**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

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| In the Matter of Fact-Finding Between: | ) | |
| | ) | |
| International Brotherhood of Electrical Workers, Local #306 | ) | 13-MED-05-0732 |
| | ) | |
| | ) | |
| And | ) | |
| | ) | Fact Finder: |
| The City of Wadsworth, Ohio | ) | John T. Meredith |

# FINDINGS, OPINION AND RECOMMENDATIONS ISSUED SEPTEMBER 12, 2013

## INTRODUCTION

The parties to this Fact-Finding proceeding are the International Brotherhood of Electrical Workers, Local 306 ("IBEW" or "Union") and the City of Wadsworth (the "City" or "Employer"). The bargaining unit is comprised of all full-time and part-time employees working in the City's Municipal Electric Power Supply and Distribution Department, including Power Line Crew Leader, Power Line Electricians (including Trainees), Electrical/Electronic Trainee, Electrical Meter Technicians (including Trainees), Customer Service Engineering Technicians (including Trainees), Operations Setup/SCADA Technician, General Maintenance and Warehouse, but excluding all employees exempted pursuant to R.C. Chapter 4117. There are nineteen (19) employees in the unit. The parties' most recent Agreement ran from June 1, 2010 through May 31, 2013.

The parties commenced negotiations for a successor agreement, but were unable to reach agreement on several issues. They initiated fact finding, and by letter dated July

10, 2013, SERB appointed the undersigned to serve as Fact Finder. A hearing was held on August 13, 2013. Witnesses testified, and the parties and their advocates also presented arguments and numerous documentary exhibits. Appearing on behalf of the Union were: Mark Douglas, IBEW Local 306 Assistant Business Manager; Michael Might, IBEW Local 306; Tim Parish, Crew Leader and Union Steward; and Tim Conrad, Engineering Technician and Union Steward. Appearing for the City were: Benjamin Albrecht, Attorney; Jim Kovacs, Human Resources Manager; Chris Easton, Director of Public Service; Bill Lyren, Electric Superintendent; and Harry Stark, Assistant Director of Public Service.

During the hearing, the parties were able to reach agreement on four of the outstanding issues: Article 15, Holidays – substitute Veterans Day for Martin Luther King Day; Article 22, Section 2, Life Insurance – increase to $50,000; Article 19, Leaves of Absence – clarify relationship between FMLA and compensatory time, per City proposal; Article 40, Duration – two years, June 1, 2013 – May 31, 2015. However, the following eight issues remained open and were submitted to the Fact Finder for recommendation: Article 10 – Hours of Work and Overtime; Article 11 - Wages; Article 13 – Sick Pay; Article 16 – Longevity; Article 20 – Personal Leave; Article 22, Section 1 – Health Insurance; Article 24 – Uniforms and Equipment; Article 25 – Inclement Weather.

The Fact Finder has evaluated the proposals and evidence submitted by the parties. His recommendations for resolving the open issues are fully explained in the Recommendations Section of this Report, infra. In making his recommendations, the Fact Finder has given consideration to the following criteria prescribed by the Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

(1) Past collective bargaining agreements, if any, between the parties.

(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

(3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.

(4) The lawful authority of the public employer.

(5) Any stipulations of the parties.

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

"Other factors" referenced in criterion no. 6 may include the desirability of consistent and equitable treatment for all of the public employer's employees.

## FINDINGS OF FACT

### A. General Background, City Workforce

Wadsworth is located in Southeastern Medina County, due west of Akron and about 50 minutes south of Cleveland. Its population is between 21,500 and 22,000. It generally is middle class, with a mix of white collar and blue collar residents. Median household income is several thousand dollars above the state median.

Wadsworth is one of several northeastern Ohio municipalities which operates its own municipal electric utility. The utility is a self-funding operation, dependent on the rates it collects for electrical service, not the City's general fund revenues. The parties submitted no evidence about the utility's revenues, and the City did not claim inability to pay at the hearing. Nineteen of the utility department's employees are represented by IBEW Local 306.

In addition to Local 306, Wadsworth currently negotiates collective bargaining agreements with three other unions: OPBA, representing three police units; IAFF, representing fire fighters; and AFSCME, representing waste water treatment workers. All of these bargaining units have accepted 2.0% wage increases for 2013. The AFSCME and IAFF contracts terminate on December 31, 2013, but the new OPBA contracts run through December 2015, with wage increases of 2.25% in 2014 and 2.50% in 2015.

