

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
FACT FINDING**

WAYNE STATE UNIVERSITY

and

MERC Case No. D-13E-0539

UAW STAFF ASSOCIATION LOCAL 2071

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**Report**

Thomas L. Gravelle, Fact Finder

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMM.  
DETROIT OFFICE

**FINDINGS, RECOMMENDATIONS AND REASONS**

The fact finding hearing was held on April 14, 2015 in Detroit, Michigan.

Present for the Union were:

Sammy Wright  
Gladys King  
Saundra Sumner  
Terri Stubblefield  
John Cunningham, Int'l Rep.

Present for the County were:

Shawn Junior  
A.L. Rainey, Jr., Dir. WSU Lab. Rels.

The parties filed post-hearing briefs, which I have reviewed together with the entire record.

## **FINDINGS OF FACT**

Wayne State University (WSU) is a major public university located in Detroit, Michigan. It has 13 schools and colleges attended by about 28,000 undergraduate and graduate students.

At WSU there are 12 bargaining units. Three are "academic." The WSU Provost office negotiates with them.

The remaining nine bargaining units are "non-academic." WSU's Labor Relations office negotiates with them. To avoid chaotic negotiations, the Labor Relations office historically has engaged in pattern bargaining with these nine bargaining units.

UAW Local 2071 – the bargaining unit in this proceeding – is one of the nine non-academic bargaining units. The UAW unit represents about 356 employees who serve in a wide variety of clerical, technical, and professional classifications. These employees average about \$33,160 in base annual salary. (E-12).

UAW Local 2071's previous CBA expired on July 31, 2013.

In May 2013, negotiations for a new CBA began. Early on, the issues of WSU's financial condition and the impact of Public Act 54 were discussed. In the early months of negotiations the parties reached tentative agreement on many issues, while agreeing that the wage structure would be the last issue to be addressed.

In November 2013, MERC mediation began.

No later than March 7, 2014, the parties began exchanging proposals on wage structure. WSU Exhibit 8 is a 15-page document showing these exchanges.

In late September 2014, mediation ended with only the wage structure and reopener language remaining to be resolved.

On September 26, 2014, the Employer renewed its "final, best offer" on wages structure – including attendance and reopener language:

- 2013-2014 – No adjustment; no retroactive compensation, by Michigan law.
- 2014-2015 – 1% ATB increase (ATB = Across the Board); effective the next business day after ratification by the bargaining unit; steps funded. No attendance adherence requirement for 2014-2015 contract year.
- 2015-2016 – 1% ATB increase to the base salary of bargaining unit members; steps funded.  
Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2015.
- 2016-2017 – 1.5% ATB increase to the base salary of bargaining unit members; steps funded.  
Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2016.
- 2017-2018 – 1.5% ATB increase to the base salary of bargaining unit members; steps funded.  
Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2017.

The WSU Attendance Standards (E-2) define excessive absenteeism and excessive tardiness on the basis of a 12 month rolling year. An employee in violation of the Standards is subject to counseling and progressive discipline.

Other bargaining units have agreed to base salary increases partially on compliance with the WSU attendance policy. A review of two of the bargaining units with this language shows declines in attendance violators between the end of 2013 and the end of 2014. (E-14).

WSU also has proposed to renew the reopener language from the parties' previous CBA (with expedited arbitration and a limited range added). Other non-academic bargaining units have agreed to reopener language in their CBAs. (E-12). At least two have included language that the bargaining agent also may reopen. (E-15; 17).

Despite a history of reopener language in the non-academic CBAs, WSU has never invoked it. Because WSU engages in long term financial planning, the purpose of the reopener language appears to be limited to an unanticipated financial emergency.

WSU has not agreed to a bonus or other "sweetener" payment for any of the non-academic bargaining units. (E-13).

WSU has a long history of engaging in pattern bargaining with its non-academic bargaining units. The key idea is to establish a common package that is offered to these bargaining units. The current cycle of pattern bargaining began in 2012. As of April 2015, only two bargaining units remain without a new CBA. With the limited exception of the campus police bargaining unit, the "attendance adherence" concept for partial base salary increases has been agreed to with other non-academic bargaining units.

On November 13, 2014, WSU petitioned for fact finding.

