MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

BUREAU OF EMPLOYMENT RELATIONS

PETITIONING PARTY:

Hurley Medical Center

-and-

RESPONDING PARTY:

Registered Nurses & Registered Pharmacists of Hurley Medical Center

MERC CASE NO.: L16 A-0044

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
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ADVOCATES
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1. INTRODUCTION AND BACKGROUND

The Petition in this matter was filed on July 28, 2017, by Hurley Medical Center (HMC), one of only nine Trauma I hospitals in the State of Michigan and the only such hospital north of Detroit. The bargaining unit consists of approximately 1,000 non-supervisory RNs and 10 full and part-time pharmacists. HMC was founded in 1908 and is a 443-bed public non-profit teaching medical center located primarily in Flint, Michigan. Hurley has at present approximately 20,000 inpatients per year and approximately 80,000 annual emergency room cases. The Hospital provides significant dollars each year in uncompensated care servicing the health care needs of a growing number of uninsured and underinsured members in the greater Flint community. Although a public hospital it does not receive any tax revenue from the city or county. The hospital maintains a burn unit, neonatal intensive care unit, pediatric intensive care unit, and pediatric emergency department. As an indication of its leadership role in clinical care and its renowned ER Department, the Hospital conducts training for various branches of the U.S. Military Services in order for those armed services to carry out their medical missions on the battlefield. The Hospital has approximately 2,500 employees and is one of the largest and most enduring employers in Genesee County.

The parties (the Union and its predecessors) have had a collective bargaining agreement since the late 60s with the current collective bargaining having expired on June 30, 2016. Bargaining for a successor Agreement commenced in May 2016, followed and interspersed with approximately 12 mediation sessions which resulted in tentative agreements being reached on several issues. The issues that remain for fact-finding in this Report are both non-economic and economic.

2. STATUTORY CRITERIA

There are no statutory criteria established for fact finding matters. However, most Fact Finders adopt the guidelines set forth in Section 9 of Act 312 which applies to compulsory arbitration for public safety (police and fire) employees. The specific criteria in Act 312 which are relevant and applicable in this case are as follows:

(b) The lawful authority of the employer.

…

(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, and 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.

…

(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.

MCLA 423.239.

3. STIPULATIONS AND PRELIMINARY RULINGS

The parties have reached agreement on several issues and where such issues are not in conflict with the issues remaining for resolution in this fact finding, they are bound to the tentative agreements that they have reached.

4. COMPARABLES

The parties' internal and external comparables submitted at the hearing are discussed throughout the Report.

5. ISSUES BEFORE THE FACT FINDER

The analysis, conclusions and recommendations set forth below are based upon 58 exhibits that the Union has introduced and have been admitted and 38 exhibits which the Employer has introduced and have been admitted, as well as the recorded testimony of 3-1/2 days of hearings. The issues considered below are based upon competent material and substantial evidence adduced by the parties and are considered in the order in which they were presented at the hearing.

A. Issue 1 -- Union Representation – Article 6

The current CBA provides that the bargaining chairperson and the PRR chairperson will be granted full-time release time from their home department equal to 1.8 FTE to handle union business. In practice this has evolved into 2.0 FTEs (80 hours a week). The Union proposal is to substitute the Organization President for the PRR chairperson and to grant to each one of them 1.0 FTE hours to handle union business. The Union then proposes to remit or reimburse the employer for .1 in wage earnings for each person per pay period. The purpose of such a proposal from the Union's perspective is to enhance the employee's wages for purposes of any benefit based upon wages such as overtime and pension. The Employer proposal is to continue to release the two Union officials equal to 1.8 FTE to handle union business between the two parties <u>if paid for by the Union</u>. The Employer would then pay up to 16 hours per week combined for the release time and further any release time paid by the medical center would be mutually agreed upon in advance by the Union and Manager prior to the release time taking place. In addition, the Employer proposal is that paid release time could be used in four (4) or eight (8) hour blocks as mutually agreed upon and at no time can any unused paid time allotted per week be banked to use at a later date/time.

The evidence established that the Union spends more than full time of its two representatives attending to matters initiated both by its members as well as by managers for the Hospital. In addition, these representatives are compensated additional time per month by the Union in order for those two representatives to satisfactorily complete their obligations. There is substantial evidence in the record that the Union carefully tracks the time it spends on Union-management matters and there is no evidence that the time expended is being misused or abused.

The Union has a point that since the Union Representatives are serving a mutually beneficial purpose (management often initiates discussion with the two Union officials for help/guidance), they should be compensated like any other employee working full time. However, since this contract has been in existence for nearly 50 years, it strains credulity to believe that there are so many contract violations/issues/concerns occurring that it requires two full time union reps working over 40 hours a week, 52 weeks a year to properly administer the CBA. On the other hand, the Employer's proposal to pay only up to 16 hours per week for both representatives is a drastic departure from the past precedent, at least the past two contracts, and is at considerable variance from the testimony of the Union as to the time devoted to contract administration.

The Union offered logs of its representatives' activities. On the first shift for 2017, 434 matters involved Union representation. Union Ex. 41. For 2016-2017, the Representatives handled 387 matters where Union representation was sought on the second and third shifts. Union Ex. 42. Since 2014, there were 2,514 calls on days for Union representatives routed through HR, not many resulting in grievances. Second and third shift, holidays and weekend calls are routed through Nursing. Union Ex. 40. Actual grievances total 300 to 400 per year. Tr. 98. Additionally, the Union represented that this Exhibit disclosed 260 staffing grievances out of 361 total grievances (72%).

