

State of Michigan
Department of Licensing and Regulatory Affairs
Bureau of Employment Relations

MERC CASE NO.: L12 I-1080

In the Matter of Statutory Fact Finding between:

North Muskegon, City of -and- Teamsters, Local 214

FACTFINDER'S
REPORT, FINDINGS AND RECOMMENDATIONS

Issued July 16, 2013

following Hearing on June 26, 2013

before Fact Finder Ralph L. Maccarone

Appearing for the Employer:

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Appearing for the Union:

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Introduction

The purpose of Fact Finding is to hear testimony, consider evidence and provide factual findings and non-binding recommendations to assist the parties in reaching an agreement on a new contract.

Despite the inclination of many to read the last page of this report first, the conclusions reached will be meaningless without an understanding of how this neutral Fact Finder reached those conclusions.

The Fact Finder has considered the testimony and evidence presented in light of the following:

Background of the Parties

City of North Muskegon

North Muskegon is a Home Rule City, incorporated as a village on March 18, 1881 and became a City on March 18, 1891. North Muskegon grew from a fur trading post, to a peninsula of lumber mills, to a city of homes. North Muskegon boasts an outstanding school system and a very interactive community atmosphere. The City's population according to the 2010 census was 3,786. The local governing body consists of a Mayor and six Council Members. The day-to-day management of the City is handled by its City Manager. The staff of the Department of Public Works (DPW) work during regular hours between 7:00 a.m. to 3:30 p.m., Monday through Friday.

Source: City of North Muskegon Website

According to the United States Census Bureau, the City of North Muskegon, a peninsula, has a total area (land and water) of 4.10 square miles of which 1.76 square miles is land where nearly 1,750 homes are situated.

In a 2004 City resident survey, the most recent this writer found, 95% of those responding found the municipal water system to be average, above average or excellent.

The attorney for the City, Michelle R. Landis, of the Parmenter O'Toole Law Firm, located in Muskegon, has a background of practice of municipal and public labor law and presented the City's case with Supervisor of Department of Public Works, Randal J. Phillips.

Teamsters Local 214

Teamsters Local 214 was chartered by its International Union in 1966 for the specific purpose of representing the rights of its public employees and their families in the state of Michigan. It has grown to be the largest Teamsters Local Union in the state of Michigan, now representing well over 9,000 members.

It wasn't until 1965 that the state of Michigan enacted the Public Employee Relations Act (P.E.R.A), which, for the first time, allowed public employees [in Michigan] to organize. Local 214 was chartered in 1966 as an exclusive public sector Teamster Local, and because of [its] involvement from the inception of the public sector law, became one of the pioneer public sector unions in the state.

Source: Teamsters Local 214 Website

Robert Vasquez, Local 214's Regional Business Representative, demonstrated his years of experience in presenting the Bargaining Unit's case in a thorough and professional manner. He was joined by veteran DPW employee and Bargaining Unit Steward, David L. Tice, Jr.

Both parties came to the Hearing well prepared and well versed in the subject matter of it.

What the Parties Have Accomplished Prior to Fact Finding

The Collective Bargaining Agreement ("CBA") at issue expired on November 30, 2012. To their credit, the parties have been able to utilize collective-bargaining and mediation to resolve almost all issues for a two-year successor agreement (i.e. 2012 – 2014).

The two issues remaining in dispute for this Fact Finding are:

WAGES and HOURS OF WORK/ON-CALLSERVICE.

The City's Position on Wages at the Beginning of the Fact Finding Hearing

1st Year: 0% Increase
2nd Year: 1% Increase

The Bargaining Unit's Position on Wages at the Beginning of the Fact Finding Hearing

3.5% per year Increase
for each year of the contract term

The City's Position on Hours of Work/On-Call Service

In order to provide satisfactory service to the City's residents, it is imperative that the Department of Public Works can respond effectively to after-hours emergencies, such as sewer back-ups and broken water pipes¹. For many years the lion's share of this on-call responsibility has been shouldered by the department's supervisor who has lived within the City limits and dedicated himself to the service of the City. He has been the first responder to all after-hours calls on weekdays, holidays and every weekend except for one weekend per month, which the Union members have rotated to cover pursuant to the terms of Section 9.3 of the current, expired contract.

That Department Head retired and his replacement has begun working. That new Department Head, Randy Phillips, lives approximately 30 miles north of the City of North Muskegon.

