STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICE
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between:

MICHIGAN STATE UNIVERSITY

-and- **MERC Case No. L02 G-4001**

LANSING, MICHIGAN LOCAL NO. 274 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA, AFL-CIO, CLC

APPEARANCES:

FOR MICHIGAN STATE UNIVERSITY:

James D. Nash, Interim Director Employee Relations
Jeffry Brodie, Human Resources
Diana J. Baribeau, Wharton Center Director Of Operations
Jim Allen, Wharton Center
Gavin J. Smith, Breslin Center Asst. Director

FOR LOCAL 274 IATSE:

Michael L. Fayette, Attorney
Michael David, Business Agent, Local 274
Michael Wright, President, Local 274
William F. Minihzen, Vice President
Jim Yocum, Recording Secretary

FACT FINDER'S REPORT, FINDINGS OF FACT AND RECOMMENDATIONS

Background

Michigan State University, with its main campus in East Lansing, Michigan, has an enrollment of approximately 44,000 students. The University consists of a number of schools and colleges.

In connection with its educational mission, the University operates a number of venues

on campus wherein what the parties have described in their collective bargaining contract as "theatrical work performed in the Fairchild Theater, University auditorium, Jenison Field House, Mun Ice Arena, Wharton Center, Breslin Student Events Center, and other buildings assigned by University officials." *See* Article 7, Section 38, of the parties' 1999-2002 Agreement. Although from time to time employees represented by Local 274 are called upon to perform at the various venues just listed, apparently a majority of the work performed by said employees over a year's period is at the Wharton Center for the Performing Arts and, to a lesser extent, the Breslin Student Events Center.

At the Wharton Center, there are three principal areas of activity requiring employees represented by Local 274, namely, 30 to 50 performances presented by the School of Music at Wharton, four or five theatrical events performed by the Theater Department, and several Broadway shows.

The Local 274 members involved in this dispute fall into three categories. Local 274 represents six stage managers who are full-time employees receiving University benefits and health care insurance. The other members or employees are what the parties refer to as "spontaneous employees." These are employees as to whom the University obtains on an at-need basis, calling the Union Hall. The Union Hall then assigns members to the University for the period that the member is needed. These employees are called "on-call" employees, are paid a stipend and as to which the University pays 5% of the employees' wages toward a Union-administered health care fund. None of these employees receive any University benefits.

Among the on-call employees there was a reference to eight to nine "core" employees whose "first call" is to the University. These employees are not on the Union's A List, but rather

are on the C List, meaning that the employees have agreed to come to the University before accepting other calls. The representation was made that these eight to nine employees are actually called directly by the University. During the course of a year's time. it was represented that approximately 200 on-call employees at one time or another were called to work at the University in "theatrical work."

The parties had a collective bargaining contract covering the period from September 1, 1999 through August 31, 2002. Through negotiations, the parties reached an impasse after mediation, resulting in the University filing a Petition for Fact Finding and the Undersigned was appointed as the Fact Finder to make a recommendation to resolve the parties' dispute. As set forth in the Petition for Fact Finding, the unresolved issues involve "wages and benefits."

The Criteria

The aim of fact finding is to guide the parties as to the terms and conditions which, in the view of a neutral. can be the basis for resolving the parties' dispute so as to enable them to reach a collective bargaining agreement. In making recommendations, a fact finder is guided by certain criteria. The legislature. as to contract disputes involving police and fire services. in the context of compulsory arbitration in Act 312 of Public Acts of 1969 has set forth certain criteria that the legislature intended Act 312 arbitrators to follow in arriving at awards. Thus, in Section 9 of Act 312, the following criteria have been set forth:

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement. and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the ages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Essentially, these criteria address the cost of living, the financial ability of the governmental unit to fund the award, and comparables both internally and with other similarly situated public and private employers in the geographical area involved and do represent criteria followed by fact finders. But there is also Section 9(h) which references additional criteria followed by fact finders.

Among these additional criteria is the bargaining history. The bargaining history not only

means the current bargaining history between the affected parties, but also the parties' previous bargaining history, as well as the bargaining history among employees of the employer in other represented bargaining units. This criteria becomes most important here. The disputes presented to the Fact Finder are against a background of a bargaining history between the parties, but, more particularly, the bargaining involving the Coalition of MSU Unions, as will be explained later in this Report.

Another criteria utilized by fact finders is what has been called the "art of the possible." The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, the parties as a strike deadline loomed would attempt to compromise in order to avoid a disruption in public service. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise. Faced with external pressures, the parties would review their respective positions and thus consider possibilities in order to reach a compromise.

Concomitant with the art of the possible is the recognition that fact finding, as would be true with binding arbitration under Act 312, is a substitute for a strike. And the Fact Finder's function is to attempt to present the guidelines to resolve the dispute – just like a strike eventually, with some exception, does result in a resolution of the underlying contractual dispute.

In addition, the traditional ability to pay and comparables cannot be overlooked in this situation.

