2168

In the Matter of Statutory Fact-finding between:

EASTERN MICHIGAN UNIVERSITY,
Employer,

Fact-finder

-and-

Ben Kerner

EMU—AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,

Union.

MERC Case No. D 06 E-1490

Hearings: Feb. 13, 20, and 21, 2007
Ypsilanti, Mi.
Briefs: March 16, 2007

FACT-FINDER'S REPORT AND RECOMMENDATIONS

Appearances:

For the Employer: James P. Greene
Dykema Gossett, PLLC

For the Union: Howard Bunsis
President, EMU-A.A.U.P.; and
Harvey I. Wax
Zausmer, Kaufman, August & Caldwell, P.C.

Also present for all or part of the proceedings: Mark Byrd, Jim Carroll, David Crary, Megan Endres, Hartmut Hoft, Paul Leighton, Rhonda Longworth, Don Loppnow, Susan Moeller, Lynn Nybell, Char Reese-Oxford, Akosua Slough, James Stengle,III, Janice M. Stroh, Denise Tanguay, James VandenBosch, Anita Westman, Diana Wong, and Linda Woodland.

Dated: March 30, 2007

BACKGROUND.

The Employer is a statutory university that has been in existence since 1849. The Union represents a bargaining unit of 689 faculty in the ranks of instructor, assistant professor, associate professor, and full professor. The parties have had a bargaining relationship for 32 years, but it has recently been a stormy one. During the most recent contract talks, the Union called a work stoppage in September 2006 which lasted 14 days. The work stoppage concluded when the parties agreed to a fact-finding procedure to resolve their remaining contractual differences.

The Union petitioned the Michigan Employment Relations Commission on September 15, 2006, for fact-finding. On October 24, 2006, after participation by the parties in the selection of a fact-finder, I was appointed by the Michigan Employment Relations Commission as the Fact-finder in this matter. My authority derives from the Labor Mediation Act, MCL 425.25 et. seq., which recites that the Commission, in order to resolve labor disputes, may on its own or through an agent, hold hearings to make the facts of a labor dispute publicly known and to recommend terms of settlement.

I held a pre-hearing conference on November 21, 2006, at which time the parties surveyed the issues in dispute; decided on a procedure for moving forward; picked hearing dates, and related dates for the provision of exhibits in advance of the hearings. The first order of business appeared to be the determination by the Fact-finder of the appropriate peer institutions, or comparable universities to be utilized by the parties in comparing the salaries, benefits, and working conditions of E.M.U. faculty members with others'. A hearing was held on December 19, 2006, limited to the question of what are the comparable institutions. Based on evidence received on that date, and as reflected in my report of December 26, 2007, I have recommended that the parties consider the following institutions as comparables: Grand Valley State University, Central Michigan University, Western Michigan University, University of Toledo, University of Akron, Kent State University, and Ball State University. The parties diligently prepared further information on salaries, other compensation, health care benefits, and other benefits with respect to the common reference points provided by these comparable institutions. This report is the final report and recommendation of the Fact-finder with respect to the issues in dispute between the parties.

STATEMENT OF GOALS.

This determination of salaries, other compensation, health care benefits, other benefits is subject to modification, adjustment, amplification, or simplification by the parties, and ultimately, to approval by the parties, acting as autonomous bargaining parties. My goal is to state some recommendations that have a basis in fact, as developed at the hearings in this matter, and to report those facts as I see them. I take it as my charge to make recommendations that keep E.M.U. faculty at the same standing or better standing with respect to comparables' salaries and other aspects of compensation. I take it as my charge to make recommendations that provide a modest improvement in real total compensation. I take it as my charge to make recommendations that are within the ability of the Employer to meet, both as regards short-term costs and as regards long-term expectations. And I take it as my charge to further the goal of reducing Employer health care costs by $750,000 per annum.

COMPENSATION—SALARY INCREMENTS.

The primary data on base salary for Instructor, Assistant professors, Associate Professors, and Full Professors are available for all of the comparable institutions. In addition to the reporting of this information, the interpretation of it was the subject of argument, the Union arguing that the proper determination of salaries should be reflected by rank, and not by lumping all salaries into one average. In addition, the Union provides evidence that the cost of living in Washtenaw County is higher than in other counties where comparable universities are located. On account of this factor, the Union proposes to adjust salary representations by a factor based on Department of Commerce average salary data for 2006. Those data show, as follows:

Institution	Metro. Statistical Area	Factor, relative to EMU
EMU	Washtenaw, Livingston & Lenawee	1.00
CMU	Saginaw, Bay City, Midland	0.951
WMU	Kalamazoo, Battle Creek	0.874

GVSU	Gr. Rapids, Muskegon, Holland	0.893
KSU	Akron	0.859
Akron	Akron	0.859
Toledo	Toledo	0.856
Ball St	Muncie	0.742

[Union Exhibit 322]

The wisdom of considering faculty salaries by rank is borne out by the evidence submitted by the Union showing that the aggregation of faculty salaries across the ranks results in misreporting the salaries of both full professors and assistant professors, based on the numeric strength of those categories in the total mix of faculty. Accordingly, I have considered the ranking of E.M.U. for separate faculty ranks (leaving aside Instructors, which is a complex category, including in some institutions persons who would be considered Lecturers here) and as adjusted by the above-given factors, on the understanding that they are a proxy for cost of living in the various counties where the comparable institutions can be found.