With the former Department Head's retirement, the City claims a pressing need to conform to an on-call system more commonly adopted by other communities by requiring the members of the department to share more equally in the responsibility of responding to after-hours DPW related emergencies.

In addition to the Bargaining Unit's reluctance to accept an on-call policy, the issue of potential discipline for an 'on-call' member's failure to respond to an emergency is also at issue.²

The Bargaining Unit's Position on Hours of Work/On-Call Service

The crux of this matter, from the perspective of the Union, boils down to the inordinate amount of "non-work hours" accessibility and responsibility the Employer is demanding of the members of this bargaining unit. The Union believes that the members have offered tentative agreement to very significant concessions to the On-Call language contained in the current CBA. The Union has agreed to an equal distribution of the On-Call responsibilities for both weekends and Holidays. It is only the lack of flexibility on the part of the employer during this period that the Department is short-staffed that has prevented this issue from being settled.

The Union's position is that during this, or other times, when the Department is short-staffed due to work-related injury to one or more of the bargaining unit members, the responsibility for weekend and Holiday On-Call service be proportionately divided among all of the remaining employees of the North Muskegon Department of Public Works, whether Union or non-union, full or part-time.³

The predominant issue during the Hearing involved On-Call which shall be covered here first.

¹ Drafter's Note - Other calls may involve roads and other DPW related responsibilities.

² Excerpted from the City's Response to the Petition for Fact Finding

³ Excerpted from Bargaining Unit's FF Exhibit 5, 'Union Position Re: On-Call'

The Issue of On-Call

Both parties confirmed their cordial relations in the workplace. This trait carried over in the Hearing when exchanging information and points of view regarding the issues being heard.

With the arrival of a new Supervisor (Department Head) following several decades of familiarity with his predecessor, members of the Bargaining Unit and the Supervisor are still getting to know each other. In past years, the City's off duty calls for assistance were described as being built upon personal relationships and trust between DPW management and subordinate personnel. After-hours DPW related calls were responded to mostly by the prior Department Head, a city resident, or assigned to off duty personnel on what can be fairly characterized as a stated (in the contract at Section 9.3), but 'flexible' basis.

Supervisor Phillips came to the City experienced in municipal water and sewer operations and DPW administration. However, the physical distance between his home and place of work; past reliance upon the Supervisor as the primary On-Call DPW staff member; and his inevitable periodic absence from the region while on scheduled leave or ill, sharpened a focus upon the City Council's desire to institute a more formal and accountable system of qualified personnel being assigned to answer after-hour DPW service calls.

On the other hand, the small in numbers (3 full time field qualified employees), but long tenured Bargaining Unit members, come likewise experienced and knowledgeable of the system they are charged with operating and maintaining. Bargaining Unit members reported a long standing history of voluntary response to after-hours calls for DPW related service.

But with the departure of the locally-based Department Head who has arguably handled the lion's share of after-hours calls for service, the City, recognizing its responsibility to ensure timely response to DPW related calls at all hours of every day, claimed it to be one of, if not the focal point in the City's negotiation of this contract.

The Bargaining Unit's Most Recognized Arguments Regarding On-Call

As to the impact upon its members regarding the imposition of an On-Call policy change requiring availability of a qualified person to be mandated to respond to after hour DPW related emergency calls, the Bargaining Unit argues the practical reality of the burden suddenly placed upon able bodied and qualified members to be available on-call during the period of loss of one or more qualified members due to work related disability or for other good cause. In fact, at the time of this Fact Finding, one of the three Bargaining Unit members was disabled due to an illness or injury arising out of and in the course of their employment and another was recovering from an injury that left them unable to fully perform. Although the latter injured member was capable of performing some duties that an 'on-call' response would likely entail, this circumstance left only one fully able bodied and qualified Bargaining Unit member available to serve 'on-call'.

The City's Most Recognized Arguments Regarding On-Call

For its part, the City set out a case of necessity to ensure timely and effective response to after-hours DPW related emergency calls. Admitting that in some instances the 'emergency' could be quickly resolved by a knowledgeable employee over the phone, the subject of training and experience to ensure a capable and 'qualified' employee be on-call to correctly

assess and deal with an after-hours call for emergency service was raised. The City's stated goal was to ensure 24 hour coverage for answering all DPW related calls for service.