It is this criteria that will guide this Fact Finder in making recommendations herein.

The Issues

The issues separating the parties are as set forth in the Petition for Fact Finding: "Wages", "Benefits".

The Bargaining History

Introduction

As early as 1994, the University began discussions with the MSU Coalition of Labor Organizations representing AFSCME, Local 999; AFSCME. Local 1585; Administrative Professional Association; Fraternal Order of Police, Lodge 141; IATSE. Local 274; Clerical-Technical Union; Administrative Professional Supervisors Association; and Operating Engineers, Local 547 concerning the rising cost of health care insurance. The concern expressed by both the University and the Coalition was the impact of the health care insurance cost increases on the financial ability of the University to meet Union wages and other benefits expectations.

By January 1998, the Coalition and the University arrived at a Memorandum of Understanding, effective January 1, 1998 and extending to December 31, 2001, as to health care issues in general. This Memorandum was ratified by the various Unions listed which constituted the eight Unions representing bargaining units of employees at Michigan State University, including Local 274 IATSE.

As noted, there are eight bargaining units represented by eight separate unions at the University. During the period January 1, 1998 to December 31, 2001, each bargaining unit had a cycle of wage increases, with the cycles among the various units overlapping and controlled by each unit's collective bargaining agreement. Though the Coalition agreement was in effect in

1999, Local 274 and the University negotiated a contract covering the period September 1, 1999 - August 31, 2002 which. as to the six stage hands, the health care provisions were controlled by the aforementioned Memorandum with the Coalition. As to the on-call Local 274 members, the University did agree to the wage increase provided in the Agreement plus contributing 5% of the employees' wages to a health care fund administered by the Union. The representation was made that this was the first time that the University had so provided. However, it should be clear that the on-call Local 274 employees did not participate in the University's health care insurance program or any other fringe benefits.

In 2002. the Coalition consisting of all of the eight bargaining units and their respective unions, including Local 274, entered into another Memorandum of Understanding which, as this Fact Finder reviewed same, was even more comprehensive than the 1998 Memorandum for the 2002 Memorandum addressed health care and interrelated the cost of health care insurance with wage increases. This Memorandum began as follows:

MEMORANDUM OF UNDERSTANDING
BETWEEN
MICHIGAN STATE UNIVERSITY
AND
MSU COALITION OF LABOR ORGANIZATIONS

Michigan State University (the "University") and the MSU Coalition of Labor Organizations, representing regular employees represented by AFSCME, Local 999; AFSCME, Local 1585; Administrative Professional Association, MEA/NEA; Administrative Professional Supervisors Association; Clerical Technical Union; Fraternal Order of _Police, Lodge 141; IATSE, Local 274; and Operating Engineers, Local 547 (the "Coalition"), have reached the following agreements regarding health care, pursuant to the parties' 1998 Memorandum of Understanding providing for joint labor-management negotiations on health care plan issues:

1. The University and the Coalition have successfully concluded negotiations, with the Coalition acting in the

name of its individual constituent unions and associations, concerning health care plan and base wage factor issues. This Agreement shall take effect on January 1, 2002, and shall extend to December 31, 2005, except as provided herein. This Agreement is conditioned on each party's separate ratification of its provisions.

2. Maintenance of status quo until June 30, 2002.

The status quo, as set forth in the parties' 1998 Memorandum of Understanding, concerning the current University health care plans shall be continued and maintained for employees until June 30l, 2002. As of July 1, 2002, this Memorandum of Understanding will supersede the parties' Memorandum of Understanding dated July 1, 1998.

* * *

Thereafter, in Paragraphs 3 and 4, the Memorandum listed changes in the health care plan, including providing for increased drug co-pays, modification to the Community Blues program, stipulations as to premium payments between BCBS/PPO and PHP/HMO, provisions as to health care plan contributions for part-time staff, and eliminating duplicate coverage for married couples and same-sex domestic partners employed by the University and providing as to partners and couples, where one is employed by another employer, that said individual be covered by the other employer's insurance plan.

Paragraph 5 of the Memorandum reads:

Health Care/Wages

The parties agree the cost of the health care plan and the funding available for wage increases are interrelated.

A. For collective bargaining agreements effective between July 1, 2002 and October 1, 2003 (the 2002 cycle), it is agreed that the Base Wage Factor Average for each bargaining agent shall be 1.75%.