Given the data as summarized above, the full professors at E.M.U. rank last in the group of comparable institutions, cost of living adjusted, at $79,905 in salary, compared to the high of $105,281 (cost-of-living adjusted, Kent State) and compared to a median of $99,193 (Ball State U.) or in other words, 19.4% less than the median. [Exh. 327]

Given the data as summarized above, the associate professors at E.M.U. also rank last in the group of comparable institutions, cost of living adjusted, at $64,345 in salary, compared to a median of $76,174 (Toledo), or in other words,15.5% below the median. [Exh. 329].

Given the data as summarized above, the assistant professors at E.M.U. rank 3rd lowest, cost of living adjusted, after Central and GVSU in the group of comparables, at $55,924, compared to a median of $61,386 (WMU), or in other words, 9% below the median. [Exh. 331]

Also of interest in the setting of base salaries is the observation, stressed by the Employer that some of E.M.U.'s sister institutions, particularly those designated in the Carnegie classification as RU/H have other components to total salaries, besides across-the-board wage increases. For instance, Akron sets aside 2.5% of salary increases for merit evaluations. An additional 0.5% at Akron is set aside for market adjustments. Similarly, at Toledo, 1.5% of salary raises is set aside for merit increases, and a lump sum of $250,000 (approximately 0.6% of total salary) is set aside for "equity" factors. Thus, in the Employer's eyes a comparison of stated base salaries, alone, is misleading for failure to incorporate those features of salary augmentation that are featured more prominently in the RH/U (Intensive Research based) institutions.

Taking account of these factors, as the Union did in its Exhibits 342-345, the ranking of the parties' proposals in relation to the comparable institutions is as follows:

2006-07 Faculty Salary Increases. (based on Exh. 342)

Akron	6.2% +
Toledo	5.6%
G.V.S.U.	5.0%
Ball State	4.0%
Kent State	3%+--5%+
EMU-AAUP Demand	3.50% (retroactive to Sept. 1, 06)
C.M.U.	3.5%
W.M.U.	3.0%
E.M.U. E'er. Offer	2.5% (includes 0.5% not added to base)
AVE. w/o E.M.U.	4.47%

THE PARTIES' POSITIONS ON SALARY INCREMENTS.

The Union has a salary increment schedule, which in a forward-thinking manner takes account of the costs of health care, as projected to be implemented in 2007-08. In other words, some or all of the cost of health care reflected in premiums, which have yet to be agreed, are to be offset by the Union's demand for 2007-08. In addition, it is anticipated that health care premiums or the portion charged to faculty members will increase over the next several years, and the Union has made an estimate to cover those costs, as follows:

Year 1 (2006-07) 3.50%, retroactive to Sept. 1, 2006.

Year 2 (2007-08) 3.00% + $750 (phased in health care premiums)

Year 3 (2008-09) 3.60% + $100 (phased in premium increases)

Year 4 (2009-10) 3.75% + $100 (phased in premium increases)

For its part, the Employer makes a wage offer that directly ties part of the increase in salaries to the date of phase-in of health care plans, as outlined later in this report. Thus, the Employer proposes:

Year 1 (2006-07) 2.00% available retroactive to Sept. 1, 2006

1.00% available at the time that health care plans have been implemented, i.e., on 1/1/08.

0.50% lump sum, available at ratification (and not added to base salary).

Year 2 (2007-08) 3.25%

Year 3 (2008-09) 3.50%

Year 4 (2009-10) 3.25%

The Employer argues that "even as the Michigan economy worsened and State support deteriorated, since 2000 continuing EMU faculty members have had greater salary growth than faculty members at any of the comparable institutions." [E'er. Brief, p. 25]. In support of this assertion, the Employer cites [Compensation Exh. p. 44] the fact that the contractual raise granted to EMU faculty in 2005-06 was 3.25% whereas the average raise of all the other comparables was 2.87%. However, the Employer recognizes that some faculty salary items at comparable institutions are left out of this comparison, such as pooled merit raises and lump-sum payments to offset health insurance premiums. Nevertheless, says the University, the weighted averages of faculty base salaries for the historical period 1999-2006 shows a gain for EMU from $56,446 to $69,717 (23.5% increase) whereas for the comparables the gain in weighted salaries was from $57,381 to $65,480 (14.1% increase). [Compensation Exh. p. 14]. The overall trend, in the University's view, is one of E.M.U. salaries outpacing the salaries of comparables.