On November 14, 2014, Union President Sammy Wright submitted to WSU its counter proposal to WSU's September 26, 2014 offer. The Union's counter proposal stated:

2013-2014 – No adjustment; no retroactive compensation, by Michigan law.

2014-2015 – 1% ATB increase (ATB = Across the Board); effective the next business day after ratification by the bargaining unit; steps funded. No attendance adherence requirement for 2014-2015 contract year.

2015-2016 – 1.5% ATB increase to base salary of bargaining unit members; steps funded. No attendance adherence requirement for 2015-2016 contract year.

2016-2017 – 1.5% ATB increase to base salary of bargaining unit members; steps funded. Plus an additional 0.5% to base salary for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2016.

2017-2018 – 1.5% ATB increase to base salary of bargaining unit members; steps funded. Plus an additional 0.5% to base salary for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2017.

\* Delete the reopener clause.

The Union reserves the right to change, modify and/or delete these proposals.

On November 20, 2014, A.L. Rainey, Jr., the Director of WSU Labor Relations responded to the Union's proposal as follows:

Good morning Mr. Wright,

Your 11/14/14 wage offer (attached) has been weighted and considered. As much as WSU is ready to bring this round of negotiations to an end, your offer cannot be accepted. In fairness, in my 11/10/14 email to you I advised that, "You are aware (and have been reminded) that we are pattern bargainners among our nonacademic bargaining units. As has been indicated all along, any wage proposal that removes the attendance requirement or attempts to pad current or future years of the contract (to account for lost time) are not agreeable to the University." It appears that your 11/14/15 proposal does exactly that. Our reasoning is that a protective wage re-opener clause is appropriate (should WSU experience severe financial decline during the run of the contract). But it is important to note that the University has never activated such a wage re-opener clause. In observance of our pattern bargaining (including looking at any other nonacademic 5 year contractual arrangement) and our responsibility to our other eight nonacademic bargaining units, we cannot give Staff Association advantage over our other negotiated nonacademic Agreements. We are, however, extending the deadline on our 9/26/14 last best wage offer (attached) until 12/5/14, which relieves your members of the attendance requirement for the first 2 years of the contract. We have just be informed that any contracts ratified by 12/1/14 can have the wage adjustments processed this year. Any new contracts ratified after 12/1/14, will most likely have wage adjustments processed next year.

This is where matters stood until the April 14, 2015 fact finding hearing.

On April 14, 2015, the Union substantially revised its previous proposal by deleting the 2017-2018 contract year; and by requesting a 3% annual across the board base salary increase for the 2015-2016 and 2016-2017 contract years.

In summary, three issues are before me: Wage structure, duration and reopener.

Additional facts are discussed below.

### **ABILITY TO PAY**

The cloud that looms over the parties is WSU's financial condition. A General fund budget comparison for fiscal year 2001 vs. fiscal year 2014 (E-5) shows the following:

Fiscal Year 2001: General fund budget \$381 million

State Appropriations:	63%
Tuition and fees:	28%
Indirect cost recovery:	6%
Other:	3%

Fiscal Year 2014: General fund budget \$576 million

State Appropriations:	31.8%
Tuition and fees:	60.4%
Indirect cost recovery:	5.7%
Other:	2.1%

In other words, state appropriations as a percentage of the general fund budget have been sliced in half and student tuition and fees have doubled.

On May 1, 2014, the Center on Budget and Policy Priorities published a study entitled "States Are Still Funding Higher Education Below Pre-Recession Levels." (E-4).

The report explains that 48 states – including Michigan – “are spending less per student than they did before the recession;” and “[s]tates cut funding deeply after the recession. The average state is spending \$2,026 or 23% less per student than before the recession.” (Id, p. 1). Figures 1 and 2 of the study shows that for fiscal year 2008 to fiscal year 2014, as adjusted for inflation, Michigan spent \$1,631 or 28.2% less per student than before the recession.

On June 27, 2014, WSU’s board of governors “approved a \$582.7 million operating budget for fiscal year 2015 – a 1.1 percent increase from last year.” (E-6)

The major reductions in state funding in recent years have caused some financial sacrifice for many WSU employees. This has included reductions in force. (A document submitted by the Union (U-7) shows that upper management appears not to have been as adversely affected by these financial shortfalls. I am not authorized to make recommendations as to the payroll of upper management.)

