership.

of which were with Mediator Richard Ziegler. The bargaining sessions produced a proposed settlement satisfactory to the College and that proposed settlement was submitted to the Union's governing body, whose Executive Board unanimously voted not to approve.[2] On May 20, 2009 the Union filed a Fact Finding Petition with the Michigan Employment Relations Commission.

PRE HEARING CONFERENCE

On July 16, 2009, a very lengthy Pre-Hearing Conference was held with the representatives of the parties to discuss the issues to be addressed at the Fact Finding Hearing, including the proposed comparables to be considered under the statute. After considerable back and forth discussion, the issues were winnowed down to the following ten issues, and subsets of these issues, to be addressed at the Fact Finding Hearing

HEALTH CARE

1. Coverage
2. Co-pays

WAGES

1. Longevity
2. Percentage of wage increase

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The College expressed its frustration with the negotiation process both on the Pre-Hearing conference call with the Fact Finder on July 16, 2009 and at the Fact Finding Hearing, expressing that it had negotiated in "good faith" and had taken a settlement position that was acceptable to the College, only to find that the negotiators for the Union did not have authority to bind the Union and ultimately the Executive Board did not approve what had been negotiated so that the members of the Union were not made aware of the "agreed to" settlement proposal. The College felt that the whole negotiation process was undermined by the actions of the Union, after a proposed settlement had been reached.

3. Retroactivity
4. Sick time
5. Personal time
6. Attendance
7. Hiring
8. Work Schedule (Overtime)
9. Grievance
10. Holidays and Days Closed

Both the College and the Union submitted Pre-Hearing Briefs, outlining their positions on the issues and identifying and discussing applicable comparables. Before the hearing, the Fact Finder reviewed the Briefs and found what he believed were at least four issues, or subsets of four issues, where there was essential agreement between the positions of the parties. Those four issues or subsets of the same included the percentage of a proposed wage increase (2%), overtime work schedule, Co-op payment on basic health insurance and abolition of the Attendance Incentive. Because it appeared that there was agreement on these issues and to make best use of the time at the Fact Finding Hearing, the Fact Finder proposed in a letter to the parties that they "stipulate" to agreement on these four issues so they could be presented to their respected principals as agreed upon. The College rejected this suggestion for two reasons: (1) Any stipulation would be meaningless, because, while the College had the ability to bind, the Union negotiators clearly did not in light of the breakdown of the previous negotiations; and (2) The College wanted a "complete" package of what was being agreed to by the parties and not a piece meal agreement.

As agreed to by the parties, the Fact Finding Hearing took place at the College on September 11, 2009. Prior to any discussion by the parties, the Union submitted a "supplemental" Brief in which it outlined its position on all of the issues, juxtaposing the Union's position with the Employer's position. After the conclusion of the hearing, the Fact Finder requested that the parties submit post-hearing submissions on one issue, sick leave, because of the complexity of the issue and because of the lengthy discussion concerning the issue at the Fact Finding hearing, where it appeared that the parties might be close to a proposed resolution of the issue. These email letter submissions were received by the Fact Finder on September 18, 2009.

For purposes of the analysis, discussion and recommendations that follow, the Fact Finder will not follow the numbering system concerning the issues, as set forth in his letter of July 16, 2009, but will follow a logical ordering of the issues, leaving the issue of retroactivity as the last issue to be addressed, as that issue interweaves itself through many of the issues to be considered. Further, because the parties either agree or are close to agreement as to some of the issues, where there is agreement, except as to the retroactivity question, it will be so noted.

PERCENTAGE OF WAGE INCREASE

Both the College and the Union agree that there should be a 2% increase in wages for the 2008-2009 contract year and a 2% increase for the 2009-2010 contract year. The only area of difference between the parties is that while both parties would make the wage increase "retroactive," the Employer would condition retroactivity as to wages on retroactivity as to all of the other issues between the parties, e.g., health care increases, sick days, etc. The Union on the other hand, for the most part would have wages retroactive to 2008-2009, but have all other changes become effective

for 2009-2010. Because, as noted, the question of retroactivity interweaves itself through virtually all of the other issues involved in this Fact Finding, "retroactivity" as to all pertinent issues will be addressed as the last issue in the Fact Finding, with each particular issue that has a retroactivity component being addressed separately, to the extent necessary.[3]

HEALTH CARE

The parties have raised three issues as relates to health care, one of which they agree upon except as to the retroactivity question, and two of which they do not agree upon. Each will be addressed separately.