The Exhibits

The Exhibits provided gave an excellent cross-section of what has been offered as comparable communities handling of On-Call and wages in their bargaining unit agreements. Contracts supplied for the comparable communities were also helpful. Additional comparison and contrast Exhibits likewise provided a good overview.

However, as with all comparables, nothing is ever an exact match. Extrapolating this information into a suitable template for a particular bargaining unit in a particular municipality is an inexact exercise. But, that data review is the generally accepted method of evaluating what other similar communities do in what are to be considered similar settlements.

Potential Resolution of the Parties' Positions

ON-CALL

Both of the parties have presented strong arguments in favor of their respective position. And, to their continuing credit the parties appear to have come very close during the Hearing to agreeing to resolve both issues in contention.

During a break in discussions, a sample text was developed that seems to lay the ground work for final contract language to give the City a predictable ability to have personnel ready to respond to after-hour DPW 'emergency' calls.

Conversely, the Bargaining Unit Members have advance notice of the days they need to be available to serve on-call. Complimenting that is the ability of Bargaining Unit members to trade scheduled on-call assignment days, albeit with consent of the DPW Supervisor.

And, to handle the unexpected unavailability of a scheduled on-call employee, the City has an Emergency Absence Relief List ("E.A.R.L.") to ensure that a qualified department member is always available to answer an after-hours call.

See Appendix D for an integrated version of the City's last offer on the subject of On-Call with what the Fact Finder understood as likely acceptable to both parties.

Appendix E is the Classification of Misconduct provisions the parties have agreed upon in the past. Despite the City's concern that one or more Bargaining Unit member may not accept the responsibility of on-call status as a serious obligation, this writer finds it inappropriate to have the failure to respond while on-call even without a reasonable excuse, as a matter where the penalty, "...shall be discharge."⁴ until such time as a case can be made that a clear and present danger to public necessity exists. It can be surmised that with a rotation using employees on a regular basis coupled with a Group II 18 month experience window that appropriate discipline can be assured if an employee is errant in following the On-Call requirements.

⁴ Ref. Group III Major Offenses mandatory penalty found below sub paragraph 9 on page 24

WAGES

Little was said about wages in this Hearing. Comparables have been reviewed with comparisons performed.⁵ Ability to pay, and in the alternative, inability to pay, was not mentioned in a manner that would be considered meaningful by the undersigned.

Considering the institution of an expanded annual rotating on call list with compensation awarded for the employee assigned that obligation gives weight to the proposition that the City's position on wages is one that suits both the spirit of the collective bargaining process and in the context of suitable pay for services performed in similar circumstances.

Indeed, the cost of living in all of Michigan has been relatively flat during the state's economic malaise. Generally acknowledged to trend uniformly statewide, the Detroit-Ann Arbor CPI-U⁶ rose only 1.3 percent in the 12 months ending in April 2013.⁷

In addition, P.A. 54 of 2011 (Appendix F) relegates wages in a contract with a less than two year term remaining to a subordinate position to the benefit created by the On-Call proposal.

Conclusion and Recommendation

My recommendation is that the City and Bargaining Unit avoid an impasse on the two issues presented, promptly conclude their negotiations and adopt contract language under a revised Section 9.3 of the existing contract; with the Bargaining Unit Members to receive an additional 1% increase in wages only in the second (last) year of this contract.

As mentioned in the later moments of the Hearing, I suspect that after implementation of the on-call provision that the parties seemed to be in agreement on at least in principle, time will offer the opportunity to suggest improvements to it benefitting all.

The community of North Muskegon is a small but proud one. The employees I observed in the short time I attended the Hearing venue, City Hall, appeared to me to be dedicated to public service. And the results of the community survey referenced above indicate community satisfaction and support for their Department of Public Works.

Respectfully submitted,



Ralph L. Maccarone
Fact Finder

⁵ Comparables were viewed with this Bargaining Unit membership all being reported at top of scale.

⁶ The Consumer Price Index (CPI) is a measure of the average change in prices over time in a fixed market basket of goods and services. The Bureau of Labor Statistics publishes a CPI for All Urban Consumers (CPI-U) which covers approximately 88 percent of the total population and a CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 29 percent of the total population. The CPI-U includes, in addition to wage earners and clerical workers, groups such as professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force.

