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**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF FACT FINDING

MICHIGAN STATE UNIVERSITY,

Employer,

and

MERC Case No. L11-C-4005

CAPITOL CITY LODGE NO. 141 FOP,

Union.

FACT FINDING REPORT AND RECOMMENDATION

INTRODUCTION

On December 28, 2011 MERC appointed Eugene Lumberg, Esq. as Fact Finder in the above-captioned matter. Michigan State University (hereinafter "MSU") filed its Petition for Fact Finding pursuant to Act 176 Public Acts (1939) on October 5, 2011.

The Respondent, Capitol City Lodge No. 141 (hereinafter "Capitol City") objected to Fact Finding and requested 312 Arbitration.

The MERC Commission rejected that request via letter of November 18, 2011.

The issues in this matter are as follows:

1. MSU raises one (1) issue:
 - A) educational tuition reimbursement (economic).
2. Capitol City raises three (3) issues:
 - A) shift pick by seniority (non-economic);
 - B) pass days by seniority (non-economic); and
 - C) vacation pick by seniority (non-economic).

A pre-hearing conference call was held between the parties on January 5, 2012.

Hearings were held on January 9, 2012, March 16, 2012 and March 22, 2012.

Comparables were agreed upon by the parties as follows:

- i) the parties agreed that the comparables to be used are:
 - 1) Northern Michigan University;
 - 2) University of Michigan;
 - 3) Eastern Michigan University;
 - 4) Western Michigan University;
 - 5) Central Michigan University;
 - 6) Wayne State University;

The parties agree that the following comparables may be used for purposes of this hearing only, and not as precedence in the future.

- 7) Ferris State University; and
- 8) Grand Valley State University.

ii) it was agreed that the following Police Department internal comparables were to be used:

- 1) City of Lansing;
- 2) City of East Lansing;
- 3) Ingham County Sheriff's Department; and
- 4) City of Meridian.

INTERNAL COMPARABLES:

The following MSU Labor Units were agreed to:

- 1) APA (Administrative Professionals);
- 2) APSA (Administrative Professionals Supervisory);
- 3) CTU (Clerical/Technical);
- 4) AFSCME 1585 (Service Maintenance);
- 5) Local 999 (Skilled Trades);
- 6) IUOE 324 (Operating Engineers); and
- 7) IATSE 274 (Theatrical, Stage Employees and Artists).

The FOP does not necessarily agree that the internal Unions are comparable to the Police comparables. However, for the purposes of this hearing they agree to use the above comparables.

The parties submitted the applicable Statutes and Rules to the Fact Finder. In addition, each party submitted numerous exhibits which were supplemented by Post-Hearing Briefs. **MSU submitted forty (40) Exhibits and FOP submitted seventy-four (74) Exhibits. As part of the Exhibits the parties submitted contracts from the comparables. I have not attached those Exhibits to this Recommendation.**

However, I do acknowledge that the parties submitted same and they were admitted into evidence. Each party has a copy of the Exhibits submitted by the opposite party. The Exhibits are made a part of this recommendation. The materials and testimony have been sufficient to allow the Fact Finder to inquire into pertinent matters necessary to allow the issuance of recommendations in regard to this dispute. While I have reviewed all submissions, I will not undertake to summarize the submissions and other material beyond a brief factual context for the Recommendation.

BACKGROUND

MSU raises an issue in its Brief as to the 2004 Opinion of Mark Glazer, who was the Fact Finder at that time. It should be noted that this Fact Finder knows and respects Mark Glazer as a very able labor Attorney/Arbitrator/Fact Finder. However, I am not bound by his Opinion, but will consider same where applicable.

Mr. Glazer points out in his 2004 Opinion that comparables should be in accordance with the type of department that is the subject of the fact finding, i.e. public safety vs. conventional Police Departments vs. Sheriff Departments, etc. I do consider this as being significant. The University Police Departments used as comparables are compatible with one another in that they are traditional Police Departments - they are not Public Safety Departments (they do not fight fires).

As to the comparables on the public Police Departments, it should be noted that those comparables are traditional Police Departments and no evidence has been introduced to show that the Municipal Police Departments are diametrically opposed to University Police Departments. They both have duties of general patrol, traffic control,

misdemeanor and felony arrests and general contact with the public. While they may have a different type individual as far as education is concerned to contend with, they are still dealing with the public in their capacity as Police Officers.

The parties to this Fact Finding are Michigan State University (hereinafter "MSU") and The Capitol City Lodge No. 141 of the Fraternal Order of Police (hereinafter "FOP").

The FOP represents the Police Department of Michigan State University. This Unit is comprised of 46 non-supervisory Officers. The contract between the parties expired June 30, 2011.

MSU is a State University with its main campus in East Lansing, Michigan. It has a student body of approximately 47,000 students on campus. It encompasses an area of approximately 5,500 acres and has a daytime population, including students, employees, et al, of approximately 69,000 people. The MSU Police Department has 46 sworn non-supervisory Police Officers, who are certified, they must have a four (4) year degree and they have full Police powers. Their primary jurisdiction is over the MSU Campus and surrounding property owned by MSU.