A. PREMIUM CO-PAY

The Union and the Employer agree that the premium co-pays for insurance generally should be raised for the 2009-2010 year as follows:

Full Family	$41.00
Two Person	$36.00
Single	$17.00

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[3] In its Fact Finding Brief and at the hearing, the Union proposed that a third year be added to the successor agreement, with all resolved issues remaining intact, and containing a one percent increase for 2010-2011. The Employer rejected any notion of adding a third year, citing the fact that such a proposal had never been raised in negotiations before, and that the economic conditions that are currently present, which are admittedly bad, are likely to worsen over the next several years and those factors will have to be taken into consideration in any subsequent negotiations. On this issue, the Employer clearly has the better view. The issue was never raised previously. Ironically, the Union's proposal of a 1% increase for 2010-2011, while understandable, in many ways is a tacit recognition of the Employer's economic projections for the future, that there will be reductions in state funding as well as reductions in property tax revenues that will affect raises or proposed raises. On this record, the issue of pay increases for 2010-2011 are best left to negotiations on a successor agreement to this contract and it is so recommended.

To the extent that there is agreement on this issue, it is recommended that such premium health care increase be adopted by the parties. The Employer would have increases of a slightly less amount also apply to the 2008-2009 year, noting that the other internal comparables had agreed to an increase in premiums for both the 2008-2009 and 2009-2010 years. This issue along with the other issues involving "retroactivity" will be addressed in the last section of this report.

B. DRUG CO-PAY

The Employer's position is that the drug co-pay for drugs should be 10/20, although it would not apply retroactively, due to the complexity of trying to collect such back monies on prescriptions already filled.[4] The Union notes that none of the internal comparables has a 10/20 co-pay, as all are at 5/10 co-pay. Both parties agree that little information is available as to the drug co-pays for comparable employees at other community colleges.[5]

RECOMMENDATION

It is the Fact Finder's recommendation that the 5/10 co-pay for drug prescriptions apply for both the 2008-2009 and 2009-2010 years, consistent with the other internal comparables.

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The Employer's recognition that applying the drug co-pay retroactively creates almost unresolvable scenarios and therefore, it cannot be applied retroactively is also tacit recognition that as to a number of the issues in this Fact Finding, applying them retroactively is either complex or virtually impossible and justifies the conclusions and recommendations of the Fact Finder in the "retroactivity" section of this report.

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As with a number of the economic issues being addressed in this Fact Finding, the Fact Finder believes that while the Employer would like to see a drug co-pay increase for these contract years, the issue is more of one where the Employer is "setting the stage" for what is to come in future contract negotiations where economic considerations at that time may lead to a demand for increased co-pays.

C. INSURANCE CARRIER

The Employer asserts that it should be able to pick the insurance provider, as long as it provides "comparable" coverage to what is provided now. It notes that at least one of the comparable community colleges has such an option for its employees. Further, the Union has a vested interest in keeping MESSA as the insurance carrier. As with the drug co-pay issue, the Union points to the fact that all of the internal comparables have MESSA, as do most of the other community colleges.

RECOMMENDATION

The Union clearly has the better argument here. There are only nine months remaining on this contract, before negotiations begin again. To attempt to replace the insurance carrier at this point would seem virtually impossible from a practical point of view. Equally important is the fact that all of the internal comparables have MESSA as their carrier. It is the Fact Finder's recommendation that MESSA remain the insurance carrier for the remaining contract term.

LONGEVITY

One of the issues that generated the most discussion at the Fact Finding Hearing both from a philosophical and practical point of view was the issue of longevity increases for employees. According to both parties, employees in this Union receive longevity adjustments after 6 years, 8 years, 12 years, 16 years, 20 years and 25 years.

The Employer took the position that any longevity step increases should be 1% rather than 2%, both for 2008-2009 and 2009-2010. Further, the Employer would abolish longevity for all new hires after July 1, 2008. While acknowledging that the other community colleges had not abolished

longevity increases for current or new employees, the Employer noted that all of the other internal Unions had reduced the number of longevity steps. Further, echoing a continuing theme, the Employer cited the fact that no employees in the private sector in the Port Huron area had such longevity increases and that the Employer and the Employees must be conscious of their position in the community where many employers and employees, alike, have been devastated by the current economic conditions. Further, echoing another familiar theme, the Employer focused on the fact that going forward, revenue streams will likely be reduced and economic reality is going to require that cuts be made and one area where cuts should be made is in the area of longevity increases.