⁷ Source – U.S. Bureau of Labor Statistics

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APPENDIX TO FACTFINDER'S
REPORT, FINDINGS AND RECOMMENDATIONS

Appendix A
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On-Call Contract Language in Contract that Expired November 30,2012

Section 9.3 On-Call Service:

Employees deemed to be fully qualified to perform every level of regular work shall be required to be on call and carry a "beeper" device furnished by the City as a means of radio controlled signal of notification of any emergency occurring during the non working hours. "Weekend period" means from 3:30 p.m. on Friday to 7:00 a.m. Monday, but not on a weekend preceding or following a national holiday for the department.

Such on-call employee shall be compensated for ten (10) straight hours pay at such employee's regular rate of pay (weekday 3 hours). In the event the on-call employee on duty for such week-end is required to perform emergency work said employee shall be paid in addition for the minimum call-in pay or the actual time worked, including one half hour for travel time, whichever is greater. If the on-call employee reasonably deems additional help is needed, he is authorized to summon additional help from the department or a contractor whom the City regularly uses for emergencies.

The employee on call for said weekend shall remain within the boundaries of the County of Muskegon while on call and carry the beeper device with him at all times in a mode to receive messages.

Employees included in the rotation shall not be forced to carry the pager more then [sic] one (1) weekend a month, and not on a holiday weekend.

The City shall provide a schedule for the year, subject to the right to revise the schedule if deemed necessary by the City.

The City has the right to cover any other weekend or night hours with non-bargaining unit employees.

The hours carrying the pager or called in do not count toward the hours a part-time employee must work to be considered for Union membership under Section 1.1.

Appendix B
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City of North Muskegon and Teamsters Local 214
Fact Finding Hearing

City of North Muskegon's Last Best Offer

Wages:

0% increase
1 % increase

Section 9.3 On-Call Service:

Employees shall be required to be on call and carry a pager or cell phone, furnished by the City, as a means of being notified of any emergency occurring during the non-working hours, as outlined below.

"Weekend" means from 3:30 p.m. Friday to 7:00 a.m. Monday.

Each "Holiday" begins at 7:00 a.m. on the designated holiday and ends at 7:00a.m. on the following day.

All departmental employees, including part-time employees, shall carry the pager or designated cell phone on each weekend of the year on a rotating basis and on each holiday on a rotating basis. The Supervisor shall make the weekend and holiday schedule for the year and holidays and shall be included in the rotations.

The Supervisor carries the pager on weekdays. When the Supervisor is on vacation, sick or other official leave on any given weekday, the option to carry the pager is offered to the most senior employee. If refused, the option is offered to the next most senior employee. If all senior employees refuse the opportunity to carry the pager on a weekday, the least senior employee is required to carry the pager on that day. Except in the case of an emergency, the Supervisor shall provide seven days advanced notice of any leave for which he will be unavailable to carry the pager on a weekday. The Supervisor may assign his weekday pager duties to a part-time employee, at his discretion.

On-call pay rates:

Weekday: one (1) straight hour of pay at such employee's regular rate of pay

Weekend: ten (10) straight hours of pay at employee's regular rate of pay

Holiday: two (2) straight hours of pay at employee's regular rate of pay, in addition to the employee's regular holiday benefit of eight (8) hours of straight time pay.

Appendix B

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In the event the on-call employee on duty is required to report in to perform emergency work, said employee shall be paid a minimum call-in pay of 2 hours or the actual time worked, including one half hour for travel time, whichever is greater. If the on-call employee reasonably deems additional help is needed, he is authorized to summon additional help from the department or a contractor whom the City regularly uses for emergencies.

The employee on call shall remain within the boundaries of the County of Muskegon while on call and carry the pager or designated cell phone with him at all times in a mode to receive messages.

The hours spent on-call or called in after hours do not count toward the hours a part-time employee must work to be considered for Union membership under Section 1.1.

Failure to respond without reasonable excuse while on-call constitutes a Group 3 offense. If an employee is unavailable for his scheduled on-call rotation, the Supervisor shall offer to the other employees, based on seniority, the opportunity to cover the on-call rotation. If no employees choose to cover the rotation, the Supervisor shall assign the on-call person or assume the on-call duty for that rotation, at his discretion.

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UNION POSITION RE: ON-CALL

During the course of bargaining and Mediation, the Union believes that the issue of the specific changes to the On-Call provisions of the collective bargaining agreement were generally reached. The issue of weekend and Holiday coverage while one of the bargaining unit members was and is off on Worker's Compensation became the insurmountable object that has resulted in the need to pursue this matter through the Fact Finding process.

