

**MICHIGAN DEPARTMENT OF LICENSING AND REGULATION**  
**MICHIGAN EMPLOYMENT RELATIONS COMMISSION**  
**BUREAU OF EMPLOYMENT RELATIONS**

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**PINECREST MEDICAL CARE FACILITY**

Employer

-and-

**SEIU HEALTHCARE MICHIGAN**

Union

MERC CASE NO.: 22-K-2109-CB



**FACT FINDER'S REPORT**

Pursuant to Michigan Labor Mediation Act (P.A. 176 of 1939 as amended)  
[MCL 423.1 et seq] and  
Public Employment Relations Act (P.A. 336 of 1947, as amended)  
[MCL 423.201 et. seq]

**FACT FINDER**

Micheal J. Falvo

**ADVOCATES**

Employer: Steven Girard

Union: Leah Fried

PETITION FILED: April 3, 2023  
FACTFINDER APPOINTED: April 25, 2023  
SCHEDULING CONFERENCE HELD: May 8, 2023  
HEARING HELD: June 26, 2023  
REPORT ISSUED: September 5, 2023

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### **WITNESS LIST**

1. Nancy Herbert (Union)
2. Mary Lark (Union)
3. Mason Wallace (Union)
4. Kassie Wellman (Union)

## 1. INTRODUCTION AND BACKGROUND

The current collective bargaining agreement between Pinecrest Medical Care Facility (“Facility”) and Service Employees International Union Healthcare Michigan (SEIU) covers 14 Licensed Practical Nurses (LPN) and expires on December 31, 2023. The agreement contains a “reopener” clause allowing either party to open negotiations in the third year of the contract limited to wages and health insurance benefits. Section 15.2 states:

Notwithstanding the provisions of Section 15.3 of this Article [establishing 11:59 p.m. on December 31, 2023, as the Agreement’s expiration date], it is agreed that this Agreement may be reopened during its term at the option of either party on March 31, 2023. If this Agreement is reopened, the reopener negotiations shall be limited to wages and health insurance benefits as set forth in this Agreement. All other provisions of the Agreement shall continue in force and effect during the reopener negotiations and until this Agreement is terminated in accordance with its terms.

The Union exercised the option to reopen negotiations and the parties engaged in mediation on March 21, 2023 with State Mediator Richard Ziegler. The stipulated issues in dispute during mediation (and during fact-finding) were (1) wage scale; (2) wages; (3) shift differentials; and (4) employer/employee co-sharing of insurance premiums. The Union no longer proposes any change to health insurance premiums. The fact-finding hearing took place on June 26, 2023.

State statutes allow counties to establish medical care facilities. A county medical care facility must give preference to “poor persons” (as defined by statute) over “persons who are not senile and who are paying the total cost of their care.”<sup>1</sup> It is one of 34 county medical care facilities in Michigan and one of 6 medical care facilities in the Upper Peninsula.

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<sup>1</sup> MCL 400.58b.

The Facility is in the Upper Peninsula City of Powers in Menominee County. It has been operating for over one hundred years. Until 1961 it was a tuberculosis sanitarium and since that time has been jointly owned by Delta, Dickenson, and Menominee counties. A nine-member Health and Human Services Board (three members from each county) oversees its operation. It currently offers a wide range of services, including skilled nursing care, an array of rehabilitative services, and specialized care in a secure environment for individuals with Alzheimer's disease or related dementia. The day-to-day operations are supervised by Administrator Dana Smith and Director of Nursing Becky Spehar. In addition to the 14 positions represented by this bargaining unit, the facility has 104 employees: 63 are in the non-supervisory bargaining unit represented by AFSCME Council 25 and 41 employees are unrepresented.

## **2. STATUTORY AUTHORITY**

MCL 423.25

Sec. 25. (1) When in the course of mediation ... it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be public.

## **3. STIPULATIONS AND PRELIMINARY RULINGS**

The Union asked me to make a recommendation concerning its demand that the Employer have ongoing meetings recent changes to the list of bargaining unit members' responsibilities. I sustained the Employer's objection because the reopener clause limited matters for renegotiation to wages and health insurance. The document delineating the new job duties was deemed admissible to the extent it supports the Union's wage proposals.