B. For collective bargaining agreements effective between July 1, 2003 and October 1, 2004 (the 2003 cycle), it is agreed that the Base Wage Factor Average increases for each bargaining agent for the term of this Agreement shall be determined as follows:

1) The aggregate cost to MSU of the health care plans for employees of MSU who are represented by members of the Coalition will be computed for the periods July 1, 2001 through June 30,2002 and July 1, 2002 through June 30, 2003.

a) The aggregate cost computation for the period July 1, 2001 through June 30, 2002 (the initial comparison period) will be compared to the aggregate cost computation for the period July 1, 2002 through June 30, 2003 (the ending comparison period) in order to yield a percent increase (or decrease) in Health Care Cost Experience.

b) The funds available for Base Wage Factor Average increases shall be based on the percentage increase (or decrease) in Health Care Cost Experience as shown in the following chart:

Health Care Cost Experience	Base Wage Factor Average
0% - 2.0%	3.50%
2.1% - 4.0%	3.25%
4.1% - 6.0%	3.00%
6.1% - 8.0%	2.75%
8.1% - 10.0%	2.50%
10.1% - 12.0%	2.25%
12.1% - 14.0%	2.00%
14.1% - 16.0%	1.75%
16.1% - 18.0%	1.50%
18.1% - 20.0%	1.25%
21.1%+	1.00%

C. 1) Base Wage Factor Average for collective bargaining agreements effective in the succeeding years of this Agreement shall be calculated using the following initial and ending comparison periods in order to determine Health are Cost Experience for the applicable cycle:

Effective Dates of Agreements between:	Initial Comparison Period	Ending Comparison Period
July 1, 2004 - October 1, 2004 (the 2004 cycle)	7/1/2002-6/30/2003	7/1/2003-6/30/2004
July 1, 2005 - October 1, 2006 (the 2005 cycle)	7/1/2003-6/30-2004	7/1/2004-6/30/2005

2) The determination of funds available for Base Wage Factor Average increases for the 2003, 2004 and 2005 cycles shall be based on the percentage increase (or decrease) in Health Care Cost Experience as determined by using the methodology in 5.B.1)a., above. The applicable Base Wage Factor Average for that cycle shall be that set forth in the table in 5.B.1)b., above for the applicable Health Care Cost Experience.

This Agreement was signed by representative of all eight bargaining units. including the President of Local 274. The Agreement in Paragraph 5 is specific that the funds available for health care and available wage increases "are interrelated." In 5.B.1.b, the parties have provided by agreement a total for wage increases over four years of 14%, namely, there would be a maximum possible wage increase of 3.5% a year and a minimum wage increase of 1% a year. Thus. the wage package could be. over a four year period for each group, a total of 4% minimum or a maximum of a 14% increase. The actual wage increase depended on the health care costs as indicated. The parties have provided in 5.C the periods of comparisons the wage increases would apply in the particular cycle of the bargaining unit involved. with some cycles extending out as far as December 2006. Paragraph 5.D contained additional conditions as noted:

D. The following additional conditions shall apply:

(1) The percent of Base Wage Factor Average increases available in each contract cycle shall be the same for each bargaining agent.

(2) Except a provided herein for labor agreements effective on and after July 1, 2005, at no time during the life of this Agreement may the University or any agent of the Coalition bargaining units make any proposals regarding the health care plan as defined herein, or in any provisions related to base wages and salaries, the University's base retirement plan contribution, overtime compensation, shift differential, call-in pay, wage progression, sick leave pay out and vacation leave pay out during their separate collective bargaining negotiations.

The University and each bargaining agent shall be free to negotiate on all other matters for their respective union contracts effective on and after July 1, 2002. Failure to reach agreement on an individual union contract shall not invalidate the provisions of this Agreement for its term.

(3) The first contract cycle, the 2002 cycle, shall be defined as the period commencing with the first day of the contract year for the first contract in the cycle and ending on the lat day of the contract year for the last contract(s) in the cycle, as shown below:

AFSCME Local 999: July 1, 2002 through June 30, 2003
AFSCME Local 1585: August 2, 2002 through July 31, 2003
IATSE Local 274: September 1, 2002 through August 31, 2003
IUOE Local 547: December 16, 2002 through December 15, 2003
Clerical-Technical Union: April 1, 2003 through March 31, 2004
Fraternal Order of Police, Lodge 141: July 1, 2003 through June 30, 2004
Administrative-Professional Association: October 1, 2003 through September 30, 2004
Administrative-Professional Supervisors Association: October 1, 2003 through September 30, 2004

For each bargaining unit, each succeeding cycle shall begin one year after the previous cycle begins.

It is noted that there is specific reference to IATSE Local 274. The Fact Finder was advised that

for the 2002 cycle the wage increase under the formula set forth in Paragraph 5.B.1.b was 1.75%: that, for the 2003 cycle, the age increase was 2%. This suggests that in the 2002 cycle comparison the health care increase went up between 14.1% to 16%; that in the 2003 cycle, the comparison suggests an increase of 12.1% to 14%. It was pointed out that the decrease in the amount of increase in 2003 in health care costs reflected the modifications that the Coalition, including Local 274, had agreed to in regard to health care changes.