City employees not represented by Local 306, OPBA, IAFF or AFSCME are currently nonunion. Some of these employees are the subject of a pending representation election petition filed by the Teamsters. Of course, the outcome of any election, and its potential effects, if any, on wage rates, are neither known nor knowable at this time.

**B. Local 306 Wages and External Wage Comparables**

The parties' current Agreement provides for a dual pay schedule. Before Local 306 was certified to represent the bargaining unit, each employee's wage was determined individually under a "merit pay" system. All employees hired before 2007 are grandfathered at their merit rates, adjusted for subsequent negotiated increases. Employees hired after 2007 are paid according to a schedule which specifies a base rate for each classification. For example, the current base rate on the schedule for Power Line Electrician Trainee is $18.17; for Power Line Electrician I is $21.05; for Power Line Electrician II is $23.99; and for Power Line Crew Leader is $26.78. Only one of the four Power Line Crew Leaders now receives the base rate. The other three are grandfathered at $29.28, $33.04 and $33.91. However, employees in lower-rated classifications, such as Power Line Electrician I, all were hired after 2007 and are paid the base rate for their classification.

The Union submitted wage scales from several bargaining agreements covering similar job classifications at other Ohio employers. These included the City of Cleveland's Division of

Public Power, top rate for senior lineman $32.32, top rate for Trouble Lineman Foreman $35.05; City of Hamilton, top rate for Distribution Lines Crew Leader $33.34; City of Lebanon, Crew Leader $34.52; City of Orville, top rate for Line Worker III $27.83; City of Cuyahoga Falls, rates for Line Leader ranging from $29.73 0-5 years experience to $31.29 20 years service or more. The Union also submitted rates for IBEW Local 71 and 245, which supply workers for construction. For outside power work, the Journeyman Lineman rate is $35.38. The top rates in these agreements all exceed the top rates on Wadsworth's base rate scale, but some do not exceed the rates actually paid to Wadsworth's grandfathered senior employees. No information was provided about the percentage wage increases received by these employees in 2013 or negotiated for them in 2014 and/or 2015.

The City pointed out dissimilarities between Wadsworth and most of the Union's "comparables." These include: The City of Cleveland is vastly larger than Wadsworth; Hamilton and Lebanon are in southwestern Ohio and are not in the same labor market as Wadsworth; Lebanon is a more upscale community; and Cuyahoga Falls is larger. The City also pointed out that construction rates usually exceed rates paid by municipal utilities.

The City's exhibits included a chart comparing Wadsworth wages to wages paid by the following nine municipal utilities. These are Hudson, Cleveland, Oberlin, Dover, Shelby, Niles, Gallion, Cuyahoga Falls and St. Clairsville. The chart compared both minimum and maximum wages for several classifications. In some cases, Wadsworth's maximum rate was the rate of a grandfathered employee, which exceeds the top rate on the base wage chart. In this group of ten cities, Wadsworth's "maximum rate" ranked second for Crew Leader, fifth for Powerline II (Journeyman A), fourth for Powerline I (Apprentice B), and sixth for Powerline Trainee (Groundsman).

The City also offered comparisons to other public employees. Citing SERB's Annual

Wage Settlement Report, it noted the average Ohio public employee wage increase in 2012 was one percent (1.0%) .

## ANALYSIS AND RECOMMENDATIONS

### Article 10 – Hours and Overtime

Positions of the Parties: The Employer proposes new language restricting an employee's ability to receive standby pay on a day when the employee leaves work on unscheduled sick leave. The Employer argues that an employee who is too sick to remain at work would also be too sick to come in if called from standby. The Union objects to this proposal.

Analysis: The parties concede that the issue raised has not actually been a problem. Article 10, Section 8 recognizes the supervisor's authority to designate an employee for standby, and Section 9 further provides that an employee absent for a full shift is not eligible for standby. This seems to adequately protect the the Employer's interest in ensuring that a standby employee in fact is able to respond to a call.

**RECOMMENDATION: No change in current contract language.**

### Article 11 – Wages

Positions of the Parties: The Employer proposes a 2.0% wage increase in the first year of the Agreement and another 2.0% increase at the beginning of the second year of the Agreement. It asserts that this exceeds average increases for Ohio public employees and equals 2013 increases negotiated for the City's other union employees.

The Union proposes the following increases to be effective on June 1, 2013 and June 1, 2014: 1) Level 2 and above – 4.5% each year. 2) Level 1 – 3.5% each year. 3) Power Line Trainee – 1.0% each year. The Union views these increases as necessary catch-up. It argues that its senior employees are underpaid relative to employees of at least some other Ohio municipal utilities and employees performing similar work in the private sector.

Analysis: Since the parties have not raised "ability to pay" [Rule 4117-05-09(3)], resolution of the wage issue depends on comparability [Rule 4117-05-09(2)] and internal parity or equity among the various groups of City employees [Rule 4117-05-09(6)] There are two aspects to comparability: 1) Comparison to current trends in percentage wage increases, and 2) comparison to absolute wages paid to employees performing similar work for other employers.

Regarding percentage wage increases, the 2012 average for Ohio public employees was 1.0%. The 1.0% was not a typical increase – rather, it reflected a blend of wage freezes negotiated by "have-not" employers and raises generally in the 2% range negotiated by employers that were participating in the gradual economic recovery from the recent recession. This 2% was not a magic number, as there was some variation above and below. But it is fair to state that the few settlements at or above 3.0% were clearly outliers.

Comparison of absolute wages, summarized at pages 4-5 of this Report, are inconclusive. Union evidence shows that the City's senior employees are paid less than employees performing similar work for some area utilities. On the other hand, the City's evidence reveals that some other employers pay the same or less than the City pays. The data does show that the top rates on the "base scale" are below the norm, but it also appears that the top rates actually paid to senior employees are more competitive. Thus, comparison of absolute wages paid by other jurisdictions does not convincingly demonstrate the need for significant "catch-up."

Regarding internal parity, all of the City's other union employees have negotiated 2.0% increases for 2013. Data after 2013 is not complete, but OPBA units have settled for 2.25% effective January 1, 2013 and 2.50% effective January 1, 2014.

The comparability data, taken as a whole, supports a 2.0% increase in the first year and a 2.50% increase in the second year.

**RECOMMENDATION: Revise Article 11, Section 1 to state: "All bargaining unit employees shall receive a pay increase of 2.0% effective June 1, 2013 and another pay increase of 2.50% effective June 1, 2014." Revise rates in the Base Wage Chart at the end of Article 11 so that rates effective June 1, 2013 reflect a 2.0% increase over 2012 rates, and rates effective June 1, 2014 reflect a 2.50% increase over 2013 rates.**

**Article 13 – Sick Pay (Cash Out; Doctor's Note)**

Positions of the Parties: The Employer proposes a two-tier system for sick leave conversion at retirement. Current employees would retain their rights under the current system, which permits employees to convert up to 1280 hours. New employees – those employed on or after the effective date of this Agreement – would be able to convert a maximum of only 300 hours. In support of its position, the Employer notes that the OPBA and IAFF contracts already include this two-tier system with a 300-day conversion limit for new employees. Similarly, City policy applicable to conversion rights of new non-union employees caps conversion at 480 hours. The Employer proposed cap also is more generous than the 240 hour conversion limit established by state statute, R.C. 124.39. The Union opposes this proposal and argues that current contract language should be retained for all employees.

The Employer also proposes to require employees on sick leave for three days to produce a doctor's note verifying the necessity of the absence. The Union opposes this change arguing that seeing a doctor may be an unwarranted expense for some 3-day absences.

Analysis: Equitable treatment among the various groups of an Employer's workforce is a factor normally and traditionally considered in fact-finding proceedings. This strongly supports establishing a two-tier system for conversion of sick leave at retirement, with new employees' conversion rights capped at either 300 or 480 hours. So long as the second tier is

limited to employees hired after ratification of this new Agreement, it will not adversely affect any current employee. Therefore, modifying the Agreement to establish a two-tier plan is warranted.

The need for the Employer's doctor's note proposal is less clear. A requirement for a statement from a physician or other licensed medical provider (e.g., physician's assistant, nurse practitioner) is reasonable. However, Article 13, Section 8 already states that an "employee who utilizes sick leave shall be required to furnish a satisfactory, written, signed statement from a licensed medical provider specifying the reason the employee is unable to work and the estimated date the employee will be able to return to work." This should be sufficient to protect the Employer's interests.

**RECOMMENDATION: No change in or addition to current language regarding certification from a licensed medical practitioner. Regarding conversion of sick leave at retirement, modify Section 12 to state:**

> **Section 12. Separation of Service An employee shall only be entitled to a payment of sick leave upon retirement. For employees hired before October 1, 2013, the maximum amount to be paid shall be twelve hundred and eighty (1280) hours. For employees hired on or after October 1, 2013, the maximum amount to be paid shall be three hundred (300) hours. The payment shall be based upon the employee's rate of pay at the time of retirement. Such a payment eliminates all sick leave credit accrued, but unused, by the employee at the time the payment is made.**

**Article 16 - Longevity**

Positions of the Parties: The Union proposes to increase the longevity supplement rate from $3.50 to $4.50 for each month worked as a Wadsworth employee. This would equal the longevity pay now provided for City firefighters. The Employer objects to this proposal, and notes that: 1) Police and AFSCME employees receive $3.50 for each month worked, the same rate currently provided for employees in the IBEW unit. 2) Both the $3.50 and $4.50 rates are

based on 2 cents/hour; the difference between firefighters and other employees reflects the firefighters' longer 2700-hour work year.