The Union, on the other hand, ignored for the most part the fact that the internal Unions had "reduced" the number of longevity steps, and focused on the fact that all of the comparable community colleges had retained their longevity steps both for new and current employees. Further the Union asserted that to have a two tier system, where new employees have no longevity increases and senior employees receive longevity increases, would create undue tension between employees within the same Union. In addition, longevity increases are in the best interests of both the Employer and the Employees, as it recognizes a value in retaining loyal, long term productive Employees. Lastly, because virtually all of the bargaining unit members are on the longevity steps, the effect of the Employer's longevity proposal of a 1% increase for both years of the contract would effectively mean that more senior Employees would receive only a 1% increase over the term of the contract rather than the 2%, which both the Employer and Union were agreeing to.

RECOMMENDATION

On the question of longevity, the Union appears to have the better argument, at least from a philosophical perspective. While obviously in a state with an unemployment rate in excess of 15%

and in an area with an even higher unemployment rate, employees have to be thankful for just having a job; however, as the Union notes, having a long term, loyal work force that has and can be counted on to perform, deserves recognition also and, for the most part, the only way that such recognition can occur is through monetary increases. Thus, longevity increases should remain for the benefit of both the Employer and the Employees. Further to phase out longevity for new hires, which none of the outside, community colleges have done, would both defeat the purpose, as well as create a stratified work force, neither of which would be beneficial to a harmonious work force. But both the Employer and this Fact Finder note some significant issues with the way longevity is handled at the College.

First of all the Employer notes that the other "internal" Unions have reduced the number of longevity steps, and while keeping the concept in place, have formed a method of accomplishing the philosophical goal, i.e., rewarding hard working, long term Employees, while at the same time achieving overall necessary, economic reductions. Second, the Fact Finder notes that there are six steps in this Union's longevity formula. No other comparable community college has as many steps and most of them have far less. Thus, to bring these Employees in line with the internal as well as the external comparables, it is the recommendation of this Fact Finder that longevity increases be available for both current and new employees, but that the number of steps be reduced at a minimum to four or three, consistent with what internal and external comparables receive.

Lastly, while longevity appears to remain a useful concept both from a philosophical as well as a practical point of view, to reduce the longevity step increases from 2% to 1% would appear again to defeat the purpose of longevity increases, generally, as the Union argues. Further, it would seem to treat the long term Employees differently from the shorter term Employees, a concept which

belies the very reason for longevity increases in general. Thus, it is the recommendation of this Fact Finder that longevity steps continue, with a reduction in the number of steps, and with a 2% increase rather than a 1% increase for the longevity steps, leaving the retroactivity question to be addressed later.

SICK TIME, PERSONAL TIME, BEREAVEMENT AND ATTENDANCE

The four issues earmarked above are consolidated for discussion and recommendation because, at the hearing, a lively dialogue and interaction took place between the parties and the Fact Finder on the four issues and it appeared to the Fact Finder, at least, that some common ground for agreement had arisen at the hearing, while not necessarily dispositive of all facets of these issues, it would lay the ground work for resolution and agreement as to these issues. In order to facilitate a resolution of these issues, the Fact Finder asked the parties to submit a written post hearing statement of the positions of the parties on the earmarked issues to identify where there was agreement and what issues remained to be resolved. The Fact Finder is attaching these statement proposals to this report as Exhibit A (Employer's Proposal) and Exhibit B (Union's Proposal). From these statement proposals, there is a framework for resolution of these issues. In this section of this report, the four earmarked issues will be outlined, with areas of agreement noted, with a recommendation that these aspects of the proposals be adopted, and with the remaining areas, where there is no agreement or a difference in viewpoint, addressed with a recommendation from the Fact Finder. We begin with "sick leave" issues.