My experience across many employers informs me these numbers for a collective bargaining relationship that is 50 years old are, to say the least, considerably above the norm. A substantial number of the grievances involve staffing issues which suggests the Hospital either isn't properly administering/addressing this issue or, is relying on the Union to administer/enforce the CBA or this is a "catch all" complaint born out of the frustrations of providing quality nursing care.

The AFSCME 1603 CBA had the same number (2) of full time paid Union representatives, but the newly ratified CBA reduced the number to one full time paid representative. Four out of the ten HMC Unions have some release time for their President; the other 6 do not have paid Union representatives but rather allow for Union representation on an as needed basis.

In short, the RN CBA is out of step with the other Hospital Unions including AFSCME 1603 which has 850 members and many more classifications.

Recommendation – Issue 1

I recommend that the current CBA language remain as is until July 1, 2020 at which time the number be reduced to one paid full time representative (40 hours a week) to be decided as the Union chooses. This allows the parties over 2 years to address the excessive amount of time being devoted to policing the CBA.[1] I pair this recommendation with the creation of the Committee outlined below in Staffing Ratio, Article 25.

B. Issue 2 - Jury Duty, Court Time – Article 19.

The Union proposes to add the following provisions to Article 19:

> Third shift employees who actually report to court for jury duty will be released from work with pay, if scheduled the night immediately following (or the night of) jury duty service. Employees will receive this jury duty supplement, except in Paragraphs 1 and 2 below:
>
> 1. If the court excuses an employee from reporting for jury duty, before they report to court, the employee is expected to report to work as scheduled, unless such day is a regularly scheduled day off or previously approved benefit time was granted outside of this provision.
>
> 2. Employee is reporting to jury duty and subsequently being released within the first four (4) hours after reporting to jury duty, and if there are at least six (6) hours remaining in their work shift, shall either: report to work (with reasonable travel and change time granted) or take the remainder of the shift off with benefit time or unpaid.

The Employer's proposal is:

1. If the court excuses an employee for reporting for jury duty, before they report to court, the employee is expected to report to work that day as scheduled, unless such day is a regularly scheduled day off or previously approved benefit time was granted outside of this provision.

2. Employees scheduled to work on the day they perform jury duty, and subsequently relieved of their jury duty from court within the first four (4) hours of their shift, must immediately contact their manager or designee to determine whether they are to return to work for the remainder of their shift. If the employee is not required to report to work for the remainder of his/her shift, they may either use vacation or personal time for the remainder of the balance of their shift, or take it unpaid.

3. Third shift employees who actually report to court for jury duty for more than four (4) hours, will be released the night immediately following (night of) jury duty service.

[1] The Union would continue to have 15 seniority bargaining unit members and 10 alternatives entitled to reasonable release time off with pay to investigate/process grievances. Proper training of these representatives would compensate for the reduction in one full time paid rep.

Both of these provisions offered by the Employer and the Union are in effort to further explicate situations which can arise with respect to jury duty that are not presently addressed by the CBA. The differences between the two competing proposals are minor. It is a recognized fact that court calendars often change and thus employees are not infrequently informed prior to reporting for jury duty that they are excused or after reporting for jury duty are excused for one reason or another. Thus, it makes sense for an employer who is providing a supplement to jury duty pay, as presently exists under the CBA, to ensure that if an employee is released, that they report back to work if their services can reasonably be used in the time remaining on their regular scheduled shift. Since the present contract doesn't address third shift employees, it makes sense to provide for that eventuality and provide for the situation where an employee could be released from jury duty while there are still substantial hours remaining in their scheduled shift. I recommend adoption of the Union's proposed language with one exception, that being the Employer's language that if an employee is relieved of jury duty within the first four hours, they are to contact their manager to determine whether they are to return for the remainder of their shift. I do not recommend the Union's additional proposal that there be at least six hours remaining in their work shift for the employee to be required to report back to work since that is somewhat difficult to administer and it is just more efficient to leave that determination up to an employer representative. Melding the parties' two respective proposals together, I recommend the following language.

Recommendation -- Issue 2.

Employees will receive the jury duty supplement except as in Paragraphs 1 and 2 below:

1. If the court excuses an employee from reporting for jury duty before they report to court, the employee is expected to report to work as scheduled unless such day is a regularly scheduled day off or previously approved benefit time was granted outside of this provision.

2. Employees reporting to jury duty and subsequently being released within the first four hours after reporting to jury duty must immediately contact their manager or designee to determine whether they are to return to work for the remainder of their shift. If the employee is not required to report for work for the remainder of his/her shift, they may either use vacation or personal time for the remainder of the balance of their shift or take it unpaid.

Third shift employees who actually report to court for jury duty will be released from work with pay, if scheduled the night immediately following (night of) jury duty service.

C. Issue 3 -- Wages

Far and away, the biggest issues dividing the parties are the wages and length of contract. The Employer has proposed a three year contract commencing on July 1, 2016 and ending on June 30, 2019, a little over one year from the date this Report will issue. The Union has proposed a five year agreement starting on July 1, 2016 and ending on June 30, 2021. In discussions with the parties during the hearing and before the commencement of the hearing, I have made no secret of the fact that longer term contracts benefit both parties as well as the public. That is particularly true in this case since the parties have had extensive negotiations and mediation traversing more than a year and a half before the first fact finding hearing.

The HMC proposed wage offer is for three year collective bargaining agreement for the following salary adjustments:

2016	1% lump sum ratification bonus for hours worked between 7/1/16 to 6/30/17
2017	1.25% across the board increase
2018	1.25% across the board increase

The Union's proposal is as follows:

2016-2018	1.5% bonus paid on all hours worked from 7/1/16 to the date of ratification.
2018	(Effective 7/1/18) 3.5% across the board increase
2019	2% across the board increase

2020 2% increase across the board

The Hospital's ability to pay is not an issue. Hospital CFO Wisniewski's testimony was forthright and not rebutted. The Hospital had in his judgment sufficient cash on hand to handle the temporary ups and downs of the revenue strain; it plans no major capital investment in the foreseeable future, and he revealed that the Hospital's bond rating is one grade above investment grade with one rating agency and one grade below with another agency. While the pension plan is underfunded he expressed no great alarm at that – likely because many other employers are in worse shape. However, simply because the Hospital is fiscally prudent is not an invitation "to give the store away." That sound financial footing ensures the present and future employees' economic security.