Efforts to resolve this issue included a great deal of discussion between the parties both at the table and via email correspondence. In an effort to afford the Fact Finder an accurate sequence of events throughout this process, the Union offers a number of emails exchanged between the parties as well as copies of proposals submitted by the Employer relative to this issue. (See Exhibit U-1)

The crux of this matter, from the perspective of the Union, boils down to the inordinate amount of "non-work hours" accessibility and responsibility the Employer is demanding of the members of this bargaining unit. The Union believes that the members have offered tentative agreement to very significant concessions to the On-Call language contained in the current CBA. The Union has agreed to an equal distribution of the On-Call responsibilities for both weekends and Holidays. It is only the lack of flexibility on the part of the employer during this period that the Department is short-staffed that has prevented this issue from being settled.

The Union's position is that during this, or other times, when the Department is short-staffed due to work-related injury to one or more of the bargaining unit members, the responsibility for weekend and Holiday On-Call service be proportionately divided among all of the remaining employees of the North Muskegon Department of Public Works, whether Union or non-union, full or part-time.

APPENDIX D

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**CITY EXHIBIT OF ON-CALL POLICY
EDITED TO REFLECT DISCUSSION AT FACT FINDING HEARING**

And

UNION POSITION RE: ON-CALL – Appendix C

[Drafter's Note - Strike-outs and highlighting reflect changes discussed at Hearing and are subject to change.]

Section 9.3 On-Call Service:

Employees shall be required to be on call and carry a pager or cell phone, furnished by the City, as a means of being notified of any emergency occurring during the non-working hours, as outlined below.

"Weekend" means from 3:30 p.m. Friday to 7:00 a.m. Monday.

Each "Holiday" begins at 7:00 a.m. on the designated holiday and ends at 7:00a.m. on the following day.

"Qualified department employee" means a DPW employee deemed to have sufficient knowledge, experience, present ability and training to answer, evaluate, remedy or obtain necessary qualified assistance in response to generally foreseeable requests for response within the area of responsibility of the Department of Public Works after normal work hours.

"Qualified department employees" for purposes of this section, includes the DPW Supervisor, all bargaining unit members and any other non-bargaining unit DPW employees deemed qualified by the Supervisor.

~~All department employees, including part time employees, shall carry the pager or designated cell phone on each weekend of the year on a rotating basis and on each holiday on a rotating basis. The Supervisor shall make the weekend and holiday schedule for the year and holidays and shall be included in the rotations.~~

All qualified department employees shall be placed on an On-Call Response List to cover after-hours calls on all weekends and holidays. The DPW Supervisor shall be responsible for the preparation and posting of this List in advance of each calendar year, except for the remainder of the year that this provision takes effect where it shall be prepared and posted on the effective date of this contract until the end of that calendar year. This List shall be prepared first using bargaining unit members and then non-bargaining unit members all in descending order of seniority. Newly qualified personnel may be added to the List by the DPW Supervisor. Trading of On-Call Response List days between qualified personnel require the DPW Supervisor's prior approval.

~~When available, the Supervisor carries the pager and shall be On-Call on weekdays. When the Supervisor is on vacation, sick or other official leave on any given weekday, the option to carry the pager is offered to the most senior employee. If refused, the option is offered to the next most senior employee. If all senior employees refuse the opportunity to carry the pager on a weekday, the least senior employee is required to carry the pager on that day. Except in the case of an emergency, the Supervisor shall provide seven days~~

APPENDIX D

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~~advanced notice of any leave for which he will be unavailable to carry the pager on a weekday. The Supervisor may assign his weekday pager duties to a part-time employee, at his discretion.~~

For weekdays when the DPW Supervisor is not available, he may select a qualified department employee who is a non-bargaining unit member to cover that On-Call assignment, provided that if none is available or willing to take the assignment, the least senior qualified bargaining unit member contacted by him must take that assignment.

On-Call pay rates:

Weekday: ~~one (1)~~ two (2) straight hour of pay at such employee's regular rate of pay

Weekend: ten (10) straight hours of pay at employee's regular rate of pay

Holiday: ~~two (2)~~ four (4) straight hours of pay at employee's regular rate of pay, in addition to the employee's regular holiday benefit of eight (8) hours of straight time pay.