The Current Bargaining History Between IATSE Local 274 and MSU

By letter dated June 28, 2002, Local 274 Business Agent Michael David wrote Samuel Baker, Director of Employee Relations, advising the University that Local 274 "wishes to amend its current agreement with Michigan State University. The current agreement expired August 31, 2002." Negotiation and mediation ensued

The University made no initial proposals except to seek a four year agreement to correspond to the Coalition agreement. The history of the various economic proposals during negotiations and mediation presented by Local 274 are set forth below:

STATUS OF UNION PROPOSAL 5

> The original proposal for On-Call Employees' wages submitted August 12, 2002 called for a one-year Agreement with wage increases of approximately 1.75%. This would be consistent with the Memorandum of Understanding between Michigan State University and the Coalition of Labor Organizations dated February 8, 2002 and separately signed and ratified by the Union. However, the Employer declined to agree to a one-year Agreement.
>
> The proposal was resubmitted during mediation on March 3, 2003, where a four-year wage chart was presented with 1.75% increases in each of the four years. The Employer declined to agree with this proposal as it involved an economic issue which is encompassed in the Memorandum of Understanding between Michigan State University and the Coalition of Labor Organizations dated February 8, 2002 and separately signed and ratified by the Union.

STATUS OF UNION PROPOSAL 8

The original proposal called for a one-year Agreement, from September 1, 2002 through August 31, 2003. The Employer declined to agree to this proposal.

In the revised set of proposals presented during mediation, the Union presented a proposed wage scale (Revised Union proposal 5, provided to the Employer during mediation on March 3, 2003) reflecting four year of wage increases. In addition, the Union has agreed to a four-year Agreement in the January 20, 2003 letter memorializing a conversation of January 17, 2003 (Exhibit 15).

ADDITIONAL PROPOSALS

During mediation on March 3, 2003, the Union presented an additional proposal for modification of the language of Article 6, D. regarding the salaries of Stage Managers. The Employer will agree with this proposal if all other issues are resolved.

In its revised proposal presented during mediation the Union maintained its position seeking 6.75% beginning September 1, 2002, while seeking further increases in the Employer contribution for September 1, 2003 (8 ½ %), September 1, 2004 (10 1/4%) and September 1, 2005 (12%). The Employer declines to agree to this proposal as it is an economic proposal encompassed in the Memorandum of Understanding between Michigan State University and the Coalition of Labor Organizations dated February 8, 2002 and separately signed and ratified by the Union.

As suggested by the status of the above proposals, Local 274 did agree with the concept of a four year contract.

Position of Parties at the Commencement of Fact Finding

At the commencement of fact finding and as set forth during the fact finding hearing, the position of the Union on the outstanding issues was set forth as follows:

I. Traditional On-Call Stagehands.

A. Wages.
   1. Increase by 1.75%.

B. Contribution to IA (IATSE) Health Plan.
   1. Continue current 5% contribution.
   2. Add a new 1.75% contribution.

II. House Staff (Formerly "Core Group") ("Super On-Call"). (Roughly equal to three quarter time (part-time) employees under the MSU-APA contract.)

A. Wages.
   1. Increase by 1.75%.
   2. Continue current $1.50 per hour premium.

B. Contribution to IA Health Plan.
   1. Continue current 5% contribution.
   2. Add the new 1.75% health care contribution (from Stagehands, above).
   3. Also add a new 5%, for a total of 11.75% contribution to the IA Health Plan

C. Annuity (New).
   1. Contribute 5% t the IA Annuity Fund.

D. Vacation (New).
   1. Contribute 2% to IA Vacation Fund.

III. Stage Managers. (Resolved by the Coalition Health Care Agreement.)

A. Wages.
   1. Increase by 1.75%

B. Health Insurance - Unchanged.

In the accompanying letter to the Fact Finder dated September 3, 2003 from counsel for Local 274, the following statement was made:

* * *

> Some explanation with regard to our position is in order. There are currently three classifications of employees: Traditional On-Call Stagehands, Stage Managers, and what we are now denoting as the House Staff, which is essentially a core group of On-Call Stagehands.
>
> The Traditional On-Call Stagehands are referred by the Union after receiving a request for labor from the Employer. The House Staff is a group of identified stagehands who are called directly by the Employer and not referred by the Union. They typically receive more hours of work and the hope is that they become essentially similar to part-time employees. The Stage Manager are full-time employees who receive the regular fringe benefits provided by the University to its full-time employees.

* * *

In response to this letter, the representative of the University in a letter dated September 8, 2003, wrote the Fact Finder:

