

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter of:

WAYNE STATE UNIVERSITY
Employer

-and-

UAW P&A Local 1979
Union

MERC Fact Finding
Case No. D12 D-0386

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

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

APPEARANCES:

FOR WAYNE STATE UNIVERSITY:

A.L. Rainey, Jr., Labor Relations Director
Shawn Junior, Labor Relations Specialist

FOR UAW P&A LOCAL 1979:

Michelle Burns, President, Local 1979
John Cunningham, International Representative
Charles Plater, Vice President, Local 1979
Rosalind Willis, Recording Secretary
Sophia Johnson, Grant & Contract Officer
Don Foshey, Member at Large

BACKGROUND

Wayne State University, in addition to employing academic personnel to meets its educational mission, employs non-academic personnel support. In doing so, the University has recognized nine non-academic bargaining units representing a variety of employee classifications.

UAW Professional and Administrative Union Local 1979 is one such bargaining unit representing over 400 employees in the professional and administrative classifications. These classifications range from accountants to application specialists, analysts, grant/contract officers,

systems, grant director and IT personnel. Salaries for the classifications vary, representing that the average annual salary for Local 1979 members was around \$54,000 per year.

In 2012, the University and Local 1979 negotiated a Collective Bargaining Agreement (CBA) covering the period August 1, 2012 through July 31, 2016.

Articles 50 and 51 of the 2012-2016 CBA provided for medical insurance (Article 50) and dental insurance (Article 51). In addition, at page 110 of the CBA, the parties in Supplemental Letter of Agreement #22 provided:

Supplemental Letter of Agreement #22

WAYNE STATE UNIVERSITY

August 1, 2012

Michelle Burns, President
Professional & Administrative Union
UAW Local 1979
5057 Woodward Ave., Suite 2222
Detroit, MI 48202

RE: 2012 Contract Negotiations - "Benefits Only" Reopener

During 2012 contract negotiations, the parties have agreed that:

- We will defer benefits bargaining, subject to a "Benefits Only" reopener;
- The reopener will trigger January 15, 2013, or 30 calendar days after the 2012 WSU AAUP-AFT agreement is ratified, whichever comes first;
- The reopener will be composed of either a 2X2 committee, or full table negotiations, whichever is agreed-upon by the parties, prior to convening;
- The parties will then negotiate benefits for up to 60 calendar days;
- If there is no agreement, the two parties will engage the services of the appointed Michigan Employment Relations Commission (MERC) mediator (Wanda Mayes);
- Should mediation fail, the two sides will each present its last best offer (LBO), concerning benefits only, to the mediator or other designated third party, who will choose one, which will be final and binding.

Sincerely,

A.L. Rainey, Jr. Director, Labor Relations

This Conforms to our agreement.

UAW P&A Local 1979 Bargaining Team - 2012

The trigger for the reopener occurred. However, what occurred is that the University negotiated medical insurance and dental insurance with five of the other non-academic bargaining units, namely, AFSCME Local 1497, UNITE HERE! Local 24, Housing Housekeepers, POLC Campus Police, reached tentative agreements with UAW Staff Association Local 2071 as to medical and dental insurance though going to fact finding on wages. In regard to SEIU Local 517-M involving 12 employees, the contract was not expiring until January 31, 2015. The Operating Engineers Local 324 contract will not expire until September 30, 2015. As to the skilled trades, MB&CTC, there are no University benefits provided in that agreement.

The bargaining units that have been settled as to medical and dental insurance contain the proposed modifications that the University proposed following the reopener to Local 1979. Local 1979 represents the largest number of non-academic employees among the bargaining units.

The parties did negotiate as to the University's proposed modifications but were not able to reach agreement. Pursuant to Supplemental Letter of Agreement #22, the parties then engaged in mediation with a Michigan Employment Relations Commission Mediator, Micki Czerniak. Despite the best efforts of the mediator and the parties, the parties could not reach agreement.

Failing to reach agreement in mediation, the University, exercising the last paragraph Supplemental Letter of Agreement #22, petitioned for fact finding with the Michigan Employment Relations Commission on November 13, 2014 with the petition reading:

THE PARTIES HAVE NOT RESOLVED THE FOLLOWING
MATTERS WHICH REMAIN IN DISPUTE:

(1) Medical benefits changes; (2) Dental benefits changes ... Based on our medical/dental "benefits-only" re-opener, agreed to during contract negotiations in 2012. Mediation has not resolved these two issues. The Employer's benefits pattern was unknown/undetermined in 2012.