In the event the On-Call employee on duty is required to report in to perform emergency work, said employee shall be paid a minimum call-in pay of 2 hours or the actual time worked, including one half hour for travel time, whichever is greater. If the On-Call employee reasonably deems additional help is needed, he is authorized to summon additional help from the department or a contractor whom the City regularly uses for emergencies.

The employee On-Call shall remain within the boundaries of the County of Muskegon while on call and carry the pager or designated cell phone with him at all times in a mode to receive messages.

The hours spent On-Call or called in after hours do not count toward the hours a part-time employee must work to be considered for Union membership under Section 1.1.

~~Failure to respond without reasonable excuse while On-Call constitutes a Group 3 Group 2 offense. If an employee is unavailable for his scheduled On-Call rotation, the Supervisor shall offer to the other employees, based on seniority, the opportunity to cover the On-Call rotation. If no employees choose to cover the rotation, the Supervisor shall assign the On-Call person or assume the On-Call duty for that rotation, at his discretion.~~

In the event that a qualified department employee is deemed by the Supervisor to be unqualified to cover a scheduled On-Call day or days, a replacement to cover that employee's On-Call duty shall be assigned on a rotating basis from the Emergency Absence Relief List.

The Emergency Absence Relief List shall be prepared and posted in tandem with the On-Call list in the same manner, but differs in that no trades are permitted from the Emergency Absence Relief List.

All qualified departmental employees shall be placed on an on-call response list for each contract year, ~~the on-call schedule shall~~ in order to cover after hours calls on ~~the~~ all weekends and holidays.

"Qualified departmental employees" for purposes of this section includes the Supervisor, all union members and any other department employees deemed qualified by the Supervisor.

In the event that a qualified departmental employee becomes unqualified or unavailable, a replacement to cover that person's on-call duty shall be taken on a rotating basis from →

the E.A.R.L (Emergency Absence Relief List)

Classification of Misconduct:

- Group I - Minor Offenses
- Group II - Intermediate Offenses
- Group III - Major Offenses

Disciplinary action shall be imposed with respect to each of the groups of offenses as hereinafter set forth, and while the groups of offenses listed below are generally broad, the parties recognize that: these lists of possible offenses do not include all possible matters that may be proper cause for disciplinary action. However, for offenses not specifically set forth below, the group of offense will be determined by the Employer.

Group I Offenses (Minor):

- 1) Habitual tardiness at commencement of work day or after lunch. (Habitual shall be interpreted to mean two (2) instances in one (1) month without sufficient reason.
- 2) Absenteeism without sufficient reason or proper notification.
- 3) Absence without approved leave or failure to return from such leave at the appointed time and date.
- 4) Abuse of coffee break time.
- 5) Disregard of safety rules or common safety practices resulting in minor personal injury or property damage.
- 6) Use of profanity or obscene language in the presence of the public or fellow employees who are intimidated or offended by said language.
- 7) Solicitations and campaigning in working areas during working time, or in non-working areas during working time.
- 8) Smoking in any restricted area.
- 9) Removing City equipment from City's premises or job site.
- 10) Unauthorized use of City's tools or equipment. The disciplinary procedure in the group shall be:
 - First offense, oral warning;
 - Second offense, written reprimand;
 - Third offense, one (1) day suspension without pay;
 - Fourth offense, three (3) day suspension without pay;
 - Fifth offense, seven (7) day suspension without pay;
 - Sixth offense, discharge.**

The violations shall be cumulated for a period of not more than 1 year.

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Group II Offenses (Intermediate):

- 1) Injurious or dangerous pranks.
- 2) Fighting on the premises (quarreling not considered fighting).
- 3) Malicious destruction or abuse of City property.
- 4) Careless use of a City vehicle causing an accident.
- 5) Possession of firearms, weapons or explosives during working hours, except when it is part of the job requirements.
- 6) Failure to meet the requirements of the job, performing work inadequately or wasting time.
- 7) Leaving the City Limits or work site during working hours without permission of supervisor.
- 8) Transporting non-City personnel in motor vehicles.

The disciplinary procedure in this group shall be:

First offense, written reprimand;
Second offense, three (3) day suspension without pay;
Third offense, seven (7) day suspension without pay;
Fourth offense, discharge.

The violations shall be cumulated for a period of not more than eighteen (18) months.