In addition, the Employer shows that its other employee groups had increases in the years 1999-2006 less advantageous that the faculty salary increases. The faculty salaries increased 29.0% (on a compounded basis over the 6 years). The other employee groups increased from a low of 17.1% to a high of 24.1%. (Exh. 114 and 116). Says the Employer in regard to the relevance of other employee groups, "As an employer of many different employee groups, bargained –for and non-bargained-for, the University must be very sensitive to providing similar compensation *increases* for all of its employees." [E'er. brief, p. 31] And, the Employer goes on to say that the faculty have been treated generously, by comparison with other employee groups.

FINDINGS WITH REGARD TO SALARY INCREMENTS.

It appears that although some of the comparable universities include such items as merit pay or market factors in their computations of salaries and increases, the Union has adequately accounted for those increases (which are not available at E.M.U.) in its statement of comparable universities' compensation. Furthermore, the Union-demanded salary increase, at least for the current year, does not change the position of Full Professors / Associate Professors or Assistant Professors from their relative rankings across the board at comparable institutions. The Employer offer of 2.5% now, and an additional 1% later is less than the increase offered at any comparable institution. Furthermore, there is no precedent offered to justify awarding part of that increase (0.5%) as a one-time payment, rather than as an addition to base. The precedent appears to go the other way, in favor of making all increases in pay as increases to base pay. Thus, in keeping with my goal of recommending salary increments that keep E.M.U. faculty at the same or better ranking with respect to comparables' salaries and other aspects of compensation and that provide a modest improvement in real total compensation, I recommend that the parties adopt the first year salary improvement of 3.5% of base salary.

In regard to Year 2 of the proposed contract, I have noted the positions of the parties above. I note that the Union statement of demand for salary increments includes a lump sum of $750 on January 1, 2008, when health care reform is likely to be achieved, and that such increase is designed to protect the lowest earning faculty, typically Instructors and Assistant Professors. The Union statement of demand preserves E.M.U.'s position among the comparables. The full rationale for the $750 increase as a flat rate increase will be presented below under the health care section of this report. Suffice to say that the increase is not out-of-line with the 50-100% salary off-sets offered at three comparable institutions which underwent major health care adjustments during recent years. I recommend that the parties adopt the increase of 3.00% plus $750 as an adjustment to base pay during the second contract year (2007-08).

The Union's demanded salary increases for the third (2008-09) and fourth contract years (2009-2010) incorporate the off-setting salary increments of $100 to correspond to 9% raises in health care premiums in each of those years. In addition, the Union demands 3.6% in 2008-09 and 3.75% in 2009-10. The Employer offers 3.5% for 2008-09 and 3.25% for 2009-10, without any off-sets for health care premium increases.

The evidence shows that there are very few figures available for the comparables in years 2008-09 and 2009-10. The projected average of the salary increases for the comparable institutions can be extrapolated from the first year of those comparables' contracts. [Exh. 435] Exhibit 435 shows the average to be a 4.47% increase, less health care estimated impact of 0.41 for a net salary increase unadjusted for inflation across the comparables of 4.06%. Applying the inflation factor of 2.60% we see that the net salary increase applicable at the comparables is 1.46%. It would be fair, in the absence of other data, to extrapolate this rate of net salary increase to 2008-09 and 2009-2010 for the comparables.

The level of increase offered by the Employer for Year 3 and Year 4 can be shown as follows:

	2008-09	2009-2010
Across the board	3.50%	3.25%
Retirement contribution	0.00	0.25
Total increase	3.50	3.50
Health care est. impact	-0.18	-0.18
Net Offer	3.32	3.32
Expected rate of inflation	-2.60	-2.60
Real salary increase	0.72	0.72

The level of increase demanded by the Union is as follows:

	2008-09	2009-2010
Salary increase	3.60% + $100	3.75% + $100
Retirement contribution	0.50	0.50
Total Increase	4.25	4.40
Health care est. impact	-0.18	-0.18
Net Offer	4.07	4.22
Expected rate of inflation	-2.60	-2.60
Real Salary increase	1.47	1.62

This analysis shows that the salaries demanded by the Union are more in line than the Employer's offer with the comparables' projected level of increases of 1.46%. Accordingly, I recommend that the parties settle on the basis of across-the-board increases for Year 3 (2008-09) of 3.6% plus $100; and for Year 4 (2009-10) an increase of 3.75% plus $100.