The petition also in response to stating the reasons why publicizing the facts and recommendations would assist in resolving the disputed issues:

The Employer is asking the bargaining unit to join the rest of the University, in terms of co-pay changes. The parties have agreed to utilize George Roumell as Fact Finder.

By letter dated November 21, 2014, the undersigned, George T. Roumell, Jr., was appointed Fact Finder by Commission Member Robert S. LaBrant. After consulting with the parties by telephone on December 10, 2014, a hearing date was selected for February 4, 2015 and a hearing was conducted on that date.

Local 1979 represented 441 employees in 2012. By 2014, it appeared that this number had been reduced to 410. The petition for fact finding suggested that the number is 406. The facts further show that the overwhelming number of Local 1979 represented employees are covered by the University provided medical and dental insurance. Forty-three employees opted out of coverage while 16 made no election.

As the petition for fact finding indicated, there are two issues before this Fact Finder – medical benefits changes and dental benefits changes – both of which are subject to the "benefits-only" re-opener set forth in Supplemental Letter of Agreement #22. From the University's standpoint, the dispute as it reached this Fact Finder, who has been empowered to issue binding recommendations, is against a background whereby the University has been experiencing financial pressures which include the rising costs of medical and dental insurance.

In a news release dated June 26, 2013, the University announced that the "Board of Governors today approved a \$576 million operating budget for fiscal year 2014, a 1.7 percent increase. This included a tuition increase of \$904, or 8.9 percent, for a resident undergraduate taking 30 credit hours." The same news release noted:

* * *

Following a 15 percent cut in state appropriations two years ago, Wayne State will have received the lowest percentage increase in state funding among Michigan's public universities this year for the second year in a row.

* * *

Thus, it appears that the University, faced with increased costs, was receiving less financial support from the State than the increasing costs would support.

For the fiscal year 2015, the University's publication, WSYOU noted:

On June 27, the Board of Governors approved a \$582.7 million operating budget for fiscal year 2015 – a 1.1 percent increase from last year ...

Local 1979's take on the situation was set forth in an opening statement which read:

Opening Statement

The members of the bargaining team of UAW Local 1979 P&A went out of their way to meet with representatives of Wayne State University in a timely fashion. Negotiations were completed and the agreement was ratified before the expiration of the predecessor agreement. As part of the negotiations, a "Benefits Only" Reopener was agreed to, as the university was not prepared to present their health care proposal at that time. The team agreed to this language because we felt it would give us the chance to negotiate proposed changes instead of taking whatever AAUP accepted during their negotiations. The language for this reopener expired 30 days after January 15, 2013, which came before the ratification of the 2012 WSU AAUP-AFT agreement. Once those 30 days passed, we considered the issue closed. To our surprise, the university contacted us almost 1 year later (January 24, 2014) to invoke the language. The "negotiations" have been very one sided. There has been little to no movement from management no matter what we have proposed. The only thing the university has been willing to negotiate is effective date. These changes come with a higher price tag to our

membership, and as such are directly related to compensation. AAUP-AFT negotiated the following compensation to accompany these changes:

Academic year	ATB	Selective	Total
2013-2014	\$1,000 and then 1.375%	1.375%	\$1,000 and then 2.75%
2014-2015	1.25%	1.25%	2.5%
2015-2016	1.25%	1.25%	2.5%
2016-2017	1.25%	1.25%	2.5%
2017-2018	1.25%	1.25%	2.5%
2018-2019	1.25%	1.25%	2.5%
2019-2020	1.25%	1.25%	2.5%
2020-2021	1.25%	1.25%	2.5%

In contrast, the following compensation changes were negotiated for UAW Local 1979 P&A:

Academic year	ATB	Attendance Incentive	Total
2013-2014	1.0%	0.5%	1.5%
2014-2015	1.0%	0.5%	1.5%
2015-2016	1.5%	0.5%	2.0%

The attendance incentive has, in turn been used by management to deny the 0.5% increase. Departments have implemented flawed timekeeping systems and have stated the reason for implementation is the attendance standards in the 2012 - 2016 P&A Contract.