The Employer proposes a two-tier longevity payment plan. Current employees would continue to receive longevity under the current system, but new employees would not be eligible for any longevity pay. The Employer justifies this proposal on grounds that OPBA, IAFF and non-union employees already have this two-tier longevity system. The Union opposes the change.

Analysis: The City's two-tier proposal is consistent with benefits provided to other City employees. The current $3.50 rate is also consistent with the rate for most other City employees, and the Employer offered a sufficient explanation to the higher IAFF rate. Therefore, the principle of equitable treatment among the various groups in the City's work force supports retaining the current rate for current employees but excluding new employees from the longevity benefit.

**RECOMMENDATION: Revise the first paragraph of Article 16 to state:**

**All full-time employees hired before October 1, 2013 shall receive an annual longevity supplement in addition to their regular compensation. The longevity supplement is paid at a rate of three dollars and fifty cents ($3.50) for each full month worked as a City of Wadsworth employee. Employees hired on or after October 1, 2013 shall not be eligible for the longevity supplement.**

**Article 20 – Personal Leave**

Positions of the Parties: The Union proposes to increase personal days from three to five per year. The Union did not offer comparability data to support its position. The Employer objects to the Union proposal. In support of its objection, it pointed out that other City employees do not receive more than three personal days per year. It also surveyed ten municipal electric utilities, most in Northeast Ohio – only one of these ten cities offered more

than three personal days, and several provided no personal days at all. Finally, the Employer argued that there would be a cost in terms of lost productivity, and noted that two additional paid days off would be a benefit worth $290 to $542 per employee.

Analysis: The Union's proposal is inconsistent with comparability and internal equity. Further it would add unnecessary and unwarranted costs.

**RECOMMENDATION: No change in current contract language.**

**Article 22, Section 1 – Health Insurance**

Positions of the Parties: The Employer proposes two changes in Article 22, Section 1. The first change concerns the employee's monthly share of health insurance costs. The current Agreement states that the employee "shall contribute," and that the "employer may increase the contributions each year," subject to stated dollar caps per pay period. The caps for 2013 are $40 single and $80 family, though employees currently are only paying $30 single and $70 family. The Employer proposes to change this so that the employee's contribution would be an amount equal to 12% of the COBRA rate. (As the City is self-insured, the employee contribution is determined with reference to the COBRA rate rather than a share of the "premium.") Based on costs determined by the Administrator for September 2012 – August 2013, this 12% formula would have resulted in employee contributions of $36 single and $74.93 family – slightly more than the employee's actual current contribution but slightly less than the current caps. However, when insurance costs increase, the employee would be obligated for 12% of the increased costs, and the employee contribution would not be subject to a cap. The Union objects to this proposal and proposes keeping the current $40/$80 caps to protect the employee from significant cost increases during the term of the Agreement.

Second, the Employer "proposes to delete the 'me-too' provision" in the current contract. (Position Statement, page 6.) While the Position Statement does not specifically identify the

"me-too" language, it apparently is referring to the following two sentences at the beginning of the first new paragraph on page 23 of the Agreement: "Bargaining unit employes shall receive the same health care coverage as other City General fund, non-bargaining unit employees. However, no bargaining unit employees shall be required to pay more for health care coverage than any other city of Wadsworth general fund non-bargaining unit employee." With four current unions negotiating for its employees and a fifth union now seeking to organize many of its currently nonunion employees, the City believes this language could cause confusion. It also asserts that "me-too" language has been taken out of other collective bargaining agreements, though the AFSCME Agreement, which expires in 2013, still has a sentence assuring that it's employees will get the same coverage (but not the same premium cost) as nonunion general fund employees. The Union prefers to retain "me-too" language.

Analysis: The proposed 12% employee contribution rate is supported by both internal and external comparability data. The City's new contracts with both the OPBA and the IAFF provide for a 12% contribution rate. A 12% employee premium contribution rate is close to the state average reported in SERB's 21st Annual Report on the Cost of Health Insurance in Ohio's Public Sector (2013).

Deleting the "me-too" language as proposed also appears to be justified. It is consistent with changes made in other City contracts. Further, the level of employee insurance coverage already is separately protected by language referring to "benefit levels … the same or similar to the benefit levels in place at the inception of this contract." Finally, the employee contribution rate will be locked in for the duration of the contract by addition of the 12% provision.

**RECOMMENDATION: Delete "me-too" language. Replace current Section 1 with the following language:**

**Section 1. Health Insurance Employees shall contribute an amount equal to 12%**

**of the COBRA rate towards the health insurance costs. Employee contributions shall be paid each pay period.**

**The employer shall have the right to change insurance companies as long as the benefit levels are the same or similar to the benefit levels in place at the inception of this contract. The City shall be permitted to utilize its desired total steerage program. Such coverage shall consist of comprehensive major medical, prescription and dental coverage. The health insurance benefits shall become effective on the first calendar day of the month following the month in which the employee is appointed to a full-time position.**

**Article 24 – Uniforms**

Positions of the Parties: The City currently reimburses employees $175 for work boots and $325 for climbing boots. Union proposes increasing these amounts to $225 and $400 respectively. The Employer counters by proposing more modest increases of $25 in each allowance. The Employer also proposes converting the reimbursement procedure to an allowance, and the Union orally agreed to this change.

Analysis: The only difference between the parties is whether a $25 increase would be sufficient to cover the cost of dielectric boots which are required by the Agreement's health and Safety article. At the hearing, the Union plausibly argued that it is insufficient.

**RECOMMENDATION: Convert reimbursement procedure to allowance as agreed. Increase amounts by $50 to $225 for work boots and $375 for climbing boots.**

**Article 25 – Inclement Weather**

Positions of the Parties: Article 25, Section 1 currently states in pertinent part: "In reaching the conclusion to suspend work, the Supervisor shall consider the following weather conditions or a combination of the following: rain, snow, lightning, ice, extremely low temperatures (15 degrees Fahrenheit wind chill factor or below) or high winds."

The Employer proposes deleting the reference to "15 degrees Fahrenheit wind chill factor or below" and substituting a reference to an inclement weather chart created and used by

a private electric company in Northern Ohio. The chart combines temperature and wind speed in a way which, the Employer contends, more meaningfully assesses working conditions than a simple "wind chill factor" test. The Employer believes that the wind chill temperature factor sometimes unnecessarily prevents outside work on sunny days with absolute temperature in the 20's and moderate winds. This, it argues, results in more shop work days than can be filled by available shop work. The chart, in the Employer's view, would reduce unproductive time without compromising employee safety.

The Union strongly objects to the proposed change. It argues that shop work is still valuable work, and that not much would be gained by using the chart as employees would have to go to their trucks for frequent warm-up breaks if they attempted to work outside on days with a 15 degree wind chill factor. It further notes that the current 15 degree wind chill factor was bargained by the Union because the prior 10 degree wind chill factor was unsatisfactory.

Analysis: At the outset, the Fact Finder concedes that he has no independent expertise in the science relevant to this issue, and cannot speculate on the relative safety of various cold weather work formulas. Turning to SERB's fact-finding criteria, the comparability data submitted was ambiguous and inconclusive. It appears that other utility contracts reference a wind temperature factor, which ranges from 10 degrees to 20 degrees. Some contracts have no reference at all to inclement weather. Thus, no pattern emerges from comparability data.

Other relevant criteria are the parties' current bargaining agreement and bargaining history. [Tule 4117-05-09(1) & (6)]. In this case, the current-15 degree test was bargained several years ago to replace a 10-degree test which both parties apparently agreed was unsatisfactory. Although the Employer raises plausible concerns about unnecessary loss of productivity, the evidence on this is somewhat incomplete and ambiguous. For these reasons, it is appropriate to retain the current standard for the term of another Agreement.

**RECOMMENDATION: No change in current contract language.**

**INCORPORATION OF AGREEMENTS**

The agreements reached by the parties prior to conclusion of this Fact Finding proceeding are incorporated by reference and made part of this Report. This expressly includes, without limitation, agreements reached at the hearing (page 2 of this Report) and the following signed agreements submitted at the conclusion of the hearing: Tentative Agreement List April 10, 2013, and Article 14 and Article 28 agreements dated April 16, 2013.

ISSUED this 12th day of September, 2013.

*s/John T. Meredith*
John T. Meredith, Fact Finder

Shaker Heights, Ohio

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Report was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing same to their representatives, listed below, this 12th day of September, 2013.

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