In regard to retroactivity, I find that retroactive pay increases for the total amount of the 2006-07 increase is warranted. I heard arguments on the subject of retroactivity and I have my own experience as an arbitrator setting wages and benefits in the Act 312 situation as well as other fact-finding experience: It awarded) benefits to the bargaining unit. The norm is to provide retroactive application of wage increments. The party not wanting to make wage increments retroactive has a large burden of showing that this tradition is not applicable in the current situation. The Employer here attempts to argue that the cost-savings to be effected by the implementation of new health care arrangements have not become effective yet; therefore, it argues, the "benefit" of wage increments should not become fully effective for the bargaining unit. I find that the final offers made by the Union adequately take account of the futurity of health care arrangements in that the Union has withdrawn its demand for an improvement in TIAA-CREF contributions in Year 1 of the contract (2006-07) and has deferred such increases until Year 2 (2007-08). I find there is no additional basis to defer the full amount—or any portion of the full amount-- of the Year 1 (2006-07) salary increase.

OTHER ASPECTS OF TOTAL COMPENSATION.

The remaining aspects of total compensation on which the parties presented evidence include promotional pay (to new rank); continuing education pay; substitution pay; and contribution to retirement.

1. The current structure of **promotional pay** is as follows: for promotion from Instructor to Assistant--$3000; for promotion from Assistant Professor to Associate Professor--$4200; for promotion from Associate Professor to Full Professor--$5400. The Employer proposes to keep these promotional pay

increments constant. It observes that the increments are higher than the average of all the comparables' increments. The Employer says that only two schools have higher promotional increments (CMU and Kent State).

The Union proposes increasing the promotional pay to $3,000 at the first step; $4,500 at the second step; and $6,000 at the third step (associate to full professor). In the fourth year of the contract, the Union proposes increments of $3,000 in the first step; $5,000 in the second step; and $6,500 in the third step (associate to full professor).

The data show that from hire-in as assistant to full professor, E.M.U. has a total promotional salary increment of $9,600. Four of the comparable schools have greater cumulative increments: CMU in the present year has cumulative increments of $18,500; and Akron has cumulative increments of $13,000. Kent State in the current year has cumulative increments of $10,000. And W.M.U. has cumulative increments of $10,625. The median (excluding E.M.U.) appears to be W.M.U. at $10,625. The total promotional increments which the Union is demanding here of $10,500 (from assistant through two promotions to full professor) is not unreasonable. In fact, it appears to preserve E.M.U.'s standing in the group of comparables. It is worth noting that in some of the comparables the figures do not necessarily reflect the increases granted to newly minted associate professors or newly minted full professors, because in most of the comparables there have been established minimum yearly salary increments. In many cases, the amount of the promotional increment is less than the amount of the minimum yearly increment, thus understating the effect of the promotional increment on actual salary. The Employer's proposal does not take into consideration the Union's institutional response to the need of faculty at achieved higher ranks to be rewarded appropriately—and with dollars that keep pace with inflation—for their achievements.

Thus, in sum, I recommend that the Union's proposal on salary promotional increments be adopted for the first three years of the proposed contract, with the same increments being effective in the fourth year.

2. Continuing education pay is earned when a faculty person teaches a continuing education course on an overload basis, beyond the 12 credit hours expected for regular service. Says the Union in its brief,

> CE courses can be taught in load as part of a faculty's normal teaching load or as overload for additional pay. The common practice at E.M.U. is to use the CE pay rate as a basis to compensate faculty for teaching overload classes. [U brief, p. 24]

CE courses may include courses taught at non-traditional hours (such as on weekends);or at off-campus sites, or online. The overload rate for teaching continuing education courses is currently $1200 per credit hour. The Union makes a proposal to increase the amount of overload pay for continuing education courses from $1200 in Year 1 (2006-07) to $1400 in Year 2 (2007-08); then, to $1600 in Year 3 (2008-09); and finally, to $1800 per credit hour in Year 4 (2009-10), The Employer would keep the current rate for continuing education courses in Year 1 (2006-07) and raise the rate to $1400 per credit hour for the balance of the 4-year contract. [1]

Thus, the parties are in agreement concerning Year 1 and Year 2, but offer different proposals for Years 3 and 4. The comparables offer some scant guidance, because most of the schools do not show negotiated rates for 2008-09 and 2009-10. C.M.U. shows an increase in CE pay from $1433 in 2006-07 to $1467 in 2007-08, thus demonstrating the scale of the rate increase which may be applicable. Kent State and Akron appear to set pay for overload courses as a proportion of base salary (1/24th of base salary). The rate at both schools is intended by the collective bargaining clauses in the respective contracts to rise in the 2nd and 3rd contract years, as base faculty salaries rise. [Exh. 364].

I find that the comparables offer some support for the concept of increasing faculty pay for continuing education teaching assignments. In addition there is internal support for the concept of rationalizing and increasing the amount of continuing education pay. As found by the EMU Commission on the Future of Instructional Delivery (2006):

> Development of a more equitable and consistent formula for compensating faculty for overload work need to be explored, i.e., percent of base increase, increasing credit hour flat rate, revenue sharing directly to faculty members. The goal is to find the balance between compensating

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[1] There are a few statements in the Employer's brief tending to support the idea that it is offering $1400 per credit hour throughout the 4-year term of the contract. However, the concluding sentences of the Employer's brief on this subject support the interpretation of its offer which I give it here. "The University's proposed increase in the minimum Continuing Education pay rate is $1400 for the last three years of the contract." [E'er. Brief p. 39]

> the faculty fairly for their efforts, at the same time, providing CE with the funding to lead the division....