> The Employer is in receipt of the Unions letter dated September 3, 2003, where it details the issues between the parties. The Employer wishes to make the following response.
>
> It is apparent that the Union is attempting to differentiate between 3 separate types of employees, i.e. "Traditional On-Call Stagehands", "House Staff", and "Stage Managers." The Agreement between the parties applies to both "on-call" and "regular" employees. Additionally recent challenges to the Unit by members of the unit have resulted in MERC repeatedly ruling that the Unit is properly defined.
>
> Paragraph 2 of the Unions position. The Employer disagrees that there is any classification of "**house staff.**" This was a proposal by the Union that has not been accepted by the University.
>
> Page 3 of the Union's response.
>
> I. A. The Employer has agreed to increase the "On-Call Stagehands by 1.75%. The Union heretofore has rejected this offer by the Employer and has steadfastly maintained its demand of 5% for "On-Call Stagehands."
>
> B. 1. The Employer has entered into Agreement with IATSE that the 5% contribution to the IATSE health plan will continue for the life of the Agreement.
>
> C. The Employer does not agree to the additional 1.75% increase to the fund.
>
> II. Core Group
> A. The Employer has agreed to 1.75% increase for all "core group" employees. These employees, while working more hours than other on call stagehands, do not hold any different classifications than those identified in item I. A.
>
> 2. The Employer has not proposed any change in the current language. Final proposal of March 3, 2003 from the Union proposes 6 3/4% 7/1/02; 8 1/2% 9/1/03; 10 1/4% 9/1/04 and 12% 9/1/05.
>
> B.1. Exactly the same as item I.B.2.. the Union and the

Employer have already entered into agreement on this issue.

2. The Employer has not agreed to add additional funds to the health care contribution.

3. This is a new proposal. Final proposal of March 3, 2003 from the Union proposes 6 3/4% 7/1/02; 8 1/2% 9/1/03; 10 1/4% 9/1/04 and 12% 9/1/05.

C. The Employer does not agree with this proposal

D. The Employer does not agree with this proposal

III. It is the Employers understanding that all issues are resolved.

Please be advised that the parties have agreed to a 4-year agreement expiring August 31, 2006.

It is the position of the Employer that all wage issues, and all related salary and wage issues are settled as they are consolidated into the Memorandum of Understanding between Michigan State University and the Coalition of Labor Organizations, ratified and signed by the Union on February 8, 2002.

The Last Offers of the Parties

At the time of the fact finding hearing, the University set forth what it termed its "Final Wage Offer" as follows:

Effective September 1, 2002	1.75% Base wage increase to all employees (in accordance with the Coalition Agreement)
Effective September 1, 2003	2.00% Base wage increase to all employees (in accordance with the Coalition Agreement)
Effective September 1, 2004	Base wage increase in accordance with the Coalition Agreement
Effective September 1, 2005	Base wage increase in accordance with the Coalition Agreement.

The University firmly believes that the Coalition Agreement that it signed and ratified binds Local 274. That aside, as an attempt at

settlement, the University is willing to offer the following:

> Effective September 1, 2003, the Employer will add 1% to the base wages of all on-call employees to bring the total to 3% for on call employees. For regular full and part time employees, they will continue to be bound by the terms of the Coalition Agreement and will receive only the wage increases as established by the Coalition Agreement.
>
> Effective Sept. 1, 2004, the Employer will adjust the final total percentage to an amount that equals 3% for on call employees. In other words, if the Coalition agreement mandates another 2.00% wage increase the University would add another 1% to the hourly rates as specified in the Coalition Agreement for on-call employees. Regular full time and part time employees would be bound by the terms of the Coalition Agreement. In the event the Coalition Agreement calls for more than a 3.00% increase the on-call employees would not receive the additional monies, but would be restricted to the 3.00% increase.
>
> Effective Sept. 1, 2005, the Employer will adjust the final total percentage to an amount that equals 3% for on call employees. In other words, if the Coalition agreement mandates another 2.00% increase the University would add another 1% to the hourly rates as specified in the Coalition Agreement for on-call employees. Regular full time and part time employees would be bound by the terms of the Coalition Agreement. In the event the Coalition Agreement calls for more than a 3.00% increase the on-call employees would not receive the additional monies, but would be restricted to a 3.00% increase.

As noted, the University did increase in 2003 the wage offer from the 2% base wage increase provided in the Coalition agreement to 3%. Likewise, the University for the 2004 and 2005 cycles, respectively, 3% which, as the Fact Finder reads the offer, would mean that on-call employees would be guaranteed a 3% increase for these three cycles, though the regular full-time and part-time employees would be bound by the terms of the Coalition agreement. This presumably would mean the Stage Managers. But the Final Wage Offer suggests that if Coalition members receive more than 3%, the on-call employees would not. This Final Wage Offer makes no mention of contribution toward health care, an annuity fund, or vacation fund.

The offer made by Local 274 at fact finding provided that in each of the four year cycles.

on-call employees would receive 1.75% increase in wages for a total of 7% wage increase for the four year cycle; that a to health care, all on-call employees would receive each year an additional 1.75% contribution toward health care, based on wages earned by the employee, so that in the 2002 cycle the health care contribution would be 6.75%, in 2003 it would be 8.5%, in 2004 it would be 10.25% and in the 2005 cycle it would be 12%, for a total increase in health care costs of 7%. The rationale presented by Local 274 is that the on-call employees would be receiving the same available 14% as Coalition employees split between health care contributions and wages.