For its part on salaries, the Employer relies on its internal comparables and on a "market consensus" it derived from melding together three state-wide independent surveys. Those 2016 surveys were authored by the Michigan Hospital Association, Sullivan Cotter and Compdata. The Employer also cited Genesys and McLaren as comparables. The Union, for its part, relies on the increases given to the Nurse Managers (U), and has also offered the comparables of McLaren Hospital and Genesys Hospital both in Flint, as well as selected hospitals outside of the area such as Sparrow Hospital (for the pharmacists), the U of M Hospital in Ann Arbor and Crittenton Hospital in Rochester. The Union's chosen hospital comparables are based on the fact that all five are Trauma hospitals; the U of M and Sparrow, along with Hurley being Trauma I facilities, McLaren being Trauma II, and Crittenton and Genesys being Trauma III. The Union Comparison Chart (U 18) reveals the following top wage rates (amended to show wage rates for length of CBA for McLaren and Genesys).

	HMC (Trauma I)	U of M HNA (Trauma I)	Sparrow HNA (Trauma I)	Crittenton (Trauma III)	McLaren (Trauma II)	Genesys (Trauma III)
Wages (15-yr nurse)	$79,664	$100,174	$87,880	$85,384	$83,970	$80,995
2016	$38.30				$39.78	$38.56
2017		$47.68	$42.25	$41.05	$40.37	$38.94
2018					$41.18	$39.33
2019					$42.01	$40.12

I think a fair assessment of the Union's chart is that the most comparable hospitals are McLaren and Genesys for the following reasons. They occupy the same patient service and recruitment area of Flint and the Greater Genesee County area. The U of M Hospital is a world class facility, often a destination Hospital for acute medical issues, too far away to be comparable, and in addition is in a high income county (Washtenaw area). Sparrow Hospital is similarly not in the same patient service or recruitment area as Flint, and is a larger hospital with two Lansing campuses, hospitals in 3 other cities and the largest mid-Michigan hospital system. It also should be noted that even on the Union's chart, Hurley's total wage and benefit package for a 15-year nurse is $1,700 higher than Sparrow's, even though Sparrow has a much higher 15-year nurse wage rate. Crittenton is similarly not in the same geographical or recruitment area as Hurley, being located in Rochester.

McLaren operates 14 hospitals/medical care facilities in Michigan with 26,000 employees and 3 billion in 2014 revenues. Genesys is a part of the Ascension health care system, the nation's largest non-profit healthcare system and largest Catholic Health System in the world. While the economic wherewithal of these two hospitals is significantly greater than HMC, competition is local and HMC must compete with these two hospitals to hire and retain RN talent. The economic strength and backbone of these two competitors explain in part why their RN salaries are significantly higher than any of the three surveys used by HMC. The $32.08 McLaren start rate is more than $6 higher than any other average minimum rate in any hospital size of the three surveys ($26.09, $25.96 and $25.98). The top McLaren rate of $39.78 is $2.14 to $2.68 an hour higher than the individual survey maximums ($37.43, $37.10 and $37.64).

The Employer offered the following mid-point (Step 5) and top of the scale rates for HMC and its two principal competitors.

	Hurley	Genesys	McLaren
Base rate 2017	$36.09[2]	$33.83	$36.47
Top of scale	(8 years) $39.11	(15 years) $38.94	(9 years) $39.78

The Employer's in-house survey based upon the Sullivan Cotter survey, the Comp Data Survey and the Michigan Hospital Association (MHA) survey revealed the following. The survey was derived by taking the weighted average of the three surveys (Comp Data, Sullivan Cotter and MHA) to arrive at a market consensus. The data was then divided into the 25th percentile, 50th percentile, and the 75th percentile, along with the current average minimum and current average maximum hourly rates. The upshot of the internal survey showed that the GDN at Hurley at the minimum was $5.67 above the market consensus that the hospital derived from the three surveys. Further, at the fourth year or the 50th percentile, the hospital survey showed Hurley ahead of the market consensus by $3.82 an hour and at the maximum salary level, Hurley was ahead of the consensus by $1.24 an hour.

If one extracts the highest salaries from each individual survey, the starting rate for a general duty nurse at Hurley is at $31.35 per hour while the highest average minimum of all three surveys is Compdata at $26.69. At the midpoint or 50th percentile, the RN at Hurley is at $35.22 and the highest hospital survey at that level is $32.68, from the MHA survey at the 50th percentile. Finally, the maximum RN rate for Hurley is $38.30, the highest comparable is

[2] This is the GDN/BSN rate after applying the employer offer of 1.25% on 7/1/17. The GDN rates would be $35.76 and $38.78.

$37.43, which is the Compdata survey at the average maximum. If we use HMC Administrator Brophy's testimony (with regard to Nurse Manager's salaries), the findings are similar. Thus from her favored Flint/Tri-Cities area breakout the average minimum is $26.73 (vs. HMC at $31.35); the average midpoint is $32.12 (vs. HMC at $35.32); the average maximum is $37.55) vs. HMC at $38.36).