A. SICK TIME

1. WHERE THERE IS AGREEMENT:

One of the significant areas where there is agreement between Employer and Union is abolition of the Sick Bank as it is currently constituted. That Sick Bank which is now currently funded by the Employer would be replaced by a Sick Bank that would in effect be funded by the Union Employees, as an incentive to not use sick days and to accumulate sick days. What is envisioned as occurring concerning the sick bank, is that current Employees with sick days banked over 100 would be allowed to buy out a portion of their sick days over 100 and going forward there would be no further buyout of sick days for any Employees. Any days not bought out would be used to fund the sick bank. Going forward, Employees would be allowed to accumulate up to 120 days of sick leave and once they exceeded 120 days, the days that the Employee would normally accumulate would not be lost, but rather would go into the Employee funded sick bank to be used as needed in catastrophic illness situations. This Fact Finder recommends such program be adopted, as it has the mutual benefit of reducing the Employer's expenses while at the same time offering an incentive to Employees to use sick leave, as intended, and to accumulate for the benefit of all members sick days within the sick bank where the days can be used for catastrophic purposes.

2. WHERE THERE IS DISAGREEMENT:

In the prior contract, the number of sick days that could be accumulated during a given year was 18. The Employer wants the number of sick days that can be accumulated in a year reduced to 12. The Union agrees to the reduction, but again the question becomes one of retroactivity. The Employer wants the 12 day cap to begin on June 1, 2008, while the Union wants the cap to begin on

June 1, 2009. While most "retroactivity" issues will be addressed in the final section of this report, as with the drug co-pay, the issue of retroactivity as it relates to sick time will be addressed in this section of the report.

While the Employer asserts that it would not "dock" an Employee who used 18 sick days during the 2008-2009 year but rather would reduce the number of days such Employee could accumulate going forward, retroactivity in ths context seems complex and unnecessarily difficult to implement, where the reduction from 18 to 12, beginning as of July 1, 2009, seems far more readily able to be implemented without causing any undue hardship on the Employer and Employees. Further with the elimination of the sick bank, as previously formulated, limited retroactivity to July 1, 2009 may assist the parties by helping fund the current sick bank. Thus, it is the recommendation of this Fact Finder that the limit on accumulation of sick leave to 12 days/per year be effective on July 1, 2009. Further, consistent with this formula and for funding of the newly formulated sick bank, the current sick bank should be eliminated, effective July 1, 2009.

Lastly, the Employer would eliminate any accumulation of sick leave for any new part-time Employees hired after June 1, 2008. The Employer points to the amount of money to be saved by elimination of such sick leave for part-time Employees. The Union, on the other hand, notes that many of the Employees in the bargaining unit are part-time, working 30 to 35 hours a week. According to the Union, since the number of part-time Employees is likely to increase, it would be unfair going forward to have these part-time Employees (new hires) to not be able to accumulate sick time, while other part-time Employees (senior part-time Employees) would be able to accumulate sick time. Lastly, and most importantly, for purposes of the statute, no comparable external

community colleges have eliminated accumulation of sick time for part-time new hires. Under these circumstances, it is the recommendation of this Fact Finder that part-time Employees, including new hires, be allowed to accumulate sick days.

B. PERSONAL TIME/BEREAVEMENT TIME

1. WHERE THERE IS AGREEMENT:

Both the Employer and Union agree that for going forward Bereavement Days should consist of 5 days for immediate family and 2 days for non-immediate family and no other bereavement days be allowed. Also, both the Employer and Union would have personal days reduced to two. It is recommended that these proposals be adopted.

2. WHERE THERE IS DISAGREEMENT:

While both Employer and Union agree that only two personal days per year be allowed, the Employer would have the days chargeable to leave time, while the Union would not have them chargeable to leave time. The comparables provided by the parties are equivocal as to how personal days are addressed. The Union notes that its comparables provide for personal leave, but there is no indication as to whether there is a charge off for these days. On the other hand, the Employer shows comparables, but only one of the comparables is identified as having a charge off (Northwestern). Under these circumstances, where the comparables are equivocal and where there is a logic to the current language of the contract where the personal days can only be used upon written notice and approved by the supervisor, the current practice of allowing the personal days, without charge off, should continue. It is so recommended.

C. ATTENDANCE

1. WHERE THERE IS AGREEMENT:

It appears that there is agreement that the Attendance Incentive be abolished. It is so recommended.

2. WHERE THERE IS DISAGREEMENT:

The Employer would discontinue the practice of allowing Employees to convert sick days over 120 days total to be converted into vacation days. The Union would continue to allow such conversion of sick days to vacation days. Although neither of the parties discussed this issue in any depth, in light of the agreed to abolition of the current sick bank to be replaced by an Employee funded sick bank, with no further buy out of sick days, there is logic to the Employer's position that the Employees should not be able to do indirectly what they can't do directly, i.e., converting sick days to vacation days. Further, there is also logic to the idea that if a sick bank is to be appropriately Employee funded, it cannot be so funded if sick days can be converted into vacation days. Under these circumstances, it is the recommendation of this Fact Finder that the practice of allowing sick days to be converted into vacation days be discontinued.