In addition to their primary duties, they may be called upon to assist the East Lansing Police Department, Meridian Township Police Department, Lansing Police Department and the Ingham County Sheriff.

MSU points out that the FOP is amongst the highest paid bargaining unit on campus. See Exhibits 9, 10, 15, 16, 23, 25 and 27.

ARGUMENT
VACATION, SHIFT AND PASS DAYS

The parties have stipulated that these issues are non-economic in nature.

The FOP states that the other comparables use seniority as a method for the selection of vacation, shift and pass days, where and if applicable.

The University points out that certain of the comparables allow for selection by seniority with the right of management to overrule. *See* MSU Exhibit 36.

Obviously, the internal comparables of MSU do not pick shift and pass days as they have fixed shifts. *See* MSU Exhibit 30. MSU argues that there has never been an instance of a problem with the current method of selection of vacation, shift and pass days, nor has there been any testimony that any employee has been denied a pass day, vacation day or shift preference. However, it should be noted the position of a Police Department is somewhat unique in that they work shifts that consist of 24 hours per day as well as weekends. The Fact Finder is not unmindful of the management right issues of the command to insure that they have adequate staffing on each shift on each day of the year.

ARGUMENT - TUITION REIMBURSEMENT

The position of the parties is as follows:

The FOP desires to have the contract language remain the same as it was in the last contract concerning tuition reimbursement for its Officers. They attach to their Brief a copy of Article 32 from the last contract entitled "Educational Assistance." That language basically states that a full time employee who meets certain provisions may apply for reimbursement or tuition waiver for up to sixteen (16) credit hours per

academic year, which are: 1) job related or 2) to promote professional development under the Educational Assistance Program. Certain other requirements must be met in the language of Article 32. Reimbursement would be at the MSU per credit tuition rate, not to exceed sixteen (16) credit hours per academic year, plus the MSU matriculation fee, where applicable.

The University proposes a fifty (50%) percent reduction in the amount of the Educational Assistance Benefit for up to sixteen (16) credit hours per academic year. They point out that spousal and dependent courtesy programs would not be changed as a result of this change, if agreed upon.

DISCUSSION

TUITION REIMBURSEMENT

MSU's Position:

MSU argues that the other internal unions have agreed to a fifty (50%) percent reduction in the Educational Assistance Program for its members for up to fourteen (14) credit hours per academic year. While that is noted by the Fact Finder, the Fact Finder is not bound by what other unions negotiate in their contracts. See MSU Exhibit 26 and Union 64. Further, MSU points out that the Tuition Reimbursement Program would allow classes to be taken at other Universities within the State of Michigan.

Over the last ten (10) years, approximately \$175,000.00 has been spent by MSU Police Officers for tuition reimbursement. This amounts to approximately \$17,500.00 per year. It should be pointed out that the number of FOP employees using the tuition reimbursement averages approximately six (6) employees per year.

This Fact Finder is not swayed by the argument that the other internal unions use this benefit to a lesser degree - that is their option as the benefit exists for all employees covered by Collective Bargaining Agreements at MSU.

MSU argues that the FOP, through its Exhibit 66 and in oral testimony and argument, shows that four (4) of the eight (8) comparable Universities offer benefits greater than the current proposal made by MSU. However, they point out that, while Grand Valley State and Northern Michigan have unlimited credits available and Central Michigan and Ferris State offer twenty-four (24) credit hours and sixteen (16) credit hours respectively, those four (4) Universities only offer credits at their own institution, whereas MSU will pay for tuition at other in-state Universities.

MSU points out that in the case of Ferris State University, an employee can only take classes at Ferris State University and the employee and/or their spouses or dependents may not displace other students in a course, which could limit the employee and/or their spouses or dependents from taking courses at Ferris State University when the courses are already filled.

MSU argues that the local Police forces should be excluded from the discussion as two (2) have no programs at all and two (2) have a value that is so small that it is not of any worth to the employees.

In its Brief MSU has as its last best offer, to allow reimbursement for MSU Graduate courses at a fifty (50%) percent reimbursement at the MSU Graduate maximum level tuition rate. It also offers a fifty (50%) percent rate for Undergraduate courses needed as part of a Graduate Degree Program. Their offer goes on to state that it would allow an employee to take non-MSU Graduate courses at up to fifty (50%) percent of the non-MSU institutions applicable Graduate rate, not to exceed fifty (50%) percent of the MSU Graduate maximum level tuition rate. For non-MSU Undergraduate courses that are required as part of a non-MSU Graduate Degree Program, they would allow up to fifty (50%) percent of the non-MSU institutions applicable tuition rate, not to exceed fifty (50%) percent of the applicable MSU Undergraduate tuition rate. They further offer the following as to registration fees, course fees, lab fees, book and other course materials charged by the institution to be the responsibility of the student. Lastly, they offer that total credits shall not exceed sixteen (16) credits per academic year which are job related or promote professional development.