In addition, which is a point of contention between the parties, Local 274 has proposed that the so-called core group – the eight or nine on-call employees that are first call employees – should receive beginning in 2002 a 5% contribution of wages toward an annuity fund administered by the Union and a 2% of wages toward a vacation fund administered by the Union. This would mean that for the eight or nine core employee, those who have been described as being "first call" would actually receive by the end of the contract a 17% of wages toward fringe benefits, namely, health care annuity and vacations.

Comparables

The Coalition Memorandum of 2002 addresses the question of internal comparables. The Memorandum sets forth the parameters of the University's financial obligation to the eight bargaining units, namely, a maximum over four years of a 14% wage increase and a minimum of a 4% wage increase geared to the percentage increase in health care costs.

Externally, it is noted that the employees represented by Local 274, except for the Stage Managers, also serve other employers, due to the nature of the industry. In fact, the testimony

was that not only are employees represented by Local 274 assigned through the Local, but there is another local, Local 26, in Michigan that cover other venues and Local 274 members frequently are assigned through Local 26. Among the other venues, for example, are the DeVoss Auditorium in Grand Rapids, the Whiting Auditorium in Flint, and Interlochen Music Camp in northern Michigan; that, in addition, employees are assigned by the two Locals to employers with whom the Locals have no contracts, but agree on an as need basis to comply with a rate sheet. The comparisons suggest that, as to the rate sheet, there is a 12% of wage obtained for health care, 5% for annuity and 2% for vacations. It was explained that for a venue such as Interlochen, the percentage of wages contributed for health care is higher than the amounts set forth above. Thus, the demands of Local 274 here have support in the external comparables.

The Ability To Pay

Michigan State University receives its funds basically from three sources: State funding, student tuition payments, and State and federal grants. The University does receive a substantial portion of its operating funds from the State of Michigan. The State of Michigan is undergoing economic difficulties. As a result, the State budget for Michigan State University has thus far been cut by at least $33 million. Unfortunately, more cuts are expected by the University. This certainly impacts on the ability of the University to fund wage increases as well as health cost increases.

Local 274 responds by suggesting that most of the on-call employees work in the Wharton Center. In regard to the Wharton Center, Local 274 indicates that it is profitable. In fact, the Wharton Center 2001-2002 annual report reports Wharton Center finished the fiscal year

in the black for the tenth consecutive year, maintaining the donated income ratio from the previous year and increasing corporate sponsorship. Indeed, there was an increase in endowment. Likewise, there seemed to be an increase in revenues over expenses that resulted in an operating balance on June 30, 2002 of $44,870, as well as a distribution to various projects.

But there are financial concerns. As Diana Baribeau, Director of Operations for Wharton Center, noted, Wharton received approximately between $435,000 to $475,000 each year from the various departments and schools to offset operational costs for school and music productions and the theater department productions. In 2002, one-half of this amount was cut and in 2003 the other half of this amount will be cut. It was also pointed out that in the fall of 2003, Wharton had had a "slow start" in generating revenues from shows. The point is that, although Wharton has had successful financial operations, there are constraints represented by, for instance, the loss of almost a half million dollar income, coupled along with the University's financial constraints tied into the financial constraints occurring in the State of Michigan that continue to be a problem based upon news reports. This could very well be reflected on the funds available in the future for Michigan State University.

The conclusion that can be drawn as to the financial ability is that the University's resources are shrinking, at least as they are generated from the State of Michigan. Though Wharton has had the fortune of having an operating balance there is an indication that balance may be impacted by future cuts in revenue from other departments in the University. The bottom line is the recommendations that follow can be absorbed by the University, but the recommendations have been tempered by the recognition that there are limited resources available.

There was a discussion and exhibits presented about the cost of the proposals by Local 274. The parties have agreed that regular and part-time employees are not covered by this fact finding; that such employees are covered by the Coalition Agreement. Therefore, the Fact Finder reviews the proposed increases to the on-call and so-called core group. One analysis of the cost was as follows:

B. Wage Increase for On Call Employees

1.75% each year beginning September 1, 2002

Impact:
The proposal effects approximately 250 On Call Stagehands.

Cost:
Base wages for 2001 approximately $385,000

	2002	2003	2004	2005	TOTAL
1.75% Increase 9/1/02	$6,700	$6,700	$6,700	$6,700	$26,800
1.75% Increase 9/1/03		$6,900	$6,900	$6,900	$20,700
1.75% Increase 9/1/04			$7,000	$7,000	$14,000
1.75% Increase 9/1/05				$7,100	$ 7,100
					$68,600

C. Health Care Contribution Increase for On Call Employees

1.75% of gross wage increase each year beginning September 1, 2002

Impact:
The proposal effects approximately 250 On Call Stagehands.

Cost:
Base wages for 2001 approximately $385,000

	2002	2003	2004	2005	TOTAL
1.75% Increase 9/1/02	$7,200	$7,200	$7,200	$7,200	$28,800
1.75% Increase 9/1/03		$7,400	$7,400	$7,400	$22,200
1.75% Increase 9/1/04			$7,700	$7,700	$15,400
1.75% Increase 9/1/05				$7,900	$ 7,900
					$74,300

D. Supplemental Health and Welfare Contributions for Core

Group Employees

5% of gross wages Health Care Contribution effective September 1, 2002
5% of gross wages Annuity Contribution effective September 2, 2002
2% of gross wages Vacation Fund Contribution effective September 1, 2002

Impact:
The proposal effects six Core Group employees.

Cost:
Base wages 2001 approximately $195,000

	2002	2003	2004	2005	TOTAL
12% Supplement 9/1/02	$24,000	$24,400	$24,800	$25,200	$98.400

However, as the Fact Finder understands the core group analysis, he is led to believe that the core group expects the same increases as to health care as the on-call employees. It would seem, therefore, that Item D may have been a miscalculation and failed to recognize the offer of Local 274. Be that as it may, these figures do represent of approximately $241.300 for the four year period.

There was a second cost analysis which was calculated as follows:

Wage Increase for On Call Employees

1.75% each year beginning September 1, 2002

Impact*:
The proposal affects 213 employees

Approximate Cost*:
Calendar year 2002 gross earnings: $716.348

	Wage Cost	Cost of 5% HC Supplement	Total Cost
1.75% Approximate Increase 9/1/02:	$12.536	$627	$13.163
1.75% Approximate Increase 9/1/03:	$12.755	$638	$13.393
1.75% Approximate Increase 9/1/04:	$12.979	$649	$13.628
1.75% Approximate Increase 9/1/05:	$13.206	$660	$13.866
Total Approximate Increase	$51.476	$2.574	$54.050

*Based on 2002 calendar year payroll records

These calculations are based upon a different starting point with the base wages in one calculation for 2001 being $385,000 and the representation that for 2002 the gross earnings were $716,348. The fact is, in calculating the wages, the increase was 7% over four years is somewhere between $52,000 and $68,000. But as pointed out, the University, in its final offer, was prepared to guarantee 10.75% for the four years involved, which suggests that the University was prepared to grant wage increases at a higher cost than the above calculations. Yet, the difference between the parties would be the fringe benefits. However, as noted, Local 274 is prepared to agree to the 7% wage increase which would free up 2.75%, at least based upon the University's last offer, to be applied to fringe benefits if that was the approach to be taken in this Report.

The Fact Finder makes these observations to indicate that, in his view, the recommendations that follow are within the ability to pay, although the recommendations are being approached with economic caution for the reasons set forth above.

The Art of the Possible

During the fact finding hearing, one of the approaches taken by the University is that the Coalition Agreement controls; that the thrust of the Agreement was to control health care; that since IATSE Local 274 is a signatory of the Coalition Agreement, there is no basis to increase the health care cost.

The response of the Local is that the Agreement referred to regular employees; that on-call, and for that matter the core, are not regular employees. Furthermore, the Local points out that even in the 1998 Coalition Agreement, which again addressed health care, the University did

introduce the 5% payment toward health care; that the purpose of Local 274 is to move forward in providing, in its view, more realistic health care for its members as well as to provide as a next step annuity and vacation payments as it has done with other employers in Michigan utilizing the services of Local 274, and for that matter the Local 26 members, on a spontaneous basis.

In addition, following the Coalition agreements, there were some Memoranda of Understanding with the Administrative Professional Association, MEA/NEA, as well as with the CTU and Local 1585 involving the merger of the physical plant maintenance service dispatch and telecommunications system directory units. There was some modification in the wages for classifications in those units because of a merger and changed duties. Thus, in the view of the Fact Finder, there were reasons for these two Memoranda. Nevertheless, the Memoranda do recognize that in certain conditions, based upon change of duties or mergers, there have been modifications at least as to the wages other than as set forth in the Coalition Agreement.

These comments are preliminary to the discussion of the art of the possible criteria.

Go back to the Coalition Agreement. As explained, the University was willing over four years to grant a 14% wage increase if the health care costs increased each year was 2% or less. What Local 274 is seeking is the total 14% split 7% between wages and 7% between health care costs. One calculation suggests that with only 5% on health care, the cost will go up $2,574 over the life of the agreement. There is no question that, as wages go up, a percentage of wages for health care increases the health care costs. Furthermore, as the percentage to be applied to health care increases, the cost also goes up.

Having made these observations, now analyze the situation. Local 274 signed the Coalition Agreement. In doing so for the regular employees, presumably the Stage Managers, if

for instance the health care costs went up in the first year beyond 2% but below 4%, the Stage Managers would receive a 3.25% pay raise or their maximum would be 13% over four years if the health care stayed in the 2.1% or 4% range. If the range was 2% or less, then the wage increase would be 3.5%, or a total of 14% for the four years. Now, beginning with this proposition, the on-call employees are seeking to claim the entire 14% up front and divide same between health care costs and wages, providing for an annual health care cost increase of percentage of wages of 1.75%. However, as wages go up, and the proposition is that wages would also increase 1.75%, it would seem that the actual increase of health care cost for the on-call would in some years be over 2%. This means, based upon this average, that the base wage factor average would be in the 13% to 13.5% range.