Group III Offenses (Major)

- 1) Gambling during working hours.
- 2) Abuse of the public, discourtesy to the public or other unprofessional conduct becoming of an employee. (This may include comments of public embarrassment toward the City and its Officials.
- 3) Willful disobedience to the proper directive of a supervisor, including overtime requests, or other acts of insubordination.
- 4) Being under the influence of intoxicating liquor or illegal drugs when reporting for work or while at work.
- 5) The misuse or removal from the premises, without prior authorization, of any City records, confidential records or intentionally giving false information to anyone whose duty it is to make such records.

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- 6) Conviction of a felony.
 - 7) Falsifying or concealing material information requested in employment application or re-employment physical or psychological examination.
 - 8) Distribution of literature in working areas at any time, with City permission.
 - 9) Working on personal vehicles at City facilities at any time.
- The disciplinary action in this group shall be discharge.**

Section 19.3 Written Notice of Discipline:

In cases of discharge or discipline, a representative of the City shall give prompt written notice to the affected employee and the Steward in person or by mail.

Section 19.4 Discussion of Discipline with Union:

The affected employee will be allowed to discuss their discharge or discipline with the Steward, or other Union representative, for a period not to exceed 10 minutes during working hours, and the Employer will make available an area where they may do so if the discipline requires the affected employee to leave the premises. NOTE: Call-in pay shall not be due or payable for such discussion.

Section 19.5 Form of Written Discipline:

Written notice of disciplinary action or discharge shall cite the specific sections of rules and regulations, manuals, policies, procedures and/or appropriate law(s) or ordinance(s) which the employee is alleged to have violated, or any other basis for discipline.

Section 19.6 Employee's Right to Copies:

Each employee is entitled to a copy of anything which is included in the employee's personnel file and is made the basis for any disciplinary action against such employee at no cost unless in excess of five pages. Documents prepared for disciplinary proceedings are not included.

Section 19.7 Investigating Complaints:

In the event of a complaint made against an employee which may result in disciplinary action, the following procedure shall apply:

If, in the investigation of a complaint, an employee is requested to appear before a member outside of the bargaining unit, they shall be fully advised of the complaint and that the

Appendix F

MCL 423.215b

Act No. 54
Public Acts of 2011
Approved by the Governor
June 7, 2011
Filed with the Secretary of State
June 8, 2011
EFFECTIVE DATE: June 8, 2011

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Reps. Knollenberg, Bumstead, McMillin, Scott, Yonker, Hughes, Hooker, Franz, O'Brien, Haveman, Price, Agema, Cotter, Daley, Gilbert, Kowall, Lyons, MacGregor, Opsommer, Rendon, Shaughnessy, Stamas and Zorn

ENROLLED HOUSE BILL No. 4152

AN ACT to amend 1947 PA 336, entitled "An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act," (MCL 423.201 to 423.217) by adding section 15b.

The People of the State of Michigan enact:

Sec. 15b. (1) Except as otherwise provided in this section, after the expiration date of a collective bargaining agreement and until a successor collective bargaining agreement is in place, a public employer shall pay and provide wages and benefits at levels and amounts that are no greater than those in effect on the expiration date of the collective bargaining agreement. The prohibition in this subsection includes increases that would result from wage step increases. Employees who receive health, dental, vision, prescription, or other insurance benefits under a collective bargaining agreement shall bear any increased cost of maintaining those benefits that occurs after the expiration date. The public employer is authorized to make payroll deductions necessary to pay the increased costs of maintaining those benefits.

(2) Except as provided in subsection (3), the parties to a collective bargaining agreement shall not agree to, and an arbitration panel shall not order, any retroactive wage or benefit levels or amounts that are greater than those in effect on the expiration date of the collective bargaining agreement.

(3) For a collective bargaining agreement that expired before the effective date of this section, the requirements of this section apply to limit wages and benefits to the levels and amounts in effect on the effective date of this section.

(4) As used in this section:

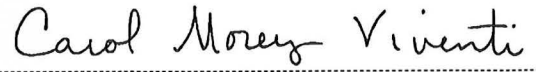
(a) "Expiration date" means the expiration date set forth in a collective bargaining agreement without regard to any agreement of the parties to extend or honor the collective bargaining agreement during pending negotiations for a successor collective bargaining agreement.

(b) "Increased cost" in regard to insurance benefits means the difference in premiums or illustrated rates between the prior year and the current coverage year. The difference shall be calculated based on changes in cost by category of coverage and not on changes in individual employee marital or dependent status.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor