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## Greene, County of and New York State Nurses Association

Sumner Shapiro

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## Greene, County of and New York State Nurses Association

### Abstract

In the Matter of the Fact Finding between: The New York State Nurses Association Association and The County of Greene. New York Employer PERB Case No.: M. 2008-091. Before: Sumner Shapiro, Fact Finder.

### Keywords

New York State, PERB, fact finding

State of New York  
Public Employment Relations Board

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In the Matter of the Fact Finding between:

The New York State Nurses Association  
Association  
and

The County of Greene, New York  
Employer

PERB Case No.: M. 2008-091

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Before: Sumner Shapiro, Fact Finder

**I. Introduction**

This document constitutes the findings and recommendations of the undersigned duly designated Fact Finder in an impasse between the New York State Nurses Association hereinafter referred to variously as; the "Association", the "Employees", the "Nurses", or "NYSNA" and the County of Greene, New York hereinafter referred to variously as; the "County " the "Employer", the "Administration", or "Greene". The Association and the County are parties to a Collective Bargaining Agreement (CBA) for the term of January 1, 2005 through December 31, 2007 which has remained in full force and effect since its expiration. The bargaining unit is one of four with whom the County has entered into CBA's with two different unions and this Association. NYSNA represents by far the smallest bargaining unit as it consists of nominally 21 registered nurses (RNs). Its members are deployed among four different County offices. One works in the Sheriff's Office, two more serve in the Mental Health operations, five are assigned to Family Planning a subunit of Public Held services and 14 are assigned directly to Public Health Services. Nominally two thirds of the members are certified RNs with a third having attained Nurse Practitioner (NP) or Public Health Nurse (PHN) credentials.

NYSNA requested the County to commence negotiating on a successor agreement on June 29, 2007 but negotiations did not commence until nominally one and a half months after expiration, on February 14, 2008 due to the fact that the County Administrator position had been vacated and his successor needed orientation time. Additional negotiations were conducted on March 10, April 7, May 14, and May 28, all in 2008, without success and the County filed a declaration of impasse with the New York State Public Employment Relations Board (PERB) on June 17, 2008 after which negotiations continued with the aid of a PERB mediator on September 5, September 19, and November 18 all in 2008. NYSNA on December 10, 2008 requested appointment of a fact finder and pursuant to New York Civil Service Law, Sections 209 and 205.5 (k)

the undersigned was appointed on January 8, 2009. A hearing was held in the Greene County Office building in Catskill New York on April 6, 2009 where the parties presented their respective proposals and positions, 11 in number for the County and 7 for the Association. Both parties were professionally represented and both were afforded unfettered opportunity to present documentary and testimonial evidence, to examine and cross-examine witnesses, and to offer arguments in support of their respective positions. Neither party questioned any aspect of the conduct of the proceeding at the conclusion of which they opted to exchange and submit post hearing post marked Friday May 12, 2009 which commitment was, by mutual consent, actually met on Monday May 4, 2009.

Appearances and/or attendance were as follows:

For the County:

Elayne Gold, esq Roemer Wallens & Mineaux Albany, New York	Employer Counsel
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Daniel Frank Interim County Administrator Greene County, New York	Witness
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Marie Ostoyich, RN Director of Public Health Nursing Greene County, New York	Witness
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Stephen Worth Undersheriff Greene County, New York	Witness
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Karen Macintosh-Frering Director of Human Resources Greene County, New York	Present
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For the Association

Janet Strominger, JD Labor Relations Representative New York State Nurses Association (NYSNA)	Association Advocate
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course of the present negotiations allegedly due in part to noncompetitive wages. Further exacerbation is attributed to the County having instituted a hiring freeze and now supplementing full-time staff with per diem employees. NYSNA implies per diem service is inferior as those employees are less fully committed to specific numbers of workdays, hours of work, and numbers of patients. Full time NYSNA staff are said to be more committed and to be absolutely reliable in providing proper care.

The Association asserts the inflation rate was 2.8% in 2007 and 3.8% in 2008 (NYSNA Ex Tab G) <sup>3</sup> and that average wage increases for 2008 state and local agreements averaged 3.2%, 3.1%, and 3.2% in each of the three consecutive years. It places the median increase at 3% for each year and concludes it is the minimum increase needed for Greene County to remain competitive in recruiting and retaining desirable employees

NYSNA responds to County testimony that Home Care which is a function of the Certified Home Health Agency operates at comparatively low productivity in Greene County where nurses averaged only 2.5 contrasted to up to 3.2 patient visits per day in neighboring Columbia and Delaware Counties. The Nurses contend the Employer has not elaborated on the methodology employed in making determinations and it further notes that County Exhibit I, Tab P indicates 48% of the County Health Department employees spend time on clerical services which it urges is higher than the prevailing practice throughout New York State local health departments. In addition, it emphasizes, 43% of employees spend time in Communicable and Infectious Disease Protection and 57% of employees spend time in Community and Family Health promotion and prevention. This gives rise to a question of whether non- direct care staff is being disproportionately charged to Certified Home Health Agency operations increasing departmental unit visit costs. But, in any case NYSNA cautions focusing largely on Certified Home Health Agency overlooks the fact that almost two thirds of the bargaining unit members are employed outside that unit. It proposes that even if some degree of inefficiency prevails in rendering home care services, the grand image continues to be one of devoted, hard-working, health care professionals providing care in a cost-effective manner.

