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MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
BUREAU OF EMPLOYMENT RELATIONS

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
 WORKERS, LOCAL 876**
 Petitioning Party

Case No. L17 E0481

and

CITY OF ESCANABA
 Responding Party

Escanaba City

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 Advocate: Ralph BK Peterson
 Union Advocate: Fil Iorio

STATE OF MICHIGAN
 EMPLOYMENT RELATIONS COMM.
 DETROIT OFFICE

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PETITION FILED: June 17, 2017
 PANEL CHAIR APPOINTED: August 2, 2017
 SCHEDULING CONFERENCE HELD: September 12, 2017
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WITNESS LIST

1. Phil Barnett, IBEW Local 876 Membership Development Representative (Union)
2. Rob Caliguri, Lineman, City of Escanaba (Union)
3. Robert Valentine, City Treasurer/Human Resources Manager (Employer)
4. Patrick Jordan, City Manager (Employer)

INTRODUCTION AND BACKGROUND

With an estimated population of 12,500, Escanaba is the third largest city in Michigan's Upper Peninsula after Marquette and Sault Ste. Marie. The bargaining unit consists of all employees of the Escanaba Municipal Electric Department except two supervisory positions, Electric Superintendent and Electric Engineer. There are presently 11 employees in the following

classifications: Journeyman Lineman (3); Apprentice Lineman (1); Foreman (3); Meter Mechanic (1); Electrical Maintenance (1); Building Maintenance (1); and Office Clerk (1). In the industry the Foreman position is also called Lead Lineman. Employees hired after June 30, 2005 are enrolled in a defined contribution pension plan. Three members who were hired before that date have a defined benefit pension plan administered by the Municipal Employees Retirement System (MERS). There are four other bargaining units, including Teamsters Local 406 comprised of employees of the Escanaba Water Department. Each of those unions has negotiated collective bargaining agreements for the period July 1, 2017 to June 30, 2020. The current collective bargaining agreement expired on June 30, 2017. Several bargaining sessions and one mediation session resulted in tentative agreement on a number of issues.

STATUTORY AUTHORITY

This report is issued pursuant to the Michigan Labor Mediation Act, MCL 423.1 et seq., the Public Employment Relations Act, MCL 423.301 et seq, and R. 423.131 to R. 423.138 of the Department of Licensing and Regulatory Affairs, Employment Relations Commission, General Rules.

Recognizing that the governing statutes are different in terms of purpose and procedure, fact finders nevertheless frequently consider the factors that pertain to compulsory arbitration proceedings involving public safety employees. MCL 423.239. I concur with the view that the Act 312 criteria are appropriate guideposts in the fact finding process. They establish a helpful framework to neutrally assess the strengths and weaknesses of the respective positions. The proper weight that should be accorded each factor varies from case to case and a fact finder is not limited to the listed factor. Section 9 of Act 312, as amended by Act 116 of Public Acts of 2011, provides:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of an 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:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the local unit of government to pay;

- (i) The financial impact on the community and any award made by the arbitration panel.
- (ii) The interests and welfare of the public.
- (iii) All liabilities, whether or not they appear on the balance sheet of the local unit of government
- (iv) Any law of this state or any directive issued under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575, that places limitations on a unit of government's expenditures or revenue collection.
- (b) The lawful authority of the employer.
- (c) Stipulations of the parties.
- (d) 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 and with other employees generally in both of the following:
 - (i) Public employment in comparable communities.
 - (ii) Private employment in comparable communities.
- (e) Comparison of the wages, hours, and conditions of employment of other employees of the unit of government outside of the bargaining unit in question.
- (f) The average consumer prices for goods and services, commonly known as the cost of living.
- (g) 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.
- (h) Changes in any of the foregoing circumstances while the arbitration proceedings are pending.
- (i) Other factors that 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.
- (j) If applicable, a written document with supplementary information relating to the financial position of the local unit of government that is filed with the arbitration panel by a financial review commission as authorized by the Michigan financial review commission act.
- (2) The arbitration panel shall give the financial ability of the unit of government to pay the most significance, if the determination is supported by competent, material, and substantial evidence

STIPULATIONS AND PRELIMINARY RULINGS

The parties have reached tentative agreements on a number of issues and agree that the successor agreement will cover the period July 1, 2017 to June 30, 2020.

COMPARABLES

Employer

1. Coldwater
2. Niles
3. Negaunee
4. Gladstone

Union

1. Alger Delta Cooperative Electric Association (Co-op)
2. Cloverland Electric Cooperative (Co-op)
3. Fox Power, Inc. (Private)
4. Great Lakes Energy (Co-op)
5. Marquette Light & Power (Municipal)
6. Midwest Energy (Co-op)
7. Presque Isle Electric & Gas (Co-op)
8. Traverse City Light & Power (Municipal)
9. Upper Peninsula Power Co. (Private)
10. Wolverine Power Cooperative (Co-op)

ISSUES BEFORE THE FACT FINDER

ISSUE 1: WAGES

The wage increase proposed by the Union is an increase of \$1.50 per hour (approximately 5% per year) for each year of a three-year contract. The City proposes a 2% wage increase for each year of a three-year contract. Although there are seven classifications in the bargaining unit, the proposed wage increase for the top pay Journeyman classification is illustrative. The parties noted that Public Act 54 prohibits retroactive wage increase.

Table 1 – Proposed Salary Comparison

	<u>7/1/17</u>	<u>7/1/18</u>	<u>7/1/19</u>
Union Proposal	33.36	34.86	36.36
City Proposal	32.50	33.15	33.81

The Union's principal justification for the proposed increase is that the wages in this bargaining unit are significantly lower than employees in the relevant comparables. I have limited the **TABLE 2** to the Journeyman Lineman and Foreman positions because those are the only two titles for which corresponding pay information is available in all of the comparables. The rate shown is for top pay.

Table 2 – Hourly Wage Comparison (Union)

	<u>Lineman</u>	<u>Foreman</u>
Alger Delta	\$35.52	\$35.82
Cloverland	\$39.47	\$40.89
Fox Power	\$40.41	\$44.89
Great Lakes	\$37.09	\$38.94

Marquette	\$37.01	\$38.47
Midwest	\$41.00	\$43.50
Presque Isle	\$32.68	\$38.48
Traverse City	\$34.50	\$36.98
Wolverine	\$40.22	\$41.31
Upper Peninsula	\$44.70	\$52.52
ESCANABA	\$31.86	\$33.11

The City provided the corresponding information for its comparables.

Table 3– Hourly Wage Comparison (City)

	<u>Lineman</u>	<u>Foreman</u>
Coldwater	\$31.43	\$32.46
Niles	\$32.88	\$33.88
Negaunee	\$27.54	\$28.54
Gladstone	\$26.79	\$28.54
ESCANABA	\$31.86	\$33.11

The average hourly wage for a Lineman in the Union's comparables is \$38.26, or \$6.40 above Escanaba. The average hourly wage for a Foreman in the Union's comparables is \$41.18, or \$8.07 above Escanaba. The average hourly wage for a Lineman in the City's comparables is \$29.66, or \$2.20 below Escanaba. The average hourly wage for a Foreman in the City's comparables is \$30.86, or \$2.25 below Escanaba. I recognize that these comparisons do not take into account differences in retirement plans, medical insurance, and other fringe benefits and for that reason are not reflective of the entire compensation package.

The main thrust of the Union's presentation is that employees in the Escanaba Municipal Electric Department should be compared to electrical workers. The Union believes that because the department generates its own income and has its own accounting system the wage rate of City employees should not set the standard. In addition to the wage disparity information, the Union puts forth several arguments why its proposed wage increase is justified. The list is not intended to be exhaustive.

- The work involved is physically challenging and dangerous. Among other things line crews maintain and construct power distribution lines, maintain street lights, replace poles, dig trenches to access underground wiring, and perform numerous other arduous functions. They work on poles as high as 55' and when the location does not allow access from a bucket truck they must climb poles. They work on energized wires that are and continuously risk serious injury or death. The work is done in inclement weather.
- The City has the ability to meet the pay demand. As the result of the closing of the power plant in 2015 and purchasing electricity the City has experienced significant savings.

Since that time the City has increased the annual transfer of funds from the Electric Fund Budget to the General Fund Budget from \$463,624 to \$765,790.

- The annual cost electric for a resident in Escanaba using 500 kilowatts of electricity per month is \$705.24. The \$10.95 monthly charge and per Kwh rate are lower than comparable cities.
- Electrical system energy loss is a measure of the amount of energy that is lost during the distribution of electricity. In the spring of 2017 the City became aware that it had overestimated the projected loss resulting in a savings of \$250,000.
- The Journeyman Lineman credential qualifies individuals to work anywhere because the skills in a municipal, cooperative, or private enterprise are interchangeable. The nature of the work is identical. Mutual aid agreements mean that Escanaba employees work when needed throughout Michigan along side employees who are more appropriately compensated.
- Because employees in this bargaining unit are woefully underpaid compared to other electricity providers, Escanaba risks losing a top-notch work force that would not be easy to replace. The Alger Delta Electric Cooperative borders the City and informed IBEW Local 876 that it wanted to reopen the collective bargaining agreement mid-contract to increase wages to hopefully incentivize its employees not to leave. Two other utilities (Presque Isle Electric & Gas and Dowagiac Electric) did the same. Cherryland Electric Cooperative, a northern Michigan power company that is not unionized, recently increased pay to retain employees. Union witnesses attributed these unusual developments, among other reasons, to anticipated increases in hiring by Consumers Power Company.

The City emphasizes that each of the other unions have settled contracts that include a 2% raise each year of the three-year agreement. The City insists the same offer to this bargaining unit treats City employees alike and is reasonable. The City also maintains that its objective, unlike some of the Union's comparables, is for the Electrical Department to break even rather than turn a profit. The City also makes a number of additional points that should be taken into account.

- The comparables relied on by the Union are not comparable to the City of Escanaba that has 7, 200 customers. The customer base of many is not close: Great Lakes Energy (123,874); Upper Peninsula Power (52,707); Cloverland Electrical Cooperative (43,647); Midwest Energy (35,762). All but two – Alger Delta (10,003) and Traverse City (12,000) – are more than twice as large. Privately owned entities and cooperatives are only accountable to a board of directors and are working with budgets much larger than Escanaba. In contrast, the comparables provided by the City “look like us.”
- IBEW Local 876 wages are higher than the average wage in the City's comparables for a top pay Lineman: (Escanaba \$31.86, average \$29.66) (top pay Foreman: Escanaba \$33.11, average \$30.86) (top pay Apprentice: Escanaba \$29.40, average \$27.24).
- When comparing municipal run electric departments demographics must be taken into account. The median income in Escanaba is \$28,767, the median home value is \$81,700, and the poverty rate is 27.4%. The median income in Marquette is \$36,250, the median home value is \$160,500, and the poverty level is 26.5%. Marquette has a new hospital, Northern Michigan University, and a prison that contribute to its finances. The median income in Traverse City is \$47,284, the median home value is \$185,500, and the poverty rate is 15.5%. Citizens in those communities have greater financial resources to pay for electricity.
- The City has had a tough time attracting businesses and jobs. All but two grade schools have closed, large and retail businesses have left, and the major employer has significantly reduced the size of its workforce. Because Escanaba is not the most

competitive venue in terms of location, weather, and transportation, keeping electric rates at reasonable rates is important to keep residents and for business development.

- The City's Electric Fund must support the day-to-day operations of the department. Of notable interest, the budget includes planned activities that will cost over two million dollars consisting of: Substation Improvement – North Shore Substation (\$1,500,000); Power Pole Replacement (\$200,000); West Side Substation Improvement (\$150,000); Street Lighting Fixture Replacement (\$80,000); and System Wide Tree Trimming (\$25,000). Operating revenues exceeded operating expenses in 2016 and 2107, which was not the case in seven of the last ten years.
- Although only 3 active members participate in the defined benefit plan, there are 17 retirees and beneficiaries receiving benefits. The City's overall actuarially accrued liabilities are 57% funded, down from 10 years earlier when the funding level was 75%. The funding level for the Electric Division is 54%. The City's ability to pay employees must take account of this obligation.
- The Union's claim that the City saved \$250,000 based on a budget forecast is not on point. The budget estimated a line loss of 6% but the actual loss was 3%. This means the City will need to purchase less power than anticipated but this does not involve any additional revenue. An event not forecasted in the budget process could easily add that amount to the City's expenses.
- IBEW Local 876 over the last ten years has received pay increases that exceed the increases awarded to other City workers. The overall increase since July 1, 2006 has been 18%. The current hourly rate and comparable overall increase for selected other positions is shown in **TABLE 4**. The City has noted that the compounded rate is slightly higher when computed by multiplying the percentage increase and the new wage rate. The City also notes that this bargaining unit received a 1% payment in the defined contribution plan in 2014 that other employees did not receive.

Table 4 – 7/1/2016 hourly rate and 10-year cumulative pay increase percentage

	7/1/2016 hourly rate	10-year cumulative percentage increase
<i>Journeyman Lineman</i>	\$31.86	18%
<i>Electrical Foreman</i>	\$33.11	18%
<i>Apprentice Lineman</i>	\$29.40	not applicable
<i>Electric Maintenance</i>	\$25.00	18%
<i>Electric Building Maintenance</i>	\$21.13	18%
<i>Office Clerk (IBEW)</i>	\$18.68	18%
Office Clerk (Teamsters)	\$16.57	16%
Recreation Office Clerk	\$18.07	15%
Laborer (Teamsters)	\$18.91	14%
Skilled Laborer (Teamsters)	\$19.96	14%
Equipment Operator I	\$20.50	14%
Painter	\$20.99	14%
Engineering Assistant I	\$21.48	13%
Equipment Operator III	\$22.21	13%
Equipment Repair III	\$23.18	13%
Skilled Laborer (Teamsters-Water)	\$21.61	15%
Operator F-4 (Teamsters-Water)	\$22.23	16%
Operator Mechanic F-4 (Teamsters-Water)	\$22.77	15%
Operator F-2 (Teamsters-Water)	\$23.36	16%
Distribution Lead Worker (Teamsters-Water)	\$24.16	15%
Operator Mechanic F-1 (Teamsters-Water)	\$24.75	15%
Chief of Operations (Teamsters-Water)	\$25.29	16%
Uniform Sergeant-Police	\$30.21	18%

Uniform Lieutenant-Police	\$31.89	19%
Detective Sergeant-Police	\$31.89	13%
Detective Lieutenant	\$33.59	16%
Public Safety Officer I	\$27.92	18%
Dispatcher	\$21.75	18%

A number of considerations would convince a disinterested individual that the City's offer of a two percent wage increase each year is supportable. Municipalities providing electrical services to citizens are not in the business to make money. Private companies, and to some extent electrical co-ops, do not have the same considerations of political accountability as elected government officials. It is also true that enterprises with a sizeable customer base have economies of scale that can support more lucrative salaries and benefits. The City reasonably takes the position that salaries in cities selected by the Union should be used for comparison because the per capita income and median home value in those cities is substantially higher than in Escanaba. The underfunded pension liabilities for Electric Department employees who have retired or retain future eligibility for the defined benefit plan is very significant (\$2,410,225). It is readily apparent that City officials have taken prudent (and undoubtedly painful) steps to ensure that it keeps off the slippery slope that has led other governmental units to insolvency or danger of insolvency. The City's assessment that the lower cost of electricity can potentially attract new businesses is sensible. Finally, where four of the five unions have settled contracts with wage increases of two percent per year, considerations of equity do not favor agreeing to a wage rate increase of other unionized employees of approximately five percent per year. Borrowing from the Section 9 Act 312 criteria, comparison of the wages, hours and conditions of employees of employees in other bargaining units is very important in the fact finding process. Section 9 has another criterion that applies here: "other factors that 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." It is consideration of that criterion that leads to the recommendation that both sides reexamine and modify their current wage proposals.

Wages are determined by many factors. Geography, unionization, and fringe benefits come into play. Another factor is the elementary economic principle of supply and demand.

Becoming a Journeyman Lineman cannot be accomplished in a short time and individuals without that credential are not allowed to do the job because of the deadly consequences of not knowing what one is doing. Proof is not needed but as this is being written newspapers articles announce the death by apparent electrocution of two persons allegedly attempting to steal copper wiring from a DTE substation. Few individuals would be in a better position to be aware of current job conditions than Mr. Barnett. As a spokesman for the Union advocating the pay increase it would be expected that the City might consider his testimony with skepticism. However, facts are facts and he described a highly unusual situation where several Northern Michigan employers are seeking the Union's agreement to raise wages. There is objective evidence that for now and the near future there is "a battle for Journeymen Linemen." The City has an investment in the members of this Union and it does not appear that the City would be competitive to attract replacements if those employees leave. It is for that reason that some increase beyond the two percent accepted by the other unions is justified.

On the other hand, in my view the Union's wage demand is, all things considered, higher than can be reasonably expected. I understand that even if granted they would be behind the wages paid by its comparables. But I did not understand the presentations to suggest that this disparity is of recent origin. Reality requires taking account of the facts that financial resources are limited, that the City has valid reasons for not increasing electricity rates higher, and that all City employees need to conform expectations to financial actuality. The job is dangerous and demanding but that characterization is not exclusive to bargaining unit members. It is also relevant consideration that a minority of bargaining unit members are not similarly situated to Journeymen Linemen or Foremen. Nothing in the record leads to the conclusion that clerical or maintenance jobs in the Electric Department are very different than clerical or maintenance jobs in other City employment. By no means am I suggesting that the Union should differentiate among its members when securing contractual benefits. I am suggesting, however, that this somewhat weakens the Union's case.

Although substantially less than the Union believes is justified, I recommend that the parties agree to a three percent pay raise for each of the three years in the successor collective bargaining agreement.

ISSUE 2: GRIEVANCE PROCEDURE

The point of contention between the parties is whether the time limit for filing a written grievance should be stated in "working days" or "calendar days." The current agreement specifies "working days" and the Union sees no need to change the contract. The Union is reluctant to agree to the change because something could occur that the Union does not learn about right away. The City justifies its position by noting that the other contracts specify "calendar" days and it would like the contracts to be uniform. The City suggests that the term "working" days is ambiguous since these employees do not work only on a regular Monday to Friday schedule. As a compromise the City has indicated a willingness to change the number of days to file a written grievance from 10 in the current contract to 17 days. The purpose of the grievance process is to resolve conflicting interpretations of contractual obligations and procedural disputes about what counts as a working day hinders the accomplishment of that purpose. **I recommend adoption of the City's proposal.**

ISSUE 3: BREAK PERIODS

The current agreement states: "Employees shall be allowed two rest periods of reasonable duration, one each morning and one each afternoon. This shall be taken as the work schedule permits." The City proposes to change the provision to read that the morning and afternoon breaks are limited to 15 minutes each and shall be taken at the job site. The recently negotiated contract with Teamsters Local 406 and the Water/Wastewater Group specifies that employees will be allowed one 15 minute break during each four hours but does not specify that it must be taken at the worksite. The contract with the Teamsters Local 406 and the Public Works and Clerical Unit provides:

Employees shall be allowed one fifteen (15) break during each four (4) hours of work. Breaks are intended to be taken at job sites. In the event of a special exception, whereby an employee, or group of employees, is permitted to travel to

an alternate location for a break, the 15 minute break period shall include any time spent traveling to such alternate locations.

According to the Union's presentation, on a normal day the morning break is taken at 9:00 a.m. and at 2:00 p.m. However, if in the middle of a job it may not be feasible to do so at that time. Breaks are sometimes taken in the break room rather than the job site and this can occur because there is an unanticipated need for parts or the specification sheet for a particular pole. At the farthest point the distance to the office is 8 miles. In addition the Union pointed out that their work often occurs in unforgiving circumstances and that members of the public get a misleading impression when they see City workers doing nothing and that employees may need access to use a restroom during a work break. The Union asserts that the work ethic among workers is good, that the break period is not abused, and disciplinary action can be taken if abuse occurs.

I recommend that the "two rest periods of reasonable duration" be deleted and replaced with language used in the two other agreements specifying a 15-minute time period. I do not recommend adoption of the City's proposal that the break must occur at the job site. The City has not explained who would decide if there is a "special exception" and how the logistics would work. There are sufficient similarities between the nature of the work in the Water Department and this bargaining unit that the restriction to take a work break at the job site apply to one but not the other.

ISSUE 4: CALL-OUT MINIMUM

Customers without electrical power are not happy. A traffic signal that stops working can cause accidents. An energized wire on the ground because of an ice storm is deadly. The nature of the job means that employees in this bargaining unit must respond to situations outside of normally scheduled working hours. The agreement specifies that employees must live within 20 miles of Escanaba and presumably one purpose of that requirement is to enable employees to respond when needed within a reasonable time period.

The contract currently provides that an employee called to duty after being released from a regular day's work, or on a day he is not scheduled to work, is entitled to a minimum of two hours pay at time and one-half. The Union proposes to increase compensation when this occurs.

- If the call-out occurs during a normal work week after being released, he would receive a minimum of 2 hours at time and one-half of their base rate of pay. (no change)
- If the call-out occurs during a normal work week between the hours of 12:00 a.m. and 7:30 a.m. during a normal work week, the employee would receive a minimum of 3 hours at time and one-half their base rate of pay.
- If the callout occurs on a Saturday, the employee would receive a minimum of 3 hours at time and one-half their base rate of pay.
- If the call-out occurs on a Sunday, the employee would receive a minimum 3 hours at double time their base rate of pay.

As previously mentioned, Fact Finders look to the Section 9 factors in Act 312, particularly with regard to "other factors" that are normally or traditionally taken into consideration in collective bargaining. Two Fact Finders have recently articulated helpful approaches that I find helpful on this issue.

Among those criteria is the bargaining history of the parties as expressed by their previous contracts and current negotiations, the strike criteria, name, what the parties would have settled for if there was the ability to strike, and the art of the possible, namely, the art of compromise to reach an agreement.¹

Two of the goals of a fact finding report are that it should do the least possible violence to the parties' relationship, and that it should recommend an agreement that the parties could have reached themselves if their bargaining had been successful.²

The nature of collective bargaining is incremental: seldom does either side get everything that it wants. The Union makes a good point that it is one thing to be called back at 8:00 p.m., when one may be watching a baseball game on television, and 3:00 a.m. when most people are asleep. Adding one hour for the additional inconvenience and disruption of being awakened after midnight is reasonable and I recommend its incorporation into the successor agreement. Under the current agreement the employee is entitled to two hours at time and one-half if called back on a Saturday or Sunday if those days are not regularly scheduled work days. The improvement in after midnight calls is an improvement that appears to me to be the extent that could be expected

¹ *Grosse Pointe Librarians Association & Grosse Pointe Public Library*, MERC Case No. D17 F-0680, p. 5 (Roumell, November 16, 2017).

² *Birch Run Educational Support Personnel Association, MEA/NEA & Birch Run Area Schools*, MERC Case No. L16 F-0664, p. 4 (Goldman, June 23, 2017).

to result in one contract. **Accordingly, I recommend that the call-back provisions remain unchanged except if it occurs between the hours of 12:00 a.m. and 7:30 a.m. when the employee would be entitled to a minimum of three hours at time and one-half.**

ISSUE 5: REST PERIODS

The current agreement does not contain provisions concerning periods of rest after an extended working period. The Union has three proposals concerning rest periods.

- Employees completing an emergency call between 12:00 a.m. and 7:30 a.m. on normal work days shall be allowed, at the employee's option, a rest period of 10 hours.
- Employees who have worked for 16 or more hours in a 24 hour period shall be allowed, at the employee's option, a rest period of 10 hours before returning to work.
- Pay shall be granted for the hours of regular working schedules not worked when the rest period extends into the employee's next regular work schedule.

The first bulleted proposal is related to the last proposal concerning call-in pay. When considered together the potential cost is substantial. Assume the emergency call in occurs at 2:00 a.m. and is completed by 3:30 a.m. Under the recommendation change discussed in the preceding section the employee would be compensated 4.5 hours. A ten hour rest period commencing at 3:30 a.m. would end at 1:30 p.m. if the next day is a regularly scheduled work day. The shift normally ends at 4:00 p.m. and the period of work after reporting would be 1.5 hours. I find it implausible that the parties would have reached that result themselves if bargaining had been successful. **Accordingly, it is my recommendation that the Union withdraw the proposal that an employee completing an emergency call between 12:00 a.m. and 7:30 a.m. on a normal work day be allowed, at the employee's option, a rest period of 10 hours.**

On the other hand, I believe the Union has made a strong case for a rest period of 10 hours when the employee has worked for 16 hours or more in a 24 hour period. It does not require research into medical literature to arrive at the conclusion that after working 16 hours straight – not in an office but doing physically demanding tasks, often in harsh weather – that fatigue sets in and when fatigued even the most conscientious worker can experience drowsiness and impaired concentration. It is not hyperbole that a mistake during a moment of inattentiveness in this profession is likely to be fatal. I have noted that in several of the collective bargaining

agreements covering Journeyman Lineman there are similar rest period provisions. I recommend that the Union's proposal be modified to add the word "continuous" before 16 hours. If an employee worked from midnight to 8:00 a.m., was excused to get sleep, and worked from 4:00 p.m. to midnight, the problems that fatigue creates would be diminished. **Accordingly, I recommend that the parties agree to grant an employee who has worked 16 hours continuously in a 24 hour period, at the employee's option, a rest period of 10 hours and that pay be granted for the hours of regular working schedules not worked when the rest period extends into the employee's next regular work schedule.**

ISSUES 6 & 7: PAID TIME OFF & SICK LEAVE

As the result in changes in the last collective bargaining agreement that the entitlement to paid time is different for some employees. For employees hired *prior* to October 23, 2014, the contract provides that the employee is entitled to from 6 to 30 vacation days (depending on years of service), one sick leave day per calendar month, 2 personal days credited at the beginning of the fiscal year (that can be accumulated to four days total), and funeral leave for a death in the immediate family not to exceed 4 days. For employees hired *after* that date, or for an employee hired before that date who voluntarily agreed to be included in the plan, employees are not credited with vacation days, sick leave days, personal leave days, or funeral leave. Instead the employees are credited, depending on length of service, with a number of Paid Time Off (PTO) days. For employees hired prior to October 23, 2014, there are no provisions for carrying over unused vacation time and those employees may be paid upon retirement for all unused sick leave over and above 720 hours at one and one-half the employee's hourly rate, not to exceed \$1,500. Employees in the PTO category are allowed to carry forward up to three years of PTO and separating employees (not necessarily through retirement) are entitled to compensation for a maximum of two years of PTO accrual, with the exception of employees who are discharged for cause or who resign without giving at least one week notice. **TABLE 5** shows the current contractual entitlement to PTO hours and in the second column shows the increased number of PTO hours proposed by the Union. The Union's proposal does not include any changes to the entitlement to payment of up to two years of accrued PTO upon separation. The fourth column shows the number of total days off per

year if the Union's related demand that employees hired after October 23, 2014 be granted PTO and eight hours sick time each month.

Table 5 – PTO hours for employees hired after October 23, 2014

<u>Date Granted</u>	<u>PTO Days Awarded</u>	<u>Proposed Additional Days</u>	<u>Total proposed PTO days</u>	<u>Total PTO & Sick days</u>
Hire date	10	+2	12	24
1 st Anniversary	12	+4	16	28
5 th Anniversary	17	+3	20	32
10 th Anniversary	22	+2	24	36
15 th Anniversary	25	+3	28	40
20 th Anniversary	30	0	30	42
25 th Anniversary	35	0	35	47

At the present time there are three employees who were hired after October 23, 2014. I emphatically agree with the City's characterization of the Union's proposal: it would obliterate the benefit of the agreement reached by this and all the other unions. Although neither party discussed the bargaining history of the change, it is apparent from reading the contract that there was a *quid pro quo* involved: the ability to leave City employment and receive up to two years salary for accumulated unused PTO time. In addition to keeping that beneficial provision, presumably the Union's proposal would include entitlement to payment upon retirement of up to \$1,500 in compensation for unused sick leave over and above 720 hours. For many reasons the proposal is not justified. **Accordingly, I recommend that the Union withdraw its proposals concerning increasing the number of PTO days as well as its proposal to reinstate sick days for employees hired after October 23, 2014.**

ISSUE 8: FUNERAL LEAVE

There was apparently a lack of communication concerning this proposal. The Union believed the parties had reached a tentative settlement. I commend the City's willingness to fine-tune the newly negotiated Paid Time Off provision in Article 11.5. As it currently exists, an employee hired before October 23, 2014 is entitled to not more than four days of funeral leave in

the event of the death of an immediate family member as defined by Article 6(h) without a deduction from an employee's sick leave bank. An employee after that date loses a PTO day for every day they miss work to attend to family business and if the employee had already used those days for a vacation would not be paid. The loss of a spouse, parent, sibling, child, or any member of one's immediate family is a devastating event and the City acknowledges that a disparity based on the date one is hired is unjustified. The City proposes to rectify the inequity by giving all employees no more than three days of funeral leave. I recommend that the City rethink its position for at least two reasons. The recently negotiated agreements with Teamsters Local 406 and both the Public Works & Clerical agreement and the Water/Wastewater Group agreement do not contain a three day limit. Those agreements in pertinent part provide:

Leave granted in the event of a death in the immediate family shall not be deducted from sick leave and shall be paid at the employee's regular rate. Duration of such leave shall be determined in the reasonable exercise of the Employer's discretion in light of the circumstances of each individual occasion for taking such leave.

I respectfully suggest that putting supervisors in the position of having to make individualized judgments about how much funeral leave is justified, without standardized criteria, is unseemly and a debate about whether the judgment was reasonable is a debate that should be avoided during the time of a devastating loss of a member of one's immediate family. **For these reasons, I recommend that the parties agree that the existing language in Article 6(h) be applied to all bargaining unit members without regard to the date of hire.**

ISSUE 9: BOOT ALLOWANCE

Article 18(o) of the current agreement states:

Safety Shoes/Clothing. All employees designated by the City shall be required to wear approved safety-toed shoes/boots and specified shirts, jackets and bibs at all time. To help defray the cost of said shoes and clothing, the City will provide to each employee required to wear said safety shoes and clothing a clothing allowance in the amount of \$375.00 per fiscal year. If future State or Federal regulations require the employer (City) to purchase compliant, flame retardant, clothing for the employees covered by this agreement, then this provision shall become null and void.

The City will reimburse Electric Custodian up to 25% of the cost of purchasing safety shoe footwear upon evidence of the purchase of qualifying footwear. This will be allowed once each fiscal year.

The parties informed me that OSHA currently requires the City to provide flame retardant clothing bringing into effect the null and void provision in the first paragraph. The City has proposed to modify this provision to provide a boot and clothing allowance of \$200 every other year. The Union proposes that the provision state that employees shall receive \$300 per fiscal year to help defray the cost of required safety shoes/boots. Because of exposure to electricity bargaining unit members must purchase boots that protect against foot injuries from falling heavy objects but do not contain metal that would conduct electricity. This may require the purchase of boots designed for winter wear, boots designed to be worn during warm seasons, and climbing boots. According to the Union a pair of boots of this nature can range in price from \$250 to \$350. The Union's proposal appears closer to the actual cost of this required safety footwear. **Accordingly, I recommend that the parties adopt the Union's proposal to provide a boot allowance of \$300 per fiscal year.**

ISSUE 10: STANDBY TIME

The City proposes to change the procedure for situations that require an urgent or emergency response outside of normal hours. The City proposes to designate one Journeyman Lineman for a period of one week on a rotating basis to be responsible for being on standby if needed. The City proposes to provide one hour compensation per regular work day, and two hours per non-scheduled work day that would add up to 9 hours of straight-time compensation per week. The Union opposes the proposal as unnecessary and unduly burdensome on the designated employee's life outside of work. Because of the nature of the work a single Journeyman Lineman never goes out alone. Under the present system one employee is designated to receive a first call on a two week rotating basis and if that employee is not reached another employee is contacted. The Union claims that the current system works adequately and that coverage is provided. The Union says that the Company's proposal would mean that the designated employee could not make any plans or have an alcoholic beverage with dinner. Although the employee would receive additional compensation the Union has concluded that the restriction on free time is more important than the offered compensation.

The City did not assert during its presentation that the current system does not provide adequate coverage or provide any statistical information when coverage was unavailable. In a situation like that a Fact Finder is reluctant to recommend a contractual change unless there is a demonstration that there is a problem in need of a solution. It is apparent to me that members of this bargaining unit are responsible and highly trained professionals who appreciate the absolutely critical role they have in responding outside of normal working hours to handle urgent or emergency situations. Although the City has in my view not made the showing that the proposed language is necessary, it would not be unreasonable to include language in the collective bargaining agreement that more formally acknowledges the responsibility of bargaining unit members to make themselves available. **I recommend that the City withdraw its proposal to designate a single employee to be responsible for responding to urgent or emergency situations on a rotating basis. I recommend that the parties incorporate language into the agreement that acknowledges that bargaining unit members have a contractual responsibility to provide coverage in such situations.**

In closing I would like to express my thanks for the professional manner in which the parties have advocated their positions. It is my hope that these recommendations will be of assistance.

SUMMARY OF RECOMMENDATIONS

ISSUE 1 – WAGES. I recommend that employees receive a 3% wage increase on July 1 2017, July 1, 2018, and July 1, 2019 to be implemented in conformity with Public Act 54 concerning retroactivity.

ISSUE 2 – GRIEVANCE PROCEDURE. I recommend that the parties adopt the City's proposal that the time limit for filing a written grievance be expressed in calendar, rather than working, days.

ISSUE 3 – BREAK PERIODS. I recommend that the agreement specify that employees are entitled to two 15-minute break periods. I do not recommend that employees be required to take breaks at the job site.

ISSUE 4 – CALL BACK PAY. I recommend that the call-back provisions remain unchanged except if it occurs between the hours of 12:00 a.m. and 7:30 a.m. when the employee would be entitled to a minimum of three hours at time and one-half.

ISSUE 5 – REST PERIODS. I do not recommend adoption of the Union's proposal that a 10 hour rest period be afforded whenever an emergency call is completed between 12:00 a.m. and 7:30 a.m. With one modification, I recommend the adoption of the Union's proposal that employees who have worked 16 or more continuous hours in a 24 hour be allowed, at the employee's option, a rest period of 10 hours before returning to work. The modification is the addition of the word "continuous." Pay shall be granted for the hours of regular working schedule not worked when the rest period extends into the employee's next regular work schedule.

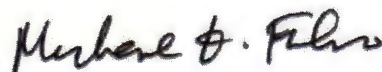
ISSUE 6 – PAID TIME OFF. I recommend that no changes be made in contractual provisions concerning Paid Time Off (PTO).

ISSUE 7 – SICK LEAVE. I recommend that no changes be made in contractual provisions concerning sick time.

ISSUE 8 – FUNERAL LEAVE. I recommend that all employees be afforded four funeral leave days for a death in the immediate family without reduction from the employee's sick bank or PTO bank.

ISSUE 9 – BOOT ALLOWANCE. I recommend that employees be provided a boot allowance of \$350.00 per fiscal year.

ISSUE 10 – STANDBY TIME. I recommend that no changes be made to require an employee to be on standby status on a rotating basis.



MICHEAL J. FALVO

Dated: January 5, 2018