DAYS CLOSED

This was an issue that was not discussed to any great extent at the hearing, nor did the parties address the issue in depth in their submissions. The Employer would like to eliminate payment for part time Employees, hired after July 1, 2008 for days when the college is closed, which days for the most part fall between Christmas and New Years. The Union, on the other hand, objects to distinguishing between new hires and current part time Employees and would have the current

contract language apply, i.e., part time Employees are paid for such closed days. The external comparables are not enlightening on this issue, as the comparable colleges either provide payment for such closed days or have a charge off for such days. Significantly the internal comparables continue the practice of payment for the closed days and in light of these internal comparables, it is the recommendation of this Fact Finder that the present practice under the current contract be continued.

WORK SCHEDULE (OVERTIME)

There is essential agreement by the parties on all issues, except one, relating to overtime pay. The parties agree to amend the Collective Bargaining Agreement that overtime for full time Employees will accrue after eight (8) hours of work per day or forty (40) hours per week. The Union would like the same formula to apply to part time employees, i.e., overtime after eight (8) hours per day and forty (40) hours per week. The Employer agrees as to part time Employees on a 40 hour week; however, the Employer notes that some part time Employees are regularly scheduled to work more than 8 hours in a day but do not regularly exceed 40 hours in a week. Thus, for part time Employees, overtime should only accrue when a part time Employee works over forty (40) hours in a week. The logic of the Employer in this context makes sense. A part time Employee who does not regularly work forty (40) hours or more in a week should not be able to accrue overtime because his or her normal schedule calls for in excess of 8 hours per day, because in this instance there would be a windfall for the Employee for working his or her normal schedule. It is so recommended.

HIRING

The current contract language as applicable to promotions is found in Article 12, Section 3 of the Collective Bargaining Agreement which reads:

> All internal applicants shall be deemed qualified for the position for the position for which they have applied as long as they have met the following:
>
> 1. Met minimum required test scores.
> 2. Their most recent evaluation form does not list any plan for improvement.
> 3. No letters of reprimand placed in the personnel file since their last evaluation.
>
> Vacancies shall be filled by the most senior, internal applicant having the highest average total score on all required tests. Applicants shall be considered tied if their average total scores are within 10 percentage points of each other. If the applicants are tied, the senior applicant shall be awarded the position. The test score for approved substituted classes (Article 12.2) will be the middle percent of the level required for the position. Qualifications for the position shall be determined by the college.

The Union would like to keep this language in place, while the Employer would like to change the hiring criteria to allow the Employer to hire from any source, whether internal and external, and points to the fact that two of the internal comparables provide for "any source" hiring. In effect, the Employer wants control of the hiring process in an unfettered manner. However, the Employer's argument ignores the fact that the other internal comparable, the Teamsters gives a preference for internal, senior Employees, "where all other factors are equal, in filling vacancies and in the advancement of Employees to higher paying jobs." Further three out of four of the external comparables provide for consideration of "senior qualified applicants" for positions, with Muskegon providing the closest comparable to the Employer. It is this Fact Finder's recommendation that the

current contract language remain in place. While there is appeal to the Employer's argument that the Employer should have unfettered discretion in hiring and promotion; however, as with issues concerning longevity, the Employer should want to see long term, qualified Employees obtain advancement, before looking outside, as this promotes a more harmonious work force and rewards long term, quality work. Further, the current contract language does not automatically create a preference for a bargaining unit member, as the Employee must meet minimum test scores, have a good evaluation and not have reprimands in his or her file. It insures that current Employees are rewarded, if they are entitled, and if not, the Employer can look externally. There appears to be no reason to change what has apparently worked over time.