I find that additional increments are necessary in Years 3 and 4 of this contract and that increments of $50 in Year 3 and $50 in Year 4 are warranted. Thus, in sum, I recommend that the Continuing Education (overload) pay be $1200 per credit hour for Year 1; $1400 per credit hour for Year 2; $1450 per credit hour for Year 3 and $1500 per credit hour for Year 4.

3. **Substitution pay** is currently available to a faculty member who is called to teach another faculty member's course. The first day's meeting of such a course goes uncompensated. Then, the substituting faculty member earns $46 per hour of contact time. The Employer offers to continue the status quo for the 4 years of the contract-to-be-formed. The Union demands $100 per credit hour starting from the first hour taught.

I recommend that the parties settle on the basis of $60 / hour for substitute pay, to be paid from the first hour worked.

4. The Employer currently makes a **retirement contribution** of 10% of a faculty member's gross salary to the TIAA-CREF pension funds. The Employer offers to increase retirement contributions as follows: 10.25% of gross salary for the 2nd contract year (2007-08); 10.25% of gross salary for the 3rd contract year (2008-09); 10.50% of gross salary for the 4th contract year (2009-10).

The Union offers to delay increases in retirement contribution until Year 2 (2007-08) when it requests a 0.5% increase in retirement contribution to 10.50%. The Union proposes further to have an increase in retirement contribution to 11.00% at the beginning of the 3rd contract year (2008-09), and to 11.50% at the beginning of the 4th contract year (2009-10).

The data indicate that at the Ohio universities, employees have a choice among a defined benefit and a defined contribution and a hybrid plan. If the employee elects the defined benefit plan, the State is mandated to contribute 14% of base pay: It is a payment designed to fund past and present liabilities for the defined benefit plan and does not all inure to the employee's benefit. Alternatively, if the employee opts for the defined contribution plan, the State of Ohio mandates an Employer contribution of 10.5% of salary. (Noteworthy, too, is the fact that Ohio university employees must pay 10% of their own funds in contributions to this retirement plan.)

At Ball State University, the employer contribution to retirement is 12.27% of gross earnings. At Central Michigan the employer contribution is 10% of gross earnings for faculty hired after 9/96; and 12% for faculty hired before 9/96. At Western Michigan the employer contribution is 11% of gross earnings. At Grand Valley State the employer contribution is 12% *of base salary.*

The Employer shows (at p. 20 of retirement exhibit) that "given the significant difference between base salary and total earnings, there is virtually no difference in the actual dollar contributions that are presently made by the Eastern Michigan University and Grand Valley State University." The Union makes the point that (when counting the Ohio universities' contribution at 14%) all of the comparable institutions contribute more to their faculty retirement plans than Eastern. And the Union points out further that a modest 1% increase in pension contribution "would not change our ranking—we will still be at the bottom."

Taking the employer contribution for Ohio universities at 10.5%, the 10.0% employer contribution at E.M.U. makes it the median among the comparables. I find that there is no data on this record to show the increments that may be planned for the comparables over the next 3 years, except that the Ohio universities are scheduled to remain the same through 2008-09.

I find that modest increases up to a total Employer contribution of 11% are warranted. I would schedule these increase as follows: in the first contract year (2006-07) no increase; in the second contract year (2007-08) a 0.5% increase; in the third contract year (2008-09) a 0.25% increase; in the fourth contract year (2009-10) an additional 0.25% increase.

HEALTH INSURANCE BENEFITS.

The current status of health care plans available to the faculty under the expired 2004-06 collective bargaining agreement includes three health care plans: 1 health maintenance organization (Care Choices), 1 preferred provider organization (Community Blue BCBSM), and 1 traditional (indemnity) plan

(BCBSM). All three plans are offered as a benefit, without premium contributions' being made by the faculty. The Employer offers a $1,000 incentive to base salary for switching to the Community Blue PPO plan. There is a drug card available to enrollees in the PPO plan, whereby prescriptions can be purchased for $10 (generic) or $20 (name brand). The drug card for enrollees in the traditional plan is more costly to the employees.

The Employer has stated as its goal in bargaining that it wishes to save $750,000 per year in faculty health care costs, so as to "flat-line" the cost of health care. The current expenditure on health care for faculty is approximately $6.7m; the desired savings represent 11.2% of the cost of this benefit.