I regard the surveys as background and a broad framework for determining a fair and competitive wage rate for Hurley RNs (pharmacists are considered below). The survey, however, has limitations. It is based on 2016 data, 2 years out of date and 5 by the end of the proposed 5-year CBA here. More significantly it doesn't specifically address Hurley's two main competitors, Genesys and McLaren, both with higher top of the scale wages (Genesys 16¢ and McLaren $1.59). Further, it is not clearly defined what items the Hospitals include in their definition of wages (e.g., bonuses, longevity, wage premiums); nor what the surveys do with the raw data proffered by the individual hospitals.

Wage Analysis

Wage analysis starts with considering broad factors that influence wages and narrowing down to more specific relevant data that drives fair, competitive wages for the hospital. The parties have prepared total compensation charts for Hurley, Genesys and McLaren. Both charts total all of the fringe benefits and wages to arrive at a total compensation amount for the 2017-2018 year. The similarity ends there. The Union chart discloses the total compensation package of $100,175.66 and a McLaren total compensation of $110,445.30, a difference of $10,000 less at Hurley. The Employer chart compares Hurley to both Genesys and McLaren and reveals a total compensation package at Hurley at Step 5 of $98,625.34 versus Genesys total package of $89,181.27 and McLaren's of $92,894.33. The Employer's chart for these numbers are measured at Step 5 of the three wage scales. At the top of the scale of 15 years (8 for Hurley; 15 for

Genesys and 9 for McLaren), the Employer chart shows a Hurley total compensation package of $112,640.15 versus Genesys of $106,285.31 and McLaren's of $110,650.70.

While these charts are useful for broader perspective, they too have a number of shortcomings. First, the Union chart is predicated on a seven year rate and only compares Hurley and McLaren. The Employer chart is predicated on Step 5 (the midpoint) and eight years or top of the scale at Hurley, Genesys and McLaren. There are also assumptions that make the charts non-comparable. For example, The Union chart discloses a difference between Hurley and McLaren of approximately $800 a year by assuming that the McLaren nurses work an extra 96 hours of weekend work when, in fact, McLaren only schedules weekend work a maximum of once per month or 208 hours annually. The Union chart seeks to equalize the McLaren weekend differential by assuming that McLaren would work an additional 208 hours of weekend work as Hurley required. The difference in compensation per year is nearly $4,500 more at McLaren. The disparity is not a fair comparison since it may well be that the nurses at McLaren prefer to have the time off as opposed to working, making the comparison unreliable or at least marginal. Apples and oranges.

The bereavement comparison is similarly imprecise since the number of relatives qualifying for bereavement leave at Hurley is broader than the FMLA eligible relatives covered for the maximum leave at McLaren.

Finally, the retention bonus of $3,500 chalked up to McLaren perhaps best illustrates the incomparability. The Union chart relates $3,500 for the retention bonus at McLaren and zero for Hurley since the longevity bonus does not start until 10 years of service at Hurley. However, the longevity bonus at Hurley begins at 2% for 10 years of service and tops out at 14% for 41 years of service and over. At 20 years of service at Hurley, the longevity pay is 6% which for 2017 would amount to $4,840. At the top of the scale, the amount is $11,293. When the four benefits that are relatively incomparable are removed (extra work on weekend, weekend differential, bereavement leave and retention bonus), the total compensation package at McLaren becomes $96,696.98 versus a total package at Hurley of $95,162.78, a much closer comparison than cited by the parties.

The Employer total compensation comparison measures different points in the salary schedule (Step 5 and the top of the scale at both Genesys and McLaren) whereas the Union measured just Step 8 at McLaren and Hurley. The Employer comparison shows a fairly large difference between the total compensation at Hurley at Step 5 and McLaren ($98,000 versus $92,000 --- a 6% difference) and at the top of the scale, less than a 2% difference (Hurley at $112,000 and McLaren at $110,000). Moreover, the retirement plan which was incomplete in the Union's survey (showing only 5/10 of a percent employer contribution to the HRA), the Employer chart lists the employer cost for maintaining the pension plan. The benefit to be derived by Hurley employees in the MERS benefit plan is significantly larger than whatever the HRA plans would derive at Genesys and McLaren.

In short, the comparison of total compensation is a broad gauge of the comparative economic packages at the two principal competitor hospitals, but of marginal help in resolving the specific issues between the parties in this case. The reality is a nurse is more interested in/attracted to wages, health insurance, vacation, and perhaps sick time and retirement benefits.

One other broad index that serves as somewhat of a benchmark for any wage adjustments is the U.S. Bureau of Labor Statistics Consumer Price Index. The latest index for December 2017 compared to December 2016 for the Ann Arbor, Detroit, Flint, metropolitan area shows an increase of 2.7%. The National All Cities Index, whether urban or wage earner, for March 2018 (vs. March 2017) showed a 2.4% increase. The historical rate for the COL going back at least 10 years has hovered around 2%, a remarkably stable and acknowledged to be very moderate cost of living increase. Given the current state of the economy and the historically low unemployment rate and rising purchasing power, it is not likely that we will see, in the near future, the cost of living on an annual basis being below 2%. Several economists see a gradual rise in the cost of living over the next couple of years. While the cost of living index is a well-recognized benchmark for the depreciating value of wages, it is nevertheless more applicable at lower wage levels since cost of living measures the basic services and commodities a consumer consumes. Thus, in this case with wage rates in the range of $80,000, it is not as relevant as would otherwise be the case.

Another data point that is relevant concerns the wages and benefits extended to other employees at the Hospital, bargaining unit and non-bargaining unit as well. A review of the non-bargaining increases over the last several years and the nurse managers and the RNs and pharmacists discloses the following.

	Non-bargaining unit	**Nurse Manager Union**	**RNs and Pharmacists**
2010	2%	0%	3%
July 2011	0%	3%	3%
July 2012	0%	1%	3%
July 2013	0%	Scale adjusted and max step increase 1.8%	Adjusted wages and steps to market with average increase of 1.4% and increase across steps range from 0 to 2.8%
November 2013	1%		
July 2014		2%	2%
November 2014	2%		
July 2015		2%	2%
November 2015	3%		
July 2016		Adjusted wages to market. Average increase 4.45%. Increases across steps ranged from 0% to 6.8%.	In negotiations.
November 2016	3.5%		
July 2017		1.25%	In negotiations.
November 2017	2%		
July 2018		1%	In negotiations.

A new 4-year CBA reached with AFSCME Local 1603 which covers a wide variety of approximately 850 hospital employees contained a one-time, off scale, lump sum payment of $400 in July 2018, a 1% increase on all base wages upon ratification and another $400 off scale payment in July of 2019. That tentative agreement also contains a provision for a wage study and reclassification which will be driven by market rates in the most recent study in which Hurley was a participant. The rates in that wage schedule for a level 101 start at $9.84 an hour before the above adjustments and top out after 21 years at $35.05. While these wage adjustments are very modest, it remains to be seen what the market rate adjustments will yield. Moreover, as indicated above supply and demand and the competition for RNs drive their wages. In that regard, the Hospital had been quite successful in keeping turnover in check and in recruiting RNs.[3]

While HMC uses its consensus survey to help determine fair wage rates, realistically factors such as hiring need, turnover, supply and demand, and adjustments dictated by market conditions play a part. Since 2010 the record evidence for 6 years shows annual RN increases of 2% or 3%. Non-bargaining unit increases since November 2014 to November 2017 were 2%, 3%, 3.5%, and 2%. The Nurse Manager Union increases were identical to the RNs for 2014 and 2015 (2%) but in 2016 were market adjusted with an average increase of 4.45% plus steps increases of 0 to 6.8%.

Perhaps the single, most important factor to consider, assuming as I do that the Hospital has the ability to pay, and as the record establishes, is the competitive presence of McLaren. The data, whether union or employer, shows that the beginning levels of the salary schedule in June 2016, a Hurley nurse, general duty nurse, started at $31.35 and a McLaren nurse at $32.08, not a

[3] No doubt HMC's high starting wage for RNs (nearly $6 an hour above the Hospital's consensus survey) has served it well. However, competitor McLaren notably is 73¢ an hour higher, while Genesys is 11¢ an hour lower.

significant difference (73¢ p/h). At the top of the scale, 7 years or Step 8 at Hurley, a general duty nurse topped out at $38.30 whereas a McLaren nurse at Level 9 years, topped out at $39.78, a $1.48 (3.8%) difference higher at McLaren. At the end of the McLaren contract in September 2020 (a 5-year agreement), a McLaren general duty nurse will start at $33.88 and top out at $42.01. In order for the Hurley nurses to keep the same $1.48 spread at the top of the scale, Hurley general duty nurses would need to be at $40.53[4] instead of its current $38.30.

Given all of these factors, including the historical increases the RNs have typically bargained, competitive factors, as well as the cost of living increases over the last few years, I recommend that the salaries be as follows.

<u>Issue 3 – Recommendation – RN Salaries</u>

2016	2.25 ratification bonus for all RN's employed at ratification date on all hours worked 7/1/16 to 6/30/18.
7/1/18	2.5% ATB
2019	2% ATB
2020	2% ATB

Such a recommendation will bring the top rate at Hurley to $40.95 an hour on 7/1/20, which is less than the $42.01 top rate at McLaren (effective in October 2019, the beginning of the last year of its 5-year agreement).

The above wage recommendations are consistent with the past 6 years for RNs and certainly no more than the adjustments for Nurse Managers (the RN's supervisors) and non-union employees. Moreover, the total recommended percentage salary schedule increase is 6.75% (8.75% with the bonus) over 5 years, a quite modest annual increase of 1.75% (including bonus) per year and a very modest 1.35% annual increase to the salary schedule. While modest, it needs

[4] The below recommendation puts the top RN rate at $40.95 but the McLaren CBA is up for renewal nine months earlier on 10-1-20.

mentioning that RNs moving through the 8-year salary schedule receive another 3% average increase for each step increase; this affects 464 RNs, nearly 1/2 the bargaining unit.

In order to avoid any legal issues with respect to retroactivity, the above recommendation adds the Employer's 2016 bonus of 1% to its 1.25 across the board salary adjustment in 2017 together to provide for a 2.25% bonus for hours worked from 7/1/16 through 6/30/18. Due to the passage of time, the Hospital benefits in two ways with the above recommended salaries as of 7/1/18. First, it avoids adjustments to the salary schedule on 7/1/16 and 7/1/17 which presumably would be in the 2% range (the non-bargaining unit employees got 3.5% increase in November of 2016 and a 2% increase in November of 2017; the Nurse Managers received market adjusted wages in July of 2016 of approximately 4.45% and another 1.25% in July of 2017.) The savings to the Hospital is considerable assuming an average RN wage of $75,000 and step increases of approximately 3% for those nurses within steps, the savings would be approximately 5% for 2016 and another 5% for 2017. In addition, by avoiding two increases to the wage schedule, the Hospital avoids all of the roll up based on the hourly wage (i.e. overtime, holidays, vacations, sick leave, call-ins, weekend premium, shift differential). While there is not precise information in the record to establish those savings given the information which is there, they are not insubstantial.

PHARMACIST SALARIES

With respect to the pharmacists, the testimony was that in 2018, HMC had four less FTE pharmacists than in 2008 while the workload has increased. A long term pharmacist (30 years) testified that they are stretched very thin and that they perform their various professional duties in the pharmacy and throughout the Hospital where mistakes/errors have grave consequences. Reviewing each of the three surveys relied upon by the Hospital, as was done above with respect to the RNs, it is evident that the pharmacists are somewhat on the low end at the top rate (two years). The top rate at HMC is $60.14 compared to the Hospital consensus of all three surveys at $61.39. The highest of the surveys are all above the HMC maximum rates with the Michigan Hospital Survey being $63.53, the Cotter Survey being $60.38 and the Compdata Survey being $61.93. As a side note only, it is noted that Sparrow Hospital pharmacists are at $68.72, very substantially above HMC and that their minimum rate at Sparrow is $60.55, actually greater than HMC's maximum rate of $60.14. For the reasons cited above, the Sparrow data is not particularly compelling, although I do not discount it to the same degree as the RN data since the Sparrow pharmacist rates were the only comparable specific hospital rates provided.

There are factors that compel a more substantial increase in the pharmacist salaries than for the RNs. First, under the expired contract, the pharmacists received no increases at the one and two year rates for all three years of the last collective bargaining agreement. Second, there was no refutation of the testimony that there are four less full-time pharmacists doing the same or greater amount of work than ten years ago. Based on the foregoing three factors, I recommend that the salary schedule for the pharmacists be as follows, including the addition of a third and fourth year step since it is going to be important for the Hospital to retain one pharmacist hired in 2015, the three hired in 2016, and the three hired in 2017. I recommend the following schedule be adopted effective July 1, 2018 and that the pharmacists also receive the increases recommended above for the RNs, including the ratification bonus and the increases for the final three years of the recommended contract.

<u>Issue 3 – Recommendation – Pharmacist Salaries</u>

	Pharmacists
One year	$58.83
Two years	$60.00
Three years	$61.00
Four years	$61.96

This recommendation will provide an incentive for the seven relatively new pharmacists to remain with the HMC and will make them competitive with the Hospital's survey data and will partially compensate for the loss for not having any wage increases for the past three years.[5]

D. Issue 4 – Length of Contract

The need for a five (5) year contract is evident. The parties have devoted two years to negotiating a successor agreement; a traditional 3 year agreement would expire in 13 or 14 months, whereas a 5-year agreement takes the parties to 6/30/21.

The McLaren CBA is 5 years; Genesys 4 years; HMC's Public Safety Officer (POLC) 5 years; AFSCME Local 1973 5 years; and the Nurse Managers Organization 4 years (wage reopener 1/1/19 based on market analysis). The Union, as well, has proposed a 5 year CBA. The one mitigating factor against a 5 year agreement is the uncertainty of the future status of hospital revenue. However, that is nearly always the case, and the next year's outlook (18-19) appears ok. Finally, the recommended wage increases are necessary for the Hospital to remain competitive and (for the most part) are prospective thus allowing for planning and will be revisited in 3 years. Perhaps, as significant is the certainty of not being in relatively ongoing negotiations with its potential disruptive effects on the parties and morale, and the certainty for the Hospital in the economic costs of the RN/PhN CBA for 3 future years.

Issue 4 – Recommendation – CBA Term

A 5-year CBA is recommended, effective 7/1/16 to 6/30/21.

[5] It is noted that even with the above recommendation, using HMC's survey data the RN salaries are above market while Pharmacists are at or below market. The market top rate consensus is $61.39 in 2016. The recommended top is $61.96 in 7/1/2018 is two years later and likely below market. Moreover, several selected data points in the 3 hospital surveys are higher (i.e., 63.53, 63.32, 62.72 - all 2016 data).

Issue 5 - ARTICLE 13.N - LONGEVITY

The Hospital has proposed eliminating the current longevity schedule which provides for longevity payments annually beginning at year 10 with an increasing percentage of straight time wages and hours commencing at 2% and topping out at 14% at years 41 and over. In its place, the Hospital is proposing a flat $3,500 longevity pay bonus beginning at year 11. The Hospital urges that since no other bargaining group in the Hospital receives longevity, the RN/Pharmacist unit should not either. There are other considerations. First, at least the AFSCME Local 1603 contract receives pay raises for employees through their 20th year. McLaren and Genesys have wage scales continuing beyond the seventh year; McLaren nine years and Genesys 15 years. McLaren offers an annual retention bonus of $3,500 with 7 years of service.[6]

The significant reduction in longevity proposed by HMC would have a substantial impact on senior nurses who receive no other increase on the salary schedule other than that negotiated at the top rate. The longevity schedule has been in existence for some number of years and adoption of the Hospital proposal would have a very negative impact on such senior nurses' compensation, let alone morale, let alone their mindset at ratification. A few examples suffice. There are approximately 108 full time RNs (not factoring in any part time employees eligible) with 20 years of service who are eligible to receive a 6% longevity bonus based on approximately $80,000 in straight time earnings. Such a payment amounts to $4,800 annually as opposed to the $3,500 being proposed by the Hospital. At 25 years, there are 68 full-time nurses eligible for an 8% bonus or $6,400 vs. the $3,500 proposed by the Hospital. At 30 years, 34 nurses are eligible for a 10% bonus or $8,000, more than double what the Hospital is proposing.

[6] Genesys pays a 2% longevity for RNs with 15 years of service (on a current longevity recipient) and 4% with 20 years of service on all paid hours up to 20.80.

At 35 years, 11 full-time RNs currently enjoy a $9,600 annual longevity bonus, nearly triple what the Hospital is proposing.

Such a proposal visited upon senior nurses in my opinion would do great harm to not only their morale, but the morale of other nurses as well, who may be sympathetic, or who themselves are looking forward to this significant benefit in future years. Finally, just as HMC's starting rate is competitive in Flint and very competitive state-wide, therefore positioning itself well in recruiting RNs, a strong longevity plan provides the incentive to retain RNs and keep turnover low. I strongly recommend no change in the longevity bonus plan currently in existence.