## **RECOMMENDATIONS**

### **1. WAGES**

I am recommending the following combination of WSU’s September 2014 final offer on wage structure and the Union’s November 2014 counter proposal on wage structure:

2013-2014 – No adjustment; no retroactive compensation, by Michigan law.

2014-2015 – 1% ATB increase (ATB = Across the Board); effective the next business day after ratification by the bargaining unit; steps funded. No attendance adherence requirement for 2014-2015 contract year.

2015-2016 – 1.5% ATB increase to the base salary of bargaining unit members; steps funded. No attendance adherence requirement for 2015-2016 contract year.

2016-2017 – 1.5% ATB increase to the base salary of bargaining unit members; steps funded.

Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2016.

2017-2018 – 1.5% ATB increase to the base salary of bargaining unit members; steps funded.

Plus an additional 0.5% to base salary, only for those bargaining unit members who are not in violation of the WSU Attendance Standards for tardiness and/or absenteeism (per APPM 3.0.11) as of July 1, 2017.

The difference between WSU's final offer and the Union's counter proposal is that I am recommending the Union's language for 2015-2016.

#### **Reasons for Wages Recommendation:**

The purpose of linking part of salary increases to attendance is to motivate lagging employees to improve attendance, which the parties understand to be a worthy objective. If the new "attendance adherence" concept were applied in the 2015-2016 contract year, it would not serve to motivate employees because the one year attendance measurement period for 2015-2016 will have lapsed, i.e., it will have ended "as of July 1, 2015."

There is academic support for the concept of "attendance adherence" being tied to salary. Cass R. Sunstein is the Director of the Program on Behavioral Economics and Public Policy at the Harvard Law School and former top policy advisor to President Barack Obama. In 2009, he co-authored a book entitled *Nudge: Improving Decisions*



*about Health, Wealth and Happiness.* This book explains that individuals can be “nudged” in a certain way without taking away their freedom of choice.

The “attendance adherence” concept is “nudge” to show up for work in a responsible manner in order to earn more salary.

I am not recommending the Union’s new proposal for 3% annual salary increases for the 2015-2016 and 2016-2017 contract years. This proposal was initiated at the April 2015 fact finding hearing, is unsupported by any of the other non-academic CBAs, and would have the effect of avoiding the “no retractivity” language of state law.

I am not recommending a \$900 signing bonus. This is a large sum which would challenge WSU’s ability to pay and future pattern bargaining with other bargaining units. No bargaining unit has received a signing bonus.

I also am not recommending the Union’s new proposal to end the new CBA on July 31, 2017. The parties prehearing proposals agreed that the new CBA end on July 31, 2018. This last year includes an across the board increase in base salary. Also, the parties may benefit from a period of repose rather than having to begin bargaining for a new CBA in less than two years.

## **2. REOPENER LANGUAGE**

I am recommending that the following underlined clause be added to WSU’s proposed reopener language:

It is agreed that the University reserves the unilateral right to cause compensation (wage and/or benefits) provisions to be reopened for bargaining by giving notice to that effect by October 1<sup>st</sup> of contract year two, three, or four of the Agreement only if a severe financial decline has occurred within the 12 months preceding the notice, in which event these compensation provisions may be changed by agreement, to be effective no later than August 1<sup>st</sup> of the following calendar year. Should the subject reopening result in non-agreement on compensation provisions, the wage matter shall be referred to the Michigan Employment Relations Commission (MERC) via mediation. Should mediation not achieve agreement, the

subject shall be referred to expedited arbitration, with an agreed-upon range of outcome ranging from 0% to 1.5%.

WSU's proposed language is very similar to the reopener language in the parties' 2009-2013 CBA with one material addition: WSU's proposed language states that if mediation fails, "the subject shall be referred to expedited arbitration, with an agreed-upon range of outcome ranging from 0% to 1.5%."

**Reasons for Reopener Recommendation:**

The addition I am recommending addresses the Union's concern that "[t]he proposed reopener doesn't provide any parameters as to what would trigger a request to reopen the contract."

All the non-academic bargaining units have a reopener clause in their CBAs.

WSU has never invoked a reopener clause. On November 20, 2014, Director Rainey wrote that a reopening could occur only if WSU experienced "severe financial decline during the run of the contract."

In other words, the reopener clause is a safety valve limited to the unlikely event of an unanticipated financial emergency.

Respectfully submitted,

Thomas L. Gravelle

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