GRIEVANCE

There are two issues related to the Grievance process, one of which the parties agree upon, one of which the parties disagree. The parties agree to the addition of a "mediation" step to the Grievance process. The parties disagree as to who should pay the costs of Arbitration. The current contract requires cost sharing of Arbitration expenses, which the Union would prefer to keep in place. The Employer would change the contract to "loser pays." Both internally and externally the parties are split on this issue. As with the changing of the Health Care provider, this Fact Finder recommends that the status quo remain in place on this issue. By the time this contract is finally ratified, nine or less months will remain before negotiations begin on a new contract. Issues such as the Health Care Provider and loser pays in Arbitration, if they are to be adopted, need to be negotiated at length, in good faith by both sides, with ample opportunity to investigate and make

informed decisions as to whether there are alternative systems that may work as to the present issue(s). A full exploration of the facts should be done by the parties before implementation of a new method of handling Arbitrations takes place.[6]

RETROACTIVITY

For purposes of the discussion concerning retroactivity, the Fact Finder will create three divisions, one involving wage increase, one involving health care co-pay, and the last involving all the remaining issues to which retroactivity would apply. This breakout seems appropriate because of the positions of the parties, i.e., the Employer will agree to wage retroactivity to July 1, 2008, if all other changes are retroactive, while the Union asserts that wages should be retroactive to July 1, 2008, but all other issues where retroactivity would apply should be retroactive to July 1, 2009.

A. WAGES

The Fact Finder agrees with the parties and recommends that wage increases should be retroactive to July 1, 2008 but that all other issues where retroactivity applies except for health care co-pays should be retroactive to July 1, 2009. The Employer's position in this case seems somewhat punitive in nature. There is some obvious frustration that a contract could not be reached long before a Fact Finder had to be brought into the picture. But obviously these Employees have gone for well over a year without the 2% increase that both the internal comparables have received and most of

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The Union points out that there is no need to make a change concerning Arbitration as very few cases have actually gone to Arbitration in the years that the Union has represented this bargaining unit. This is one of just many factors that should be put on the table to weigh the cost benefit analysis of whether a change from cost sharing to loser pays is justified. On this record the information has not been developed for an informed position to be taken.

the external comparables as well. While the Fact Finder cannot tell why these contract negotiations were so prolonged, to put these Employees of this bargaining unit in a comparable position with their fellow union Employees at this institution and at other similar institutions, their percentage of wage increases should be retroactive to July 1, 2008. It is so recommended.

B. HEALTH CARE CO-PAY

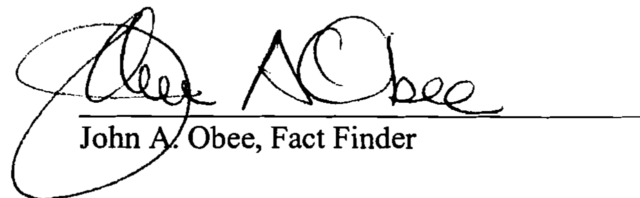
The Employer would have the health care co-pay increase be made retroactive to 2008-2009, while the Union would have limited retroactivity to July 1, 2009. The Employer's position is the better position on this issue. The internal comparables had their health care co-pay increase effective July 1, 2008. Unlike issues related to longevity, sick pay, etc., as discussed in the next section of this report, calculation of the increase and deduction of the amounts for the 2008-2009 year is relatively uncomplicated and straight forward. Thus, it is recommended that the health care co-pay increase be made retroactive to the 2008-2009 contract year.

C. ALL OTHER ISSUES TO WHICH RETROACTIVITY WOULD APPLY

It is the recommendation of this Fact Finder that the Union position as to retroactivity of all other, non-wage increase issues or health care co-pay issues be adopted, i.e., that retroactivity should be effective July 1, 2009. Two examples of why retroactivity should not go back to July 1, 2008 are appropriate. As this Fact Finder sees it as to sick leave, in which a whole new concept of how sick leave is computed and a new sick leave bank is recommended to be created, and as to attendance, where the attendance incentive has been agreed upon to be abolished, it would be a logistic nightmare to go back and compute what sick leave time was taken, what was in excess of 12 days, how a set off should apply as to the 12 days. Equally "nightmarish" would be to calculate those who have benefitted from the attendance incentive from July 1, 2008 to July 1, 2009. The Employer

seems to recognize this in some areas by suggesting that nothing punitive would be put in place that impacts the Employees or former Employees. This recognition suggests to this Fact Finder that the Employer is cognizant of the complexity of the retroactivity concept and, thus, based upon the Employer's own sensitivity to the issue, it appears to this Fact Finder, at least, that the more reasonable approach in this negotiation process, which has led to some significant changes in the present system, is that non-wage percentage and health care co-pay issues have limited retroactivity to July 1, 2009. It is so recommended.

Respectfully Submitted,



John A. Obee, Fact Finder

Dated: September 30, 2009