<u>Issue 5 – Recommendation - Longevity – Current Contract</u>

<u>Issue 6 - ARTICLE 16 – HOLIDAY PAY</u>

The Union seeks to provide for special holiday pay for working the Friday after Thanksgiving for part time employees. The Employer offered that benefit to part-time (status .9) employees only. This is a reasonable compromise and I recommend it.

<u>Issue 7 - ARTICLE 17 – LEAVES OF ABSENCE</u>

The parties have agreed on almost all of the Employer's proposed changes to sick leave and I recommend the Employer's language as quoted below.

A. Sick Time

1. Reduce the number of hours an employee must work to accumulate one sick day from 231 to 173.

2. Reduce the maximum number of sick days an employee can accumulate from unlimited to 27 days.

3. Permit a one-time cash out of sick days in excess of 27 days. A maximum of 10 days may be requested to be cashed out for those employees with 37 days or less in their sick bank. Employees with more than 37 sick days will be allowed to cash out a maximum of 25 days.

4. Employees who have accumulated more than three years of sick time will have the excess sick time converted to an illness bank, at their current rate of pay on the date of such conversion.

5. Employee must keep a minimum of five days in their sick bank.

6. Employees may use sick time in one-hour increments (as opposed to two-hours as provided in the expired CBA).

7. If an employee reports for duty, but discontinues working as a result of an illness, the employee must notify their supervisor and clock out. Time spent waiting or being seen for an illness will not be counted as work time for pay purposes.

8. Employees shall not report to work with communicable diseases.

In exchange for these significant changes in the sick leave Article, the Union has requested two minor changes which I recommend:

Point 9 - It is recommended that Point 9 be added to the above Employer proposal to read as follows: No employee shall receive discipline if said employee has any sick leave stored in his/her bank (up to 9 per fiscal year) and properly utilizes the sick time for the absence.

Point 10 – It is recommended Point 10 be added as follows (existing practice): Point 10 – sick time in the illness bank will not be counted in the final average compensation for all time accrued after January 1, 2014.

Issue 8 - ARTICLE 17.A.9.b. – Short Term Disability

With regard to Article 17.A.9.b, I recommend the Union's proposal to increase the short term disability benefit from $350/week to $500/week. Generally speaking, the short term disability benefit approximates about 60% of an employee's gross pay. Increasing this benefit to $500/week, which has been frozen for a considerable period of time, still brings it in far below 60% (about 35% for the mid wage rate RN).

Issue 9 - ARTICLE 17.A.9.f – S & A Leave – Pension Contributions

It is recommended that the current language be maintained that employees be allowed to contribute to the pension program for pension credits if permitted by the retirement plan. There is no harm to the employer's flexibility by maintaining the current language.

Issue 10 - ARTICLE 17.A.10 – Sick Leave Without Pay

I recommend that the parties agree to reduce the period of the leave following short term disability leave from 24 months to 18 months, a fair compromise to the reduction to 12 months proposed by the Employer.

Issue 11 - ARTICLE 17.B – Personal Days

I recommend that the Employer's proposal that personal days only be granted as long as 50% of the staff on the unit are not off on an approved leave and the Union's proposal to add additional personal days for part-time employees both be denied and that the current contract language remain as is.

Issue 11 - ARTICLE 17.D – Bereavement Leave

The parties have agreed to reduce the bereavement leave by two paid travel days with the employee still getting five bereavement days off, the other two days at the employee's option being paid by the use of their own accrued time. I also recommend that the Employer proposal that an employee must utilize their bereavement leave within seven days of either the death, the funeral or memorial service.

Issue 12 - ARTICLE 17.E – Emergency Leave

The Employer has proposed eliminating this benefit which allows an employee to use an emergency day to accompany a "family member to the hospital with a life-threatening condition." The Union seeks to change "life threatening" condition to "serious condition." I recommend the retention of the current contract language due to the lack of evidence to support such changes.

Issue 13 - ARTICLE 17.F – FMLA Leave

I see no need to change the language (as the Union proposed) in the expired agreement since the Employer agrees to comply with all state and federal laws regarding such leave.

Issue 14 - ARTICLE 17.J – Organization Business Leave

I recommend that this provision remain as is with the exception that the Hospital's proposal that it be given at least 30 days' notice prior to any organizational meeting be part of the new CBA.

Issue 15 - ARTICLE 21.E – Retiree Health Care

The Employer has proposed to require retirees to sign up for Medicare Parts A & B at their expense. The Union is seeking to increase the maximum retiree supplement from $450 to $650 and post-Medicare payments to $440 from $250 per month. AFSCME Local 2056 has a pre-Medicare supplement of $650. McLaren employees hired prior to 1/1/2005 pay 50% of the pre-Medicare premium and Genesys pays an annual supplement of $2,000 to $6,000 for retirement dates after 7/1/95 depending on single or family coverage.[7]

[7] Effective 1/1/2021 RN Retiree Health Care is eliminated. The CBA expires 5/9/20!

For post-retirement, McLaren offers its Retiree Health Insurance Plan with the RN paying the full cost. Genesys pays the full cost for post 7/1/95 retirees at the level of costs in effect 1/1/97.

I recommend both the Employer and Union proposals with RNs being required to sign up for Medicare Parts A and B and the pre-retirement benefit increased to $650 and the post-retirement benefit increased to $440 per month.