It is our position that the university should leave the Medical Insurance language as it stands until the 2016 contract negotiations where they can be negotiated in good faith taking the economic impact into account. We believe this to be a fair solution as the university waited almost a year to invoke the language that should have been expired as of February 14, 2013.

It is worth noting that there is language in the contract that allows for a wage only reopener, and the negotiating team would be willing to consider the following change to accompany implementation of the Medical Insurance language changes:

Provide the following salary increases:

Academic year	ATB
2013-2014	\$1,000 & then 2.75% ATB (retroactive-not subject to attendance)
2014-2015	2.5% (not subject to attendance)
2015-2016	2.5% (not subject to attendance)

The point of the Local 1979 statement is that it was the first non-academic unit to negotiate a contract for 2012-2016 wherein the wage increases were modest. For this reason,

according to Local 1979, its members should not be governed by any AAUP medical and dental insurance modifications during the life of Local 1979's 2012-2016 contract.

The University responds by referencing its difficult financial situation and the fact that at least five of the non-academic bargaining units have accepted the modifications, including certain effective dates proposed by the University.

Medical Insurance

As to medical insurance, the University's initial last best offer read:

Last WSU Offer 4-9, 2014

P&A Article 50 The WSU pattern of medical benefit changes

ARTICLE (50) MEDICAL INSURANCE

- A. Medical insurance is available to members of the bargaining unit through contracts and agreements with Blue Cross/Blue Shield of Michigan, DMC Care (PPO), Community Blue (PPO), Health Alliance Plan (HMO), and Blue Care Network (HMO). All such employees working 50% or more time and all persons on long-term disability shall be eligible to participate in one of the programs.

For all HMO/PPOs the University shall provide a subsidy equal to the subsidy in effect on August 31, 1994, (or the full cost of the premium if equal to or less than the August 31, 1994, subsidy) plus 70% of the actual dollar increase in premium for Single, 2-Person and Family coverage plus an additional \$7.50 per month subsidy for family coverage.

For BCBS, the University will provide a subsidy equal to the subsidy in effect on August 31, 1994, plus 70% of the average cost increase for Single, 2-Person and Family coverage for the five HMO/PPO's plus an additional \$7.50 per month subsidy for family coverage.

For at least the life of this Agreement, there shall be the following modifications:

- a) A \$20.00 co-pay on office visits;
- b) \$5/\$20/\$45 co-pay for prescription drugs;
- c) \$20 co-pay on Urgent Care visits;

- d) \$100 co-pay on Emergency Room visits; waived if admitted to the hospital;
- e) A mail order prescription drug option.

The modifications listed immediately above shall go into effect during fiscal year 2014, approximately 90 days after ratification of the benefits-only reopener (which was agreed-upon in 2012, reopened in 2014).

(No other changes proposed)

Local 1979's proposal as to medical insurance reads:

Date: Feb 4, 2015

WSU Benefits Proposal #24 (Union Counter 2)
ARTICLE (50) MEDICAL INSURANCE

A. Medical insurance is available to members of the bargaining unit through contracts and agreements with Blue Cross/Blue Shield of Michigan, DMC Care (PPO), Community Blue (PPO), Health Alliance Plan (HMO), and Blue Care Network (HMO). All such employees working 50% or more time and all persons on long-term disability shall be eligible to participate in one of the programs.

For all HMO/PPOs the University shall provide a subsidy equal to the subsidy in effect on August 31, 1994, (or the full cost of the premium if equal to or less than the August 31, 1994, subsidy) plus 70% of the actual dollar increase in premium for Single, 2-Person and Family coverage plus an additional \$7.50 per month subsidy for family coverage.

For BCBS, the University will provide a subsidy equal to the subsidy in effect on August 31, 1994, plus 70% of the average cost increase for Single, 2-Person and Family coverage for the five HMO/PPO's plus an additional \$7.50 per month subsidy for family coverage.

For at least the life of this agreement the modifications listed below shall go into effect during the fiscal year 2014 , approximately 60 days after the ratification of the benefits-only reopener:

- a.) A \$20.00 co-pay on office visits;
- b.) \$5/\$20/\$45 co-pay for prescription drugs;
- c.) \$20.00 co-pay on Urgent Care visits;
- d.) \$100.00 co-pay on Emergency Room visits; *Waived if admitted or if the emergency is for an accidental injury;
- e.) A mail order prescription drug option.