## 4. COMPARABLES

Neither the statute governing fact-finding proceedings nor the applicable Michigan Employment Relations Commission Administrative Rules make reference to the criteria for selecting comparables. Nevertheless, factfinders frequently consider the Act 312 Section 9 criteria that facilitate an alternate, expeditious, effective, and binding procedure for the resolution of labor disputes involving public safety employees. The most salient standard in that regard requires a “comparison of the wages, 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 . . . [in] public employment in comparable communities [and] private employment in comparable communities.”

The parties have proposed facilities that they believe are the most fitting comparables to the Pinecrest Medical Care Facility. Understandably, parties in fact-finding proceedings tend to choose comparables that best advance their positions. The record contains extensive information concerning the similarities and differences between proposed facilities including population, number of housing units, median value of owner-occupied housing units, median household income, distance from the facility, and other variables. The germaneness of those yardsticks to the recommendations that must be made is debatable and it is clear that there is no picture-perfect comparable facility. Although each side has given reasonable explanations for the comparable facilities that it chooses, my assessment is that neither the list originally proposed by the Employer<sup>2</sup> nor the Union should be adopted unchanged. In my estimation, the two criteria that substantially outweigh the others are (1) a government-

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<sup>2</sup> At the hearing the Employer proposed the Gogebic County Medical Care Facility (in Wakefield) and the Houghton County Medical Care Facility. In its view the choices are appropriate because both are located in the western Upper Peninsula and are not more than one county away from Menominee County, LPNs are represented by labor unions, and the LPNs at the Gogebic location are represented by SEIU Healthcare Michigan.

funded medical care facility and (2) a facility located in the Upper Peninsula. Undoubtedly there is plenty of room to reasonably quarrel with the five comparable facilities that I deem to be sufficiently similar to inform the recommendations in this report. Considering the multiplicity of arguably relevant circumstances an expectation that every dissimilarity can be avoided is unrealistic.<sup>3</sup>

#### **A. Rationale for excluding private for-profit facilities.**

Privately operated nursing homes, as I understand it, are not required to admit persons who cannot pay and unlike county medical care facilities, are not required to give preference to indigent individuals. Mission Point Nursing and Physical Rehabilitation Center in Ishpeming is operated by Mission Point Healthcare Holdings LLC headquartered in Bingham Farms which has 28 facilities in the state. MediLodge Group is headquartered in Washington Michigan and has 27 facilities throughout the United States. It does not require expertise in the economics of health care to deduce that large corporations have efficiencies in scale and enjoy other competitive advantages. Neither is an appropriate comparable. A stronger case can be made for the Norlite Nursing Center in Marquette because it is a family-owned and operated facility but the fact remains that it is a for-profit enterprise and not saddled with the mandate to afford indigent individuals admission preference.

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<sup>3</sup> As has been aptly observed:

Benefit issues are particularly difficult, and involve consideration of internal comparables, risk pooling, net effect on take-home pay and employee expectations, costs of administration, access to information, etc. Wage patterns, historical differential, labor markets, the cost of living, the amount of a living wage, job security, and ability to pay are all metal for this forge, depending upon the particular context and their weight on a designated issue.

## **B. Rationale for excluding facilities in the Lower Peninsula.**

There has not been a previous fact-finding proceeding involving these parties. From what can be determined from the fact-finding reports assembled by Michigan State University, the only other fact-finding for a county medical care facility occurred in 2005 in *Gogebic County Medical Care Facility and Michigan AFSCME Council 25*.<sup>4</sup> The comparables were limited to facilities in the Upper Peninsula. My admittedly incomplete review of other fact-finding reports<sup>5</sup> and Act 312 awards<sup>6</sup> discloses that comparables in the Lower Peninsula have been excluded when the parties are located in the Upper Peninsula.<sup>7</sup> Nothing that has been presented persuades me that a different judgment is warranted here.

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<sup>4</sup> MERC Fact-Finding Case No. L04 J-5001 (Girolamo, 2005).