The Union has agreed to the concept of sharing health care costs by payment of payroll–deduction premiums. The Union, however, points out that 11% savings in one year is overly-ambitious by any measure, and particularly for a first-year program. The Union offers a different level of premium contributions than that demanded by the Employer; but, equally important, the Union proposes a different configuration of available plans and benefits under those plans.

The backdrop of bargaining on this subject is that health care cost for all employers nationally have risen 9-15% each year over the seven years since 2000, including a projected increase of 9.9% for 2006 (Hewitt Associates, Oct. 10, 2005, E'er. Health Care Exhibit p.4). The actual costs nationally for employer sponsored health plans in 2005 was $7,089/ employee. (Mercer

Survey, 2005, E'er. Health Care Exhibit, p. 7). The actual cost of E.M.U. health care costs for the faculty is projected at $6.7m for 2006. For each active employee (not faculty, but all active employees) for 2006 the cost was $9,566 per employee. The level of increase for faculty health care costs in recent years (2003-06) has been 11+% per year.

THE PARTIES' POSITIONS ON HEALTH INSURANCE OPTIONS.

The Employer proposes to phase out the HMO option at the end of the 4-year contract. It proposes to limit current faculty (or newcomers) from enrolling in either the HMO plan or the traditional indemnity plan. The Union would continue the existence of both the HMO plan and the traditional indemnity plan, but not allow now entrants into the traditional plan, while allowing new entrants into the HMO plan. The basic Union rationale for allowing the HMO plan to continue to exist and to enroll new entrants is that it offers competition to the other plans, all of which have Blue Cross Blue Shield of Michigan as the underlying carrier.

In regard to the traditional indemnity plan the parties proffered differing premium structures as follows:

Traditional Plan Proposed Premiums

	Employer Proposal Per employee	Union Proposal single/2person & family
2006-07	1,200	450/1,200
2007-08	1,308	490/1308
2008-09	1,439	535/1,439
2009-10	1,569	not supplied.

In regard to the HMO plan, the parties proffered the same premium structure as shown above for the traditional plan.

In regard to the preferred provider organizations, there are two options, one with premiums and no deductible or co-insurance (designated PPO-2) and the other with high deductibles and co-insurance, but no premium (designated PPO-1).

The PPO-2 has been the subject of the following premium proposals:

PPO-2 Plan Proposed Premiums

	Employer Proposal single/2-person & family	Union Proposal single/2person & family
2006-07	650/ 950	278/ 750
2007-08	709/ 1,036	303/ 818
2008-09	779/ 1,139	333/ 898
2009-10	849/ 1,366	not supplied

The PPO-1 has been the subject of the following proposals:

PPO-1 Plan Proposal

	Employer Proposal single/2-person & family	Union Proposal single/2person & family
2006-10	no premiums	no premiums
Deductibles	250/ 500	100/ 250
Co-Insurance	500/ 1,000	400/ 800

Fortunately, the parties were able to agree on the level of services to be provided in each of the above-summarized plans. In addition, there was testimony at hearing on the subject of appropriate drug benefits, a major component of health costs. Despite differences which appeared in the original proposals, it appears now that the parties are in substantial agreement on the subject of drug cards.

The Employer points out that it will, by implementation of the plans briefly described above, "continue to provide a top-level array of choices for EMU faculty." [p. 73 of health care exhibit]. The plan designs of the E.M.U.-proposed plans provide multiple options, as is common at comparable institutions, says the Employer. However, most of the comparables charge higher premium contributions for the same or fewer benefits, says the Employer. For example, E.M.U. has offered a 100% benefit level plan (the PPO-2) at premium contribution levels of $650 (single)/ $950 (family). By comparison, Kent State's best plan is a 90% coverage plan with premiums required of $541 or 604 (single)/ $1,430 or 1,582 (family) (depending on income).

In terms of eligibility for plan coverage, the Union makes a proposal applicable across the board that "eligible dependent children" between the ages of 19 and 25 should be covered under any family medical plan without additional charge of premiums beyond the family rate. The Employer points out that the expired collective bargaining agreement makes provision for such coverage [at marginal par. 799] with the cost of such benefits to be paid in full by the faculty person. The Employer argues that its offered premium rates for the 4 years of the new contract did not take into account the cost of 19-25 year-old dependent coverage.

The Union argues that its proposals keep competition alive for the bidders for E.M.U. health care business. Thus, Care Choices HMO should continue to be a viable option at and after the end of this 4-year contract, says the Union. The cost of the Care Choices HMO would be higher than for either of the PPO options but "not out-of-line with the PPO." [Exh. 407] as shown above. In addition, according to the Union, the comparable institutions generally (with the notable exception of Western Michigan) offer 2-5 discrete health care plans, usually with one traditional and one HMO option. [Exh. 408].

The Union offers the comparison of the phase-in experience of 3 sister institutions: Akron, Grand Valley State, and Kent State.

At Akron, the faculty paid health care premiums for the first time in 2006. The bargaining unit received a raise to base pay of 6.6% in Sept. 2005; then in Jan. 2006, they received additional compensation (1.2% plus flat amount) to base salary to offset new health care premiums. A further increase in base pay was scheduled to occur in Sept. 06, but there were no further raises to base pay *or* health premium increases in 2006 or 2007.

Similarly, at Grand Valley, there was a scheduled raise to base salary of 4.6% in Sept. 05. On Jan. 1, 06 health care premiums were increased up to a maximum of $900. "All faculty were given a flat raise to base of $450 to compensate for this substantial increase." [Exh. 416] In Sept. 06, there was a further scheduled raise to base salary of 4.3%. In 06/07 premiums were increased by at most 0.25%. No further adjustment to base salary was made.

At Kent State in Jan. 06, 4 plans (one with no associated premiums) were replaced with 3 PPO options (all with premiums). On that date faculty members who switched from the no-premium option into one of the 3 PPO options were granted lump sum amount equivalent to 6-8 months' premiums. Thereafter, in Jan. 07, faculty paid premium increases which varied between –4% and 2.36%.

The Union's view is that experience at Akron, Grand Valley, and Kent State support its compensation demand for $750 as protection for premium charges, or an adjustment to base pay over and above the 3.0% demanded as base salary increase in Sept. 07. Contrariwise, the Union argues that the Employer's offered 2.5% in Sept. 06 (with 0.50% being a one-time payment) followed by 3.25% in Sept. 07 and 3.5% in Sept. 08 results in a loss of real salary in 2006-7, and less than 1% improvements in following years, as shown in Exhibit 421.

FINDINGS ON HEALTH INSURANCE OPTIONS.

A. PREMIUMS.

In regard to premiums, I find that the premium level required to participate in similar programs at the sister institutions is generally higher than that offered by the Employer here. At Akron, the premium contribution is $1,860 (for a 100% PPO plan). At Kent State the premium contribution required of employees is $1,430 or $1,582 (for a 90% PPO plan). At Grand Valley State University the premium contribution is $1,812 (for a 100% PPO plan). At Central Michigan the premium required is $2,914 (for a 100% traditional plan). At Western Michigan the premium contribution is $3,732 (for a 100% PPO plan). Some are even higher. Only Toledo is lower, requiring a contribution of $927 (for a 100% PPO plan). Thus, the schedule of contributions I have shown above in the "Employer proposal" columns is entirely reasonable. These schedules of employee contributions will go a long way towards accomplishing the Employer goal of reducing faculty health care costs to the institution. I thus endorse the schedules shown above, with modifications to make the first-year premiums 0 and to effectuate the first year premiums under the Employer-offered schedules in the 2nd contract year. To avoid any ambiguity about this, I am spelling out the schedule of premiums that I recommend will apply during the term of this new contract:

Traditional Plan Premiums

	Per employee
2006-07	-0-
2007-08	1,200
2008-09	1,308
2009-10	1,439

HMO Plan Premiums

	Per employee
2006-07	-0-
2007-08	1,200
2008-09	1,308
2009-10	1,439

PPO-2 Plan Premiums

	Single/2-person & family
2006-07	-0-
2007-08	650/ 950
2008-09	709/ 1,036
2009-10	779/ 1,139

There are no premiums applicable in the PPO-1.

I would recommend that the $1,000 incentive adjustment to base for adoption of a PPO plan continue in effect for a reasonable time, say until August 31, 2008. I would also recommend that the 19-25 dependent child coverage remain available, by separate rider, as is apparently permitted under the expired 2004-06 contract.

B. OFF-SETTING SALARY.

The experience of the sister institutions is instructive. Looking at the 3 "case studies" provided by the Union, it is clear that the introduction of premiums and/or the revamping of health care plans to require substantially higher premiums warrants protection of faculty salaries. Thus, in my Compensation recommendation I have endorsed the idea of $750 being added to base salary in 2007-08, when the health care premiums will be introduced. I am aware that the Union-offered $750 adjustment is not a full adjustment for health care premiums to be charged in 2007-08. But the experience of the comparables suggests that the sister institutions attempt to make up some, but in most cases not all, of the amount of the first-year premium charges. I find that the recommended $750 salary adjustment for health insurance premiums is a fair and equitable amount: Faculty would earn all of this amount in the second contract year (2007-08) even though health care premiums may not be introduced until January of 2008 (and thus premiums would be charged for only part of the 2nd contract year).

C. TERMINATION OF PLAN.

The Employer has offered to stake its claim to reducing health care costs on a combination of employee contributions, new plan design (BCBSM PPO-1), drug card savings, and a few other items (and has done an excellent job of delineating how it will achieve cost-savings). Not included in the Employer's list of cost-saving techniques is the continuation of the HMO option. The Employer points out that its administrative cost is higher than any of the Blue Cross plans (15% of claims paid as opposed to 5% for any of the BCBSM plans) and the HMO plan does not offer meaningful competition in Washtenaw County.