Thus, based upon the Coalition Agreement and formula therein, if the parties were dealing with the art of the possible, what would be available on a total range, the base wage factor average would be between the 13% and 13.5% range, not 14%.

Again, applying the art of the possible, the on-call employees will not accept during the life of this contract less than a 12% contribution to health care. That is the experience in other venues involving other employers. That is the experience on the rate sheet.

So as to balance these interests, contrary to the Union's request for 14% split between wages and health care costs, it would seem that the split should be more akin to the 13%-13.5% formula for the reasons just stated. The health care cost proposed by Local 274 would go over the 2%, at least on some years, simply because it would involve a 1.75% as applied to an increased wage pattern. In other words, the cost is just not 1.75% per year increase.

On the other hand, applying the art of the possible, Local 274 will not settle for less than

a 12% contribution toward health care by the end of this contract simply because this is consistent with the comparables of other employees working in other venues serviced by Local 274 and its brother Local 26. This does mean an increase in health care costs which the University is attempting to control. But the University has agreed with the Coalition that it has, during the years involved, up to 14% to spend in an interrelationship between wages and health care costs.

In addition, the University in its Final Wage Offer, without adding more to health care, has offered to the on-call for the four year period 10.75%. If the Fact Finder's analysis is valid, this means, when using a 13%-13.5% figure, the parties are 2.25%-2.50% apart, at least for the on-calls. It seems that, in applying the art of the possible and considering that the largest venue served by the University, the Wharton Center, is financially solvent, that this 2.25% would not prevent the parties from reaching an agreement.

It does not get the full 7% wage increase sought by Local 274, but it does obtain the on-call expectation of a more reasonable health care insurance through a union-administered fund consistent with the experience that Local 274 members have with other employers. The two competing interests must be reconciled. The fact is if the recommendation that this Fact Finder is about to make, namely, a 1.75% increase for each year except in the 2005 cycle where the increase would be 1.25%, meaning a total wage package of 6.5%, such a wage package would be within the art of the possible when the 1.75% each year for health care contribution is added and would balance the interests of the University and Local 274 for the on-call employees. It would be consistent with the Coalition Agreement. One could argue that perhaps the last year should be less, but one is dealing with the art of the possible.

In arriving at this approach, the Fact Finder recognizes that there are numerous employees employed at the University who are less than part-time who receive no fringe benefits. However, the IATSE Local 274 on-call members are different. The industry that they work in, the theatrical industry, because of the spontaneity aspect of the work, has developed different patterns of bargaining and of compensating employees, as well as a different pattern of providing for fringe benefits depending on health care cost increases.

By the nature of the business – the business being seasonal – there will be times when these employees will work almost non-stop as in a broadway musical and then be without work for a period of time, giving the impression that they are akin to the less than part-time employees at the University. But this is not the case. This is a phenomena of the type of work involved. The fact that the University has agreed in past negotiations to a 5% contribution for health care recognizes this point.

At this point there is the issue of the six to eight core employees, which the Union is attempting to provide an annuity and vacation fund for, consistent with the experience of Local 274 members employed by other employers. This is a desirable goal based upon the comparables. But there is only so much that can be accomplished in one negotiations. The Coalition Agreement, which Local 274 was a part of, recognized the need to control health carecosts. By adding 7% for health care costs during the life of the contract, further increased costs are inconsistent with the controlled cost factor and inconsistent with an attempt to increase health care costs for on-call employees in a culture that is attempting to control costs. In other words, to repeat, there is only so much that can be done in one negotiation.

Having said this, however, it would seem that at some point in this contract, in order to

get agreement, and since only eight-nine employees are involved, and again because of the nature of the employment, that some provision for a pension should be begun. On this basis, considering the art of the possible, the Fact Finder will recommend a 5% additional contribution to a union-administered annuity fund in the last cycle year of the contract for the core employees. However, the Fact Finder will not recommend a contribution toward a vacation fund because, again, there is a limit to what can be done in one negotiation.

It is based upon this rationale that the Fact Finder makes the following Recommendations:

RECOMMENDATIONS

1. The Agreement shall be four years, as agreed to by the parties.

2. Wages. It is recommended that all on-call employees in the 2002, 2003, 2004 cycle receive in each cycle year a 1.75% wage increase across-the-board; that in the final cycle (2005), the wage increase shall be 1.25%.

3. Health Care. That in each year of the cycle beginning with the 2002 cycle, the health care contribution shall be increased each year by 1.75% so that in the final year of the cycle the contribution shall be 12%. In other words, the contribution in 2002 shall be 6.75%; in 2003, 8.25%; in 2004, 10.25%; and in 2005, 12%.

4. As to the core on-call employees limited to eight-nine, there shall be in the final cycle year a 5% contribution of wages toward an annuity plan administered by the Union.

GEORGE T. ROUMELL, JR.
Fact Finder

February 16, 2004