<sup>5</sup> See, e.g., *Gladstone Area Public Schools & Michigan Education Association*, MERC Fact-Finding Case No. L06 B-5024 (Widgeon, 2008); *Marquette County Road Commission & Michigan AFSCME Council 25*, MERC Fact-Finding Case No. L02 K-5010 (Roumell, 2004); *Schoolcraft Memorial Hospital*, MERC Fact Finding Case No. L05 G-5007 (W. Long, 2007).

<sup>6</sup> See, e.g., *Schoolcraft County Sheriff's Department*, MERC Act 312 Case No. G93 F-2000 (Barnes, 1994); *City of Sault Ste. Marie & Michigan Fraternal Order of Police*, MERC Act 312 Case No. G88 3-244 (Poindexter, 1988); *Iron County Sheriff's Department & Michigan AFSCME Council 25*, MERC Act 312 Case No. L00 K-5008 (Glazer, 2002) ("Lake County from the Union's list should be rejected because it is located in the Lower Peninsula which is an entirely different labor market").

<sup>7</sup> The Union has objected to the inclusion of the Gogebic County MCF and Houghton County MCF proposed by the Employer because they are three hours away from Powers. The Upper Peninsula covers more than 16,000 square miles and travel times between cities are often longer than in the rest of the state. In comparison, there are 47 nursing homes in Oakland County's 850 square miles. A review of the fact-finding reports and Act 312 awards in the preceding two footnotes discloses that comparables are included notwithstanding distance (up to 6 hours). The Union's objection is undercut by its proposal to use the Hillsdale MCF as a comparable that is 460 miles from Powers. I concur with William Long's observation in the Schoolcraft Memorial Hospital fact-finding report at p. 10.

The Fact Finder recognizes that the use of partial information of this nature is not the most ideal process of determining comparables but there is no precise way of doing so and some information is better than none and that information combined with common sense usually results in selection of a representative group of internal comparables.

Accordingly, the following five comparables are adopted.<sup>8</sup>

1. Gogebic County Medical Care Facility
2. Houghton County Medical Care Facility
3. Iron County Medical Care Facility
4. Marquette Medical Care Facility
5. Schoolcraft Medical Care Facility

## **5. ABILITY TO PAY**

The Employer concedes that it has the ability to pay the cost of the Union's demands and doing so would not result in bankruptcy or cause it to close its doors. However, it insists that the more modest but substantial wage improvements it proposes should be recommended because the factfinder should not ignore that the Pinecrest Medical Care Facility does not have excess financial resources; rather, "it is an employer with scarce resources." I agree with the Employer's interpretation of the "financial ability of the unit of government to pay" amended language in Act 312. The term is not self-defining. The standard is not whether the employer has sufficient cash flow to meet payroll. On the contrary, it requires that the financial impact on the community, the interests and welfare of the public, and all other financial liabilities be accorded the most significance of all other factors if supported by substantial evidence. The recommendations in this report are premised on that understanding of ability to pay.

The funding for this facility is unique in comparison to other Upper Peninsula county-owned not-for-profit medical care facilities. Although located in Menominee County, it is jointly owned by Menominee, Delta, and Dickinson Counties and is governed by a nine-member Health and Human Services Board with three members from each county. As a consequence, Pinecrest is the only of the six facilities in the Upper Peninsula without a

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<sup>8</sup> In its post-hearing brief the Employer stipulated that it accepts the five facilities as comparables.



dedicated millage that is not affected by competing budgetary needs. The millages range from .55 mills to 2.25 mills and provide the following annual funding.

- Gogebic \$544,000
- Houghton \$2,250,000
- Iron \$762,336
- Marquette \$1,274,600
- Schoolcraft \$556,346

While the lack of a dedicated millage is important, the Employer asserts that the real driver of Pinecrest's financial woes is the significant decline in the resident census over the course of the pandemic. Pinecrest originally had 130 licensed resident beds and in the past has operated at close to capacity. The current capacity is 80. The decrease resulted from the decision to permanently de-license 10 beds and to temporarily place 40 beds in escrow pursuant to a state-approved "Non-Available Bed Plan" designation. This action was necessary to avoid significant Medicaid penalties if occupancy falls below 85% of capacity.

Medicaid funding is essential to the safety net that county-owned not-for-profit medical centers provide.<sup>9</sup> 73.1% of patients in county medical care facilities are eligible for Medicaid, compared to 62.6% for all nursing homes in Michigan. At an approximate Medicaid rate of \$313.00 per day, an empty bed for one-year results in lost revenue of over \$114,000.00. In May 2021 the resident census was 94. In May 2022, the resident census was 72. In May 2023, the resident census was 62. In 2023, the resident census has been as high as 66 and as low as 62. Although the testimony did not delineate the causes of these significant declines, the Employer's characterization that the financial situation "is not a pretty picture" is merited when revenue and expenses for the last three years are considered.

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<sup>9</sup> In addition to Medicaid, the facility receives Medicare, private pay, private insurance, and other federal funds. The combined amount of those payment sources is substantially less than the projected Medicaid income for calendar year 2023 (\$4,862,233.00).

2020 Revenue:	\$13,602,830	2020 Expenses:	\$14,581,681	(\$978,851) Loss
2021 Revenue:	\$11,216,512	2021 Expenses:	\$14,414,017	(\$3,197,105) Loss
2022 Revenue:	\$9,197,357	2022 Expenses:	\$12,606,841	(\$1,907,175) Loss

Thankfully, the 2023 budget that accounts for anticipated revenue and expenses shows “a slight loss for the year.”

2023 Revenue:	\$9,383,364	2023 Expenses:	\$9,227,073	(\$156,292) Loss
(Anticipated)		(Anticipated)		(Anticipated)

The Union believes that granting each of its demands is well within the Employer's financial abilities and points to several reasons to support that reasoning. The facility has been working to increase the resident census, and as a part of that effort has received a report from a consulting group to accomplish that goal. It points to an announcement that the per-day rate of resident care will be raised which will result in additional Medicaid income. Importantly, the Union urges me to reject the Employer's “not a pretty picture” portrayal because Chief Financial Officer Steve Dubord has confirmed that the facility anticipates receiving funds from the Federal Employee Retention Credit (ERC) and that it may be received sooner than previously anticipated because facilities that applied at the same time as Pinecrest have started to receive the money. Interpreting the complicated bureaucratic regulations in this program is beyond my capacity and the reimbursement amount is likely less than the \$26,000 per employee referenced by the Union. As the Employer sees it, I should not consider anticipated ERC funds in formulating my recommendations.

While the Employer hopes that its application for the Employee Retention Credit is approved and funds are received this year, neither are guaranteed. Even if it is approved, either fully or partially, this federal program is designed to reimburse employers for the losses they suffered during the pandemic and to reward them for maintaining employees on the payroll during the pandemic. (Employer Rebuttal Exhibit 10). The federal CARES Act funds were designed for rewarding employees for working during the pandemic through the COVID bonus and the employer participated by passing those bonuses through to the LPNs, and continues to do so. (Employer Exhibit 17. [Emphasis in original]).

In my view, this rationale is questionable. The Employer has objectively demonstrated that the description of the Pinecrest Medical Care Facility as “an employer with scarce resources” is on target. Many factors contributed to that situation and many factors will be involved in returning it to a better place that will advance its mission to provide excellent medical care. To the extent that they materialize, ERC funds should not be considered as a bonus embargoed only for one side.

The parties at the same time agree but disagree. I find the evidence compelling that bargaining unit members are expected to do more with fewer resources. In June shifts were short-staffed from one to three positions on 26 days requiring nurses to assume extra work and the Union has proven that the list of their responsibilities has expanded. The job is stressful and more so when shifts are short-staffed. As the Employer has noted, everyone “recognizes that a much larger increase is necessary for the LPNs at Pinecrest to achieve the current market rate for LPNs in the Upper Peninsula. The parties simply disagree on the amount of that increase.”

The following recommendations are based on the conclusion that for the most part, the Union’s demands are not supported by the record. For that reason, I will recommend that the status quo be maintained with regard to wage scale as well as shift and weekend premium pay. On the other hand, I conclude that a wage adjustment substantially less than the Union requests but moderately more than the Employer proposes should be granted.

## 6. ISSUES BEFORE THE PANEL

### **Issue 1: Wage Scale** (Economic)

The current wage scale has six steps. The Employer proposes no changes.

- Start
- 3 months
- 6 months
- 1 year
- 2 years
- 3 years

The Union proposes a revised wage scale with seven steps.

- Start
- 1 year
- 2 years
- 3 years
- 4 years
- 5 years
- 10 years

The record does not support the changes proposed by the Union. The number of Licensed Practical Nurses in Michigan has declined significantly from 28,324 in 2011 to 21,604 in 2021. The Union's post-hearing brief notes that there are currently four unfilled LPN positions and that there have been no applicants to fill the vacancies. The Employer believes that it is more competitive in recruiting new staff if applicants can reach top pay in just a few years. It also suggests that the goal of rewarding longer-term employees could be achieved by increasing longevity payments, increasing combined time-off accruals, or other benefits. I recommend that the parties explore those alternatives in bargaining for the successor collective bargaining agreement.

**RECOMMENDATION ON ISSUE 1:** I recommend that the wage scale remain unchanged.

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## **Issue 2: Shift Premium Pay**

The current shift premium for the afternoon shift is 50 cents and 75 cents for the night shift. The Employer proposes to maintain the status quo. The Union proposes to increase the shift premium to \$1.25 for the afternoon shift and \$1.50 for the night shift. The amounts proposed by the Union exceed the shift premiums in the comparable facilities.

<b><u>Facility</u></b>	<b><u>Afternoon Shift</u></b>	<b><u>Night Shift</u></b>
Gogebic MCF	\$.50/hour	\$1.00/hour
Houghton MCF	\$.30/hour	\$.75/hour
Iron MCF	None	None
Marquette MCF	None	None
Schoolcraft MCF	\$1.00/hour from 7pm to 7am	

The average shift premium for the three facilities that have shift premiums is 60 cents for the afternoon shift and 92 cents for the night shift (and the average is 36 cents for the afternoon shift and 55 cents for the night shift if all facilities are counted).

The Union has a stronger case with regard to internal comparables. In a contract negotiated in 2023 the AFSCME bargaining unit negotiated an increase in the shift premium to \$1.00/hour for afternoons and \$1.50 for nights. The goal of avoiding substantial disparities among represented groups is valid. Employee morale can be adversely affected if there is a perception of unequal treatment. However, comparisons among bargaining units must be made cautiously. Ildiko Knott explained this point several years ago.<sup>10</sup>

Bargaining units are not identical, nor are their negotiations. Each has a pattern of give and take of its own. The negotiation process must be flexible enough to recognize both similarities and differences. Neither an equal share nor equal sacrifice are necessarily valid ones. Each bargaining unit has its own rationale for wages and other determinations

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<sup>10</sup> *Lenawee County Board of Commissioners & AFSCME Council 25, MERC Fact-Finding Case No. L92 F-0095 (Knott, 1993), p. 10.*

in collective bargaining. What one bargaining unit might gain or not gain in their negotiations with the County depends upon the particular circumstances of the negotiations, their bargaining history and their job market. These circumstances cannot be automatically transferred to another group. Each group must be judged on objective standards appropriate to that group.

In the absence of any information concerning the give and take that resulted in the AFSCME agreement, I conclude that the Union has not demonstrated a sufficient basis to recommend its proposed increase.

**RECOMMENDATION ON ISSUE 2:** The current shift premiums should remain unchanged.

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### **Issue 3: Weekend Premium Pay**

There is no current weekend premium pay for bargaining unit employees. The Union proposes a new weekend premium pay of \$1.25/hour. The Employer proposes maintaining the status quo. No other employees at Pinecrest MCF receive weekend premium pay. Three of the five comparable facilities do not have weekend premium pay. The Houghton MCF has a \$.30/hour weekend premium and Iron MCF has a \$2.00/hour weekend premium.

I conclude that the Union has not demonstrated a sufficient basis to recommend its proposed new weekend premium pay.

**RECOMMENDATION ON ISSUE 3:** A new weekend premium pay is not recommended.

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### **Issue 4: Wage Increase**

As previously mentioned the difference of opinion between the parties on wages is the amount of the increase. The hourly wage increase proposed by the Union ranges from \$5.00 for starting pay and \$6.23 for top pay. The wage increase proposed by the Employer is an across-the-board hourly increase of \$3.50. A direct comparison of the proposals is not feasible because the Employer's proposal is based on the existing six-step wage scale (with

top pay achieved at three years) and the Union’s proposal is based on a new seven-step wage scale (with top pay achieved at ten years). Appropriately, neither party’s proposal includes the State of Michigan “hero pay” for direct care employees (Certified Nurse Aides, Licensed Practical Nurses, and Registered Nurses) that will increase on October 1, 2023 to \$3.20 per hour.

**TABLE 1** shows the wage increase proposed for 2023 by the Employer. **TABLE 2** compares the rank order for Employer proposed top pay with the other facilities. **TABLE 3** shows the wage increase for 2023 proposed by the Union. **TABLE 4** compares the rank order for Union top pay with the other facilities. It should be kept in mind that the time to reach top pay varies and that neither party has described differences in other compensation such as longevity pay.

**TABLE 1—EMPLOYER PROPOSAL FOR 2023 WAGE INCREASE**

	<u>Current</u>	<u>Employer Proposed</u>	<u>\$ Increase</u>	<u>% Increase</u>
Start	\$20.60	\$24.10	\$3.50/hour	17.00%
3 Months	\$20.85	\$24.35	\$3.50/hour	16.78%
6 Months	\$21.10	\$24.60	\$3.50/hour	16.58%
1 Year	\$21.60	\$25.10	\$3.50/hour	16.20%
2 Years	\$22.10	\$25.60	\$3.50/hour	15.83%
3+ Years	\$22.60	\$26.10	\$3.50/hour	15.48%

**TABLE 2—RANKING FOR EMPLOYER PROPOSAL FOR 2023 TOP PAY WAGE INCREASE**

1. Schoolcraft MCF:	\$34.02	30.74% higher than Pinecrest MCF
2. Marquette MCF:	\$28.44	8.96% higher than Pinecrest MCF
3. Iron MCF	\$26.34	0.92% higher than Pinecrest MCF
<b>4. PINECREST MCF</b>	<b>\$26.10</b>	
5. Houghton MCF	\$25.96	0.54% lower than Pinecrest MCF
6. Gogebic MCF	\$25.83	1.03% lower than Pinecrest MCF

TABLE 3—**UNION** PROPOSAL FOR 2023 WAGE INCREASE

	<u>Current</u>	<u>Union Proposed</u>	<u>\$ Increase</u>	<u>% Increase</u>
Start	\$20.60	\$25.60	\$5.00/hour	24.27%
1 Year	\$21.60	\$26.11	\$4.51/hour	20.87%
2 Years	\$22.10	\$26.63	\$4.53/hour	20.50%
3 Years	\$22.60	\$27.17	\$4.57/hour	20.22%
4 Years	\$22.60	\$27.71	\$5.11/hour	22.61%
5 Years	\$22.60	\$28.26	\$5.66/hour	25.04%
10 Years	\$22.60	\$28.83	\$6.23/hour	27.56%

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TABLE 4 – RANKING FOR **UNION** PROPOSAL FOR 2023 TOP PAY WAGE INCREASE

1. Schoolcraft MCF	\$34.02	5.19% higher than Pinecrest MCF
<b>2. PINECREST MCF</b>	<b>\$28.83</b>	
3. Marquette MCF	\$28.44	1.35% lower than Pinecrest MCF
4. Iron MCF	\$26.34	8.63% lower than Pinecrest MCF
5. Houghton MCF	\$25.96	9.90% lower than Pinecrest MCF
6. Gogebic MCF	\$25.83	10.40% lower than Pinecrest MCF

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After carefully considering the entire record, I recommend that the 2023 wage be increased from \$3.50 per hour proposed by the Employer to \$4.00 per hour at each step of the current wage scale. Although substantially less than the wage increase proposed by the Union, it is supported by proofs and arguments from each side. It will make the facility somewhat more attractive to prospective employees and is more in line with the increased responsibilities that bargaining unit members have been given. It is in recognition of the fact that the Union has withdrawn its original proposal concerning health insurance costs. It is also supported by the funds that the Employer is scheduled to receive this year from the Employee Retention Credit program and the anticipated increase in Medicaid reimbursement after the private pay rate is raised. TABLE 5 shows the recommended 2023 wage increase. TABLE 6 compares the rank order of the recommended top pay with the other facilities.



TABLE 5—**RECOMMENDED** 2023 WAGE INCREASE

	<u>Current</u>	<u>Recommended</u>	<u>\$ Increase</u>	<u>% Increase</u>
Start	\$20.60	\$24.60	\$4.00/hour	19.41%
3 Months	\$20.85	\$24.85	\$4.00/hour	19.18%
6 Months	\$21.10	\$25.10	\$4.00/hour	18.96%
1 Year	\$21.60	\$25.60	\$4.00/hour	18.52%
2 Years	\$22.10	\$26.10	\$4.00/hour	18.09%
3+ Years	\$22.60	\$26.60	\$4.00/hour	17.70%

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TABLE 6— RANKING FOR **RECOMMENDED** PROPOSAL FOR 2023 TOP PAY WAGE INCREASE

1. Schoolcraft MCF	\$34.02	21.8% higher than Pinecrest MCF
2. Marquette MCF	\$28.44	6.64% higher than Pinecrest MCF
<b>3. PINECREST MCF</b>	<b>\$26.60</b>	
4. Iron MCF	\$26.34	0.98% lower than Pinecrest MCF
5. Houghton MCF	\$25.96	2.41% lower than Pinecrest MCF
6. Gogebic MCF	\$25.83	2.89% lower than Pinecrest MC

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**RECOMMENDATION ON ISSUE 4:** I recommend that bargaining unit members receive an increase of \$4.00 at each step of the existing wage scale.

### **Putative Issue 5: Retroactivity**

On page 32 of its post-hearing brief the Employer wrote: “A final issue involves the retroactive application of the wage increase to unit employees. The Employer has not included retroactivity in any of its proposals.”

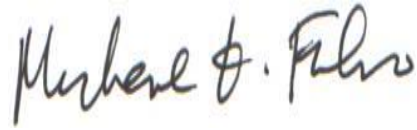
I was surprised and confused by the assertion. The “Issues Before the Fact Finder” on pages 8 and 9 of the post-hearing brief specifies that the issues to be considered are (i) wage scale, (ii) raises, and (iii) shift differentials (noting that the issue of insurance has been resolved). The brief at page 7 confirms that those were “the issues in dispute at the mediation.” The issues described in the voluminous 29 exhibits-in-chief and 11 rebuttal

exhibits concern only those issues. The Employer's position on all outstanding issues was extensively discussed at the hearing. If the Employer believed that retroactivity was "a final issue" and something that should be considered in the fact-finding process that should have been disclosed during the hearing to give the Union the opportunity to respond and to allow me to ask questions and receive answers. It should not be raised -- apparently the first time -- in a post-hearing brief after the close of proofs. Significantly, the Employer's objection to the Union's attempt to add a new issue at the hearing was sustained. Because it is too late in negotiations that began months ago to interject retroactivity as an additional issue, I recommend that the position be reconsidered and withdrawn.

Moreover, in my judgment, the conclusion that PA 54 applies here is legally erroneous. The statute unambiguously pertains to retroactivity for wages and benefit levels **"in effect at the expiration date of the collective bargaining agreement."** The expiration date of the collective bargaining agreement is December 31, 2023, and analogizing a reopener clause in an unexpired contract to an expired contract requires reading into the statute words that the legislature never wrote.

**RECOMMENDATION ON PUTATIVE ISSUE 5:** I recommend that the Employer reconsider its position on retroactivity.

I would like to express my appreciation for the professional and cordial manner in which each side advocated their positions.



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MICHEAL J. FALVO

Dated: September 5, 2023

### **SUMMARY OF RECOMMENDATIONS**

**ISSUE 1 – WAGE SCALE.** I recommend that the wage scale remain unchanged.

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**ISSUE 2 – SHIFT PREMIUM PAY.** I recommend that shift premium pay remain unchanged.

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**ISSUE 3 – WEEKEND PREMIUM PAY.** I do not recommend that weekend premium pay be paid to employees.

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**ISSUE 4 –** I recommend that a wage increase of \$4.00 per hour for each step of the wage scale.

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**PUTATIVE ISSUE 5 –** I recommend that the Employer reconsider its position on retroactivity.