I find that the Care Choices HMO option as it existed under the now-expired 2004-06 contract offered a community-rated premium to subscribers. There is no competitive influence on these rates, at least not directly from other local insurance carriers.

Conversely, the rates charged by Blue Cross Blue Shield of Michigan in its PPO-2 plan are derived from claims paid by EMU on behalf of EMU employees and dependents. "BCBSM actuaries utilize a consistent formula which bases 'illustrative premium rates' on EMU's actual claim experience." [E'er. Brief, p. 15] Thus, there is no direct competitive pressure from the premiums charged by other health insurers. The rates charged to the Employer are solely claims-based.

In short, I agree with the Employer's conclusion that at least in Washtenaw County (and unlike the experience proffered by the Ohio universities) we are not facing "a meaningful competitive landscape;" and the Care Choices HMO option could be eliminated from E.M.U.'s offerings without adversely affecting the degree of competition affecting E.M.U. rates.

I find that the Employer will effectuate certain savings by closing down the HMO health insurance option at the end of this (2006-10) contract term and by not permitting new entrants into this insurance plan. In addition, the Employer will achieve—if both parties adopt this entire health care article--a steady guide to the future of cost-management in health care. I recommend that the parties adopt the Employer's proposal on this subject.

.SUMMARY.

On the subject of **salary increments**, I recommend as follows: Across the board increases in Year 1 of 3.50% retroactive to September 1, 2006;

3.00% + $750 in Year 2;

3.60% + $100 in Year 3;

3.75% + $100 in Year 4.

On the subject of **promotion increases**, I recommend an increase in salary available for promotion from the rank of Instructor to Assistant Professor in the amount of $3,000;

for promotion to the rank of Associate Professor in the amount of $4,500;

for promotion to the rank of Full Professor in the amount of $6,000.

(No additional increments during the 4^{th} Year of the contract.)

On the subject of **Continuing Education (overload) Pay**, I recommend an increase in the rates for paid for continuing education courses as follows:

$1200 per credit hour in Year 1;

$1400 per credit hour in year 2;

$1450 per credit hour in Year 3;

$1500 per credit hour in Year 4.

On the subject of **short-term substitution pay**, I recommend that those assigned (or volunteering) and accepting such assignments be paid $60 per hour from the first hour worked.

On the subject of **retirement contribution**, I recommend that the Employer contribution to a faculty person's TIAA-CREF accounts be 10.00% of earned income in Year 1;

10.50% in Year 2;

10.75% in Year 3;

11.00% in Year 4.

On the subject of **health care options**, I recommend that the Care Choices HMO (or its successor) option be terminated at the end of this contract period and that there be no new entrants permitted.

I recommend that the **premiums** to be charged to faculty persons be as outlined in the Employer's presentation, modified and reiterated at pages 26-27 above.

I recommend that **the terms of the health care plans** made available to faculty persons include the PPO-1 option as outlined in the Employer's presentation [$250 /500 single /2-person & family deductible; $500 /1,000 single /2-person & family co-insurance; no premiums] and the PPO-2 option as outlined in the Employer's presentation.

I recommend that the **$1000 incentive** to switch to a PPO plan should continue in effect until August 31, 2008. I recommend that the coverage of **dependent children aged 19-25** be continued in effect as shown in the 2004-06 contract.

On all other subjects which the parties have bargained during their contract negotiations including during the pendency of these fact-finding proceedings, the parties have either reached tentative agreements, or one party or the other withdrew a matter from consideration.

CONCLUSION.

In entering upon this assignment, I was aware of the September 2006 strike by faculty members. In recent months I've become aware that the Board of Regents of the University underwent a wholesale re-formation in its membership. Throughout the course of these proceedings, I have been aware that the terms of this contract have created a great deal of publicly expressed anguish and comment in the E.M.U. community. Despite all these pressures on the parties, it has been my observation that both parties demonstrated a high degree of professionalism, and showed an interest in doing a public-spirited job in this case, rising above parochial interests. Now it is up to the parties and their leadership to continue that public-spiritedness as they negotiate the conclusion of this chapter in E.M.U. history.

During the course of the proceedings I made clear the wisdom of proceeding on the basis of a 4-year contract period (2006-10) and I am pleased to see in your final offers and briefs that you, the parties, have followed my lead. I am fully aware that some of the above recommendations will not be palatable to one side; other recommendations will be unpalatable to the other side. However, these recommendations are designed to be taken together, as a package of reasonable proposals, supported by the evidence adduced at hearing, and believed to be, as a package, the basis on which the parties can settle their 2006-10 contract.

Benjamin A. Kerner

Benjamin A. Kerner
Fact-finder

Dated: March 30, 2007
Detroit, Michigan