Issue 16 - ARTICLE 25 – Staffing and Patient Ratios

Rather late in the negotiation process, the Union submitted what the Employer deemed "a complicated proposal that would significantly modify Article 25." The Union's objective with such a proposal was to address three concerns, viz:

1. Allow RNs working less than full time to be eligible for full time positions rather than such employees being scheduled for hours below full time but actually working additional hours equal to that worked by a full time employee.
2. Provide better patient care for what the Union currently says is a "huge problem with understaffing." It points out that in its Ex. 40 in 2017 260 out of 361 total grievances were related to staffing.
3. Eliminate the significant reliance the Hospital has placed on agency employees costing up to $83 an hour.

While the Employer styles the Union's proposal as "unworkable and completely unreasonable," there is ample evidence in the record to warrant consideration of addressing the foregoing three concerns. Over 70% of the grievances in 2017 concerned staffing issues. At this stage, there has been inadequate discussion among the parties to address this issue, the record is not sufficient for me to address it and therefore I recommend the following:

a. A committee be established after ratification of the contract to review and study this matter and make recommendations within one year or less after it commences its work.

b. The committee be composed of no more than 6 people, better yet 4, to be chosen as follows. The Union and the Employer will each select an employee from its ranks (2 if a 6-member committee) and will also select a member from the Employer's ranks by the Union and Union's ranks by the Employer. I suspect this would be a far better use of each party's considerable skills rather than having to file and process and resolve multiple grievances on a common issue burdening both parties.

<u>Issue 17 - ARTICLE 28 – Overtime – Agency/Temporary Employees</u>

With regard to agency/temporary employees, I recommend adoption of the Employer's language defining the circumstances under which such employees may be used. The Hospital currently has the right under Article 28A.6 to use agency employees. Temporary employees would be employees who are not employed through an employment agency and may be, for example, retired RNs or RNs in the marketplace who make themselves available for work opportunities on their schedule. Those employees would presumably cost significantly less than agency employees and would not be entitled to any fringe benefits and thus are a good economical resource for the Employer as well as benefitting the Union by avoiding the use of mandatory overtime. Language the Employer proposed and that I recommend is as follows:

> C. Agency/Temporary Employees. The parties agree that the Medical Center may utilize agency/temporary employees for the following reasons:
>
> 1. During the leave of absence of a permanent employee. (This section is not to be utilized to avoid overtime for incidental personal days.)

2. To allow for vacation/sick leave coverage. (This section is not to be utilized to avoid overtime for incidental vacation days, i.e., three (3) days or less.)

3. While actively recruiting to fill a permanent vacancy.

4. During short periods of time to perform emergency work or additional, extra work in a department.

5. To backfill vacancies created by temporary reassignments.

6. Other specific situations as mutually agreed upon by the parties.

Aside from its place in the priority order for staffing shortages, the current CBA contains no limits on the use of agency employees, so the above language is beneficial to both parties.

Issue 18 - ARTICLE 28 – Overtime – GAP Pay

The Employer proposed certain modifications to GAP pay, some of which the Union agreed with and in other instances offered counter-proposals. I recommend the following language be adopted, most of which there is a tentative agreement upon and where that is not the case, I have added recommended language which the Union proposed.

Add: Point No. 9 to Article 28D - The number of GAP slots available will be determined by management and based on the number of known holes in the posted schedule(s). Any additional staffing beyond the number of determined available GAP positions will be filled by utilizing staffing as outlined in the contract, excluding GAP.

Point No. 10 – GAP Pay will only be utilized for members that are overtime eligible and have worked voluntary overtime of at least eight hours in the previous two weeks.

Point 11 – For any given pay period, employees calling in "ill" or "absent" that have worked GAP hours over their normally scheduled hours for the day will be paid at time and one half (1-1/2) for the hours worked. However, if the employee makes up their ill or absent hours during the pay period, they will receive GAP pay. Members that have worked GAP as an "extra day" outside of normally scheduled hours will be paid at straight time; unless worked hours are over eighty (80) hours in a pay period or over forty (40) in a pay period for ten (10) or (12) hour employees, then their rate will be at time and one half (1-1/2).

Issue 19 - ARTICLE 29.A.1 – Scheduling Stretch Pay

The Employer proposes to eliminate stretch pay. The parties' tentative agreements regarding Article 29.A.1 regarding stretch pay and my recommendations in addition thereto are as follows. As a reasonable compromise, I recommend retaining the current contract language so that employees working more than seven consecutive days are entitled to premium pay, however, with the requirement that the pick up day which created the Stretch must be a minimum of 8 hours. Also stretch pay is limited to 14 consecutive days. This will ensure that nurses are compensated for their extra effort of working seven days in a row while at the same time invoking the premium pay only where an employee has worked an additional 8 hours between scheduled shifts.

Issue 20 - NEW – Me Too Protection

After fact finding concluded, the Union proposed a provision which would require HMC to provide its RNs with any wage or benefit increase that is more lucrative or beneficial as offered to any current or former non-union employee. I do not recommend adoption of that Union proposal since an employer in order to attract talent of qualified administrative employees has to have the flexibility to economically attract such candidates. In its extreme implementation, the hiring of, for example, an HR person at 5% more than the incumbent was making would entitle 1,000 RNs to the same increase. Such an outcome is totally unrealistic and, in any event, the RN union is more than capable of negotiating its own wages and benefits rather than relying on factors beyond its control.

Issue 20 Recommendation – Current Contract Language

Issue 21- Tentative Agreements and Current Contract Language

Over the course of bargaining, mediation and fact finding a substantial number of proposals and counter proposals were made. The 20 issues considered herein emanated from the evidence in the record and were addressed in the parties' post hearing brief.

There are other issues where the parties have tentative agreements and those are adopted herein. With respect to all other issues, I recommend the current contract language.

6. SUMMARY OF RECOMMENDATIONS

Refer back to foregoing recommendations for each of 21 issues.

Respectfully submitted,

June 22, 2018

Tom Barnes

Thomas J. Barnes