- f.) \$ 1000.00 deposit in 4 increments of \$250.00 to 1.) Flexible Spending account or 2.) to the employees One Card account.

(No other changes proposed)

As noted, the parties were not in disagreement as to most of the provisions of Article A. The dispute arose between the parties was in D that the University would waive the \$100 co-pay on emergency room visits if admitted to the hospital. Local 1979 wished to extend the waiver to include accidental injuries. There was also a Paragraph F which Local 1979 wished to add, namely, \$1,000 deposit in four increments of \$250 to (1) flexible spending account or (2) to the employee's One Card account. The University opposed these two additions.

There was general discussion with the Fact Finder wherein this Fact Finder noted that the whole purpose of a co-pay for emergency room visits is to discourage the use of emergency rooms for routine medical matters that can be addressed by office visits or urgent care visits. This is understandable because the cost of emergency room care can be expensive, increasing health care costs.

On the other hand, if there is an accident such as in cutting a finger or breaking an arm, the matter is an emergency that could well only be handled in an emergency room setting, but could be addressed without an overnight hospital stay.

In other words, the use of an emergency room for an injury resulting from an accident does not represent an abuse of emergency room procedures which the \$100 co-pay is designed to address. This additional waiver request by Local 1979 is reasonable when analyzed this way, recognizing the purpose of the \$100 co-pay.

In regard to the \$1,000 deposit, Local 1979's rationale is that because the Local was the first non-academic unit to reach agreement on a 2012-2016 contract and even settled before the

AAUP and not in the same wage pattern as the AAUP, this should be recognized by the \$1,000 deposit. The difficulty of this claim is that this is an unusual request, not part of any of the University's health care plans as well as in most other health care plans negotiated throughout the State. There is no persuasive precedent for such a provision. It is contrary to the economic realities facing the University and in particular the University's attempt to control its health care costs while providing reasonable medical and dental insurance to its employees.

For these reasons, the Fact Finder will not recommend the \$1,000 deposit program, but will recommend that the \$100 co-pay on emergency room visits waiver would include both admission to a hospital or if the emergency is for an accidental injury. This recommendation was not the last best offer of the University or Local 1979 but, after discussions with the Fact Finder, the Fact Finder permitted the University to amend its last best offer to include this change as to the emergency room waiver provided that the modification listed would go into effect on October 1, 2015. This effective date would be slightly different than the effective date of some of the other settled contracts. However, the modification will be made during the life of the 2012-2016 contract which is the purpose of the effective date. It is a reasonable modification. In fact, the Fact Finder commented on the fact that a \$20 co-pay on office visits was indeed modest as compared to other health plans that he has seen throughout the State. The \$5 co-pay for generics is most generous as is the \$20 co-pay for brand name drugs.

The binding recommendation will be consistent with the above discussion.

Dental Insurance

As to dental insurance, Local 1979's offer on February 4, 2015 reads:

WSU Benefits Proposal #25 (Union Counter 2)

Article 51 DENTAL INSURANCE

- A. The Employer shall provide dental care coverage to all non-probationary enrolled Employees as described in the contract between the Employer and Delta Dental of Michigan. **Members of the bargaining unit who participate in this plan shall be required to make a contribution equal to one percent (1%) of the premium rate for the coverage selected, effective immediately upon ratification for the life of this agreement.**
- B. **Effective May of 2016, the percentage members of the bargaining unit who participate in this plan shall be required to make a contribution equal to is open for negotiation.**

(No other changes proposed)
(Emphasis in original.)

The University's offer had been and was submitted to the Fact Finder on February 4,

2015 as:

3/12/14 -- WSU Benefits Proposal #25 (University Pattern)

ARTICLE (51) DENTAL INSURANCE

- A. The Employer shall provide dental care coverage to all non-probationary enrolled Employees as described in the contract between the Employer and Delta Dental of Michigan. **Members of the bargaining unit who participate in this plan shall be required to make a contribution equal to five percent (5%) of the premium rate for the coverage selected, effective immediately upon ratification. Effective March of 2016, members of the bargaining unit who participate in this plan shall be required to make a contribution equal to twenty percent (20%) of the premium rate for the coverage selected.**

(No other changes proposed)

The difference is that the University proposed a 5% contribution toward dental insurance premium at the time of ratification. The University was also proposing effective March 2016 a 20% contribution toward premium rate. Local 1979 was proposing 1% contribution and a re-

opener effective May 2016 for the other contribution.