There are other requirements and provisions as to eligibility that are set forth on Page 14, 15 and 16 of their Brief. MSU cites that fact that of the total credits taken for FOP members, approximately eighty-five (85%) percent of the classes were taken at other institutions. Thus, the costs associated with those classes were paid directly by MSU to other institutions within the State of Michigan. MSU states that only the University of Michigan allows classes to be taken at other institutions and the tuition paid by the University for classes taken at other institutions is at a reduced rate.

MSU feels that its current proposal exceeds the comparable Michigan Universities and local municipality's current benefit levels and that the present proposal matches the internal comparables benefits that are now in place.

FOP'S Position:

The FOP, as stated, is requesting that tuition reimbursement stay "as is." Currently all of the FOP Officers have an Undergraduate Degree which is required in order to be hired by MSU. Further, they state that the Officers that participate in the program are taking Graduate level courses at a higher tuition rate. By reducing the benefit to fifty (50%) percent, the FOP states that MSU has, in essence, reduced the benefit by more than fifty (50%) percent.

The FOP points out that MSU's Exhibit 2 states that the cost as to labor and health care is constantly rising. The FOP is participating in the Health Care Coalition in an attempt to slow the increase of health care costs. In its Brief the FOP states that, while costs are rising, the University has the wherewithal to balance its budget by simply raising tuition, which it does on an annual basis. **This argument is not a viable argument as to the issue of raising tuition.**

At any time the FOP has an average of six (6) Officers taking courses under the Educational Assistance Program. *See* MSU Exhibit 22. Said Exhibit states that the total cost over a ten (10) year period is \$175,000.00 or an average of \$17,500.00 per year (*See* MSU Exhibit 23) and that the usage by the FOP Officers is fifth out of seven of the internal comparables. *See* MSU Exhibit 24.

The FOP points out that of the college comparables, only the University of Michigan has less than full tuition reimbursement. The University of Michigan waives or reimburses seventy-five (75%) percent of the tuition of the courses taken and may pay more if the course is required by the University. They go on to state the other University comparables have a full waiver of tuition, and some waive course fees. In the case of Central Michigan University and Ferris State University, benefits can be transferred to a spouse/dependent if not used by the Officer. (Note: There is a separate benefit for spouses and dependents at MSU)

ABILITY TO PAY

The Fact Finder is mindful of the present economic conditions in the State of Michigan as it applies to the State Universities. The cost of higher education has continually increased while funding from the State has continually decreased. However, it should be pointed out that the University did not argue that it did not have the ability to pay as to the economic issues contained in this fact finding. Of course, there is only one economic issue, i.e. tuition reimbursement. *See* MSU Exhibit 2.

RECOMMENDATION

While the parties and the Fact Finder discussed using “last best offer” for purposes of the recommendation, I do not feel that “last best offer” is appropriate. This is a fact finding and the parties have presented testimony as to their respective positions. However, I have heard the last best offers and will make a recommendation based upon the testimony and exhibits.

1. **Educational Tuition Reimbursement:** The Fact Finder finds that the University has negotiated contracts with its other internal unions and has scaled back on the tuition reimbursement provisions as to those unions. Further, it is the belief of the Fact Finder that the University does have the ability to pay for educational reimbursement.

The FOP is requesting status quo, while MSU is requesting a 50% decrease in the educational benefits. Furthermore, under the MSU offer the FOP members will actually pay 50% of their tuition if the MSU offer is adopted.

Tuition Reimbursement:

It is the recommendation of the Fact Finder that MSU pay for up to twelve (12) hours per academic year at MSU Graduate level tuition rates for each of its Officers who desire to take advantage of the benefit. Should an Officer wish to take the credits at another University, MSU shall pay to that University tuition equal to the MSU Graduate level tuition rate, or, if the tuition at the other University is less, then in that case MSU shall pay Graduate level tuition at the University where the Officer takes the course(s).

As to the Remaining Three (3) Issues:

The Fact Finder is mindful of the fact that there are certain management rights that the employer has. Staffing of the shifts of a Police Department are an essential management right.

1. **Shift Picks:**

The Fact Finder recommends that the shift pick be by seniority with management having the right to make the final decision.

2 Pass Days: The Fact Finder recommends that pass days are by seniority with management having the right to make the final decision.

3. Vacation Days: The Fact Finder recommends that the first vacation pick shall be by seniority. Any/all subsequent vacation days shall be by seniority with management having the right to make the final decision.

CONCLUSION

At this time I wish to state that the parties introduced a great amount of material and testimony. In addition, they submitted Briefs, which I found very helpful to assist in deciding the issues and making my recommendations.

While my recommendations may not satisfy each party to the Fact Finding, I would hope that the comments and recommendations would be of some benefit to the parties, and that perhaps through this process they will be able to reach an agreement that all parties can abide by.

It is important that the parties consider these recommendations and use them to alter their respective positions and reach an agreement.

This concludes the Fact Finder's Report and Recommendations. It has been a pleasure serving in this capacity.

Dated: 6/25/12



EUGENE LUMBERG