Again, there was discussion with the Fact Finder and the Fact Finder suggested to the University that it modify its dental insurance proposal by eliminating the 5% contribution upon ratification and instead provide for the 20% premium contribution effective March 2016. The University so modified its dental insurance proposal. The reason the Fact Finder made such a recommendation is that the proposal of the University as to a 20% premium is realistic with the cost of dental insurance increasing. It is consistent with the negotiated contracts and is consistent with the purpose during the life of the 2012-2016 contract of obtaining a contribution to the dental insurance premium. On the other hand, suggesting a 5% contribution upon ratification interferes with the parties' ability to cooperate in controlling health care costs by establishing modifications in the 2012-2016 contract.

It is obvious in this discussion that this Fact Finder considered the economic situation of the University and the fact that other bargaining units have accepted the proposals of the University. There is also in negotiations and in fact finding the art of the possible. Regardless of excellent mediation the parties were not able to reach agreement, despite the history of negotiations with the other bargaining units and the University's financial situation. In conducting this binding fact finding with binding recommendations, this Fact Finder has considered the economic ability of the University to pay and the comparison with other bargaining units within the University. This Fact Finder also recognized that the parties have had to go to binding fact finding as the negotiations on health care and dental insurance have been difficult. This was obvious to the Fact Finder. By eliminating the 5% upon ratification, this Fact Finder is recognizing the art of the possible, the art of compromise. The compromise is the

elimination of the 5%, but nevertheless obtaining the 20% premium cost sharing during the life of the 2012-2016 contract which is the goal of the University in its quest to control medical and dental insurance costs. This explains the rationale for the dental insurance recommendation and, for that matter, the medical insurance recommendation.

As noted in Supplemental Letter of Agreement #22, the fact finding recommendations set forth below are to "be final and binding" on the parties. This is the understanding. This Fact Finder will so provide.

What follows are the final and binding recommendations as to the two issues before the Fact Finder, namely, medical insurance and dental insurance.

FINAL AND BINDING RECOMMENDATIONS

The Fact Finder makes the following final and binding recommendations, binding on the UAW and its W.S.U. Professional and Administrative Union Local 1979 UAW and Wayne State University:

1. **Medical Insurance**

ARTICLE (50) MEDICAL INSURANCE

- A. Medical insurance is available to members of the bargaining unit through contracts and agreements with Blue Cross/Blue Shield of Michigan, DMC Care (PPO), Community Blue (PPO), Health Alliance Plan (HMO), and Blue Care Network (HMO). All such employees working 50% or more time and all persons on long-term disability shall be eligible to participate in one of the programs.

For all HMO/PPOs the University shall provide a subsidy equal to the subsidy in effect on August 31, 1994, (or the full cost of the premium if equal to or less than the August 31, 1994, subsidy) plus 70% of the actual dollar increase in premium for Single, 2-Person and Family coverage plus an additional \$7.50 per month subsidy for family coverage.

For BCBS, the University will provide a subsidy equal to the subsidy in effect on August 31, 1994, plus 70% of the average cost increase for Single, 2-Person and Family coverage for the five HMO/PPO's plus an additional \$7.50 per month subsidy for family coverage.

For at least the life of this Agreement, there shall be the following modifications:

- a) A \$20.00 co-pay on office visits;
- b) \$5/\$20/\$45 co-pay for prescription drugs;
- c) \$20 co-pay on Urgent Care visits;
- d) \$100 co-pay on Emergency Room visits; waived if admitted to the hospital or if the emergency is for an accidental injury;
- e) A mail order prescription drug option.

The modifications listed immediately above shall go into effect on October 1, 2015.

(No other changes proposed)

2. Dental Insurance

ARTICLE (51) DENTAL INSURANCE

- A. The Employer shall provide dental care coverage to all non-probationary enrolled Employees as described in the contract between the Employer and Delta Dental of Michigan. **Effective March of 2016, members of the bargaining unit who participate in this plan shall be required to make a contribution equal to twenty percent (20%) of the premium rate for the coverage selected.**

(No other changes proposed)


GEORGE T. ROUMELL, JR.
Fact Finder

February 18, 2015