The Employees further offer that the County was fully aware of the pending CBA expiration prior to February 2008 when it entered into negotiations and that one may reasonably presume provisions for funding and increase must have been included in the 2008 budget and is yet to be dispersed. It characterizes the Employer's position opposing any wage increase as untenable particularly in light of its having awarded wage increases to other employees both unrepresented and members of other bargaining units.

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<sup>3</sup> BLS arrives at a 3.8% for 2008 utilizing the 12 months of that calendar year

## 2. County Response

Greene County insists NYSNA has cited non-comparables and incomplete statistics in its proposed prevailing practice profile. Specifically, among other charges, the Employer contends hospital facilities are in no way comparable to County operations. Moreover, it urges, NYSNA has excluded any reference to significant fringes and other compensated activities specifically citing health insurance, retirement and pension benefits, on-call pay, shift differentials, holiday pay, and paid time off. The County further asserts Dutchess, Putnam and Ulster counties cited by NYSNA can not be considered to be "comparable" to Greene County. Dutchess, it notes, is 5.8 times as populous with a 1.4 % higher median family income. Similarly, it notes Putnam County is about two times more populous with twice Greene's wealth as measured by median family income. Ulster is cited as being 3.7 times as populous with a 1.18% higher median family income. Finally, Greene offers that all three of these counties have a lower percentage of population below the poverty line.

In further rebuttal the County offers that not one of NYSNA's claimed comparables has negotiated a 7% increase and it further observes the actual wages paid Registered Nurses in 2007, the last year when all the cited jurisdictions and Greene had a contract in place, shows the Greene RNs enjoying higher earnings than the group average with Greene's employees at Step 8 earning above the group average. The Employer does concede that it's Public Health Nurse at step five in year 2007 earned a small amount below the average, \$602, with only four jurisdictions employing a person in that title. However it notes that at step 8, Public Health Nurse in Greene earned slightly more, specifically \$43 per annum, more than the average for the other jurisdictions.

The Employer acknowledges granting other bargaining units wage adjustments extending into the year 2010 but emphasizes those increases were negotiated before onset of the precipitous and continuing decline in Greene's fiscal health. It reports 27% of the 2008 budget consisted of revenue from the sales tax which began to decline in 2009. Property taxes too are adversely affecting revenues with about 25% of the county tax levy being delinquent as of December 2008. Exacerbating the situation is an increase in demand for Social and Public Health services attributable to increased unemployment. Recessionary economic conditions are cited as a source of other burgeoning costs as they purportedly give rise to crime, the need for family assistance and the like. The County insists it has and continues to make every effort to rein in expenditures noting that in 2008, it renewed only 6 miles of County Road where it's upkeep standard specified a 26 mile minimum.

While it has in the past been unable to cope with revenue vicissitudes by drawing from its Fund Balance in the lean years, it pleads that an absence of surplus years has resulted in a shrinking balance giving rise to fears that the Unappropriated Fund Balance will be depleted. It specifically notes the Unappropriated Fund Balance in the 2009 budget is under 8% and is insufficient fully to pay even one month's bills.

The Employer pleads the depressing immediate economic forecasts compels the County Legislature to proceed with cautious prudence in authorizing any expenditures and it has been doing so by among other things very selectively filling vacancies. Greene contends the NYSNA unit historically has been the beneficiary of generous increases in base salary and added pay for longevity, stand by, and shift differentials when the County could responsibly fund such payments. It maintains the present time total earnings of NYSNA local members are ample and equitable. In view of the County's perilous economic position the Interim County Administrator testified that the legislature Chairperson has "will not support any wage adjustment at this time". Greene County urges that it has provided ample irrefutable testimony in support of that position. .

### 3. Opinion

The County's principal witness has testified that the legislature will not support any wage increase. His testimony relating to other issues appears to extend this determination to all cost items. We accept this as a valid statement of inferred prevailing principle which if literally adopted would foreclose discussion and analysis of virtually all the issues instigating this impasse. That would be inconsistent with a fact finder's responsibility to confine focus to factual aspects severed from their possible attachments to emotional or political tangents. This process is intended to cut away impediments to reasonable compromises considering the criteria of comparable practice, ability to pay, and the established relationship between the parties. While this is an adversarial process it is not a charade and the parties thereto are not litigants in a more customary sense where the relationship ends with the resolution of the issue. NYSNA and Greene County have a long-standing collective bargaining relationship which will continue in the years ahead. The County Chairman in his most recent State of the County Address paid tribute to its employees noting that "we have a dedicated, talented workforce; they deserve fair compensation. However any agreement must be reflective of the harsh economic times we are in and the impact to our taxpayers." (County Exhibits Tab Q.) . He delineated the significance of Employee relations by characterizing the County government as "a three-legged stool: the first leg representing our County residents, the second leg representing our workforce in the third leg representing our Legislature. The only way that we can have a stable government is to balance the needs of all three." NYSNA members and the



County share responsibility for tending to the residents' health needs and maintaining the morale and dedication of the former is clearly a factor to be balanced in serving concerns and needs of all three groups.

In analyzing this issue it is instructive to differentiate among the proposed three years of the new agreement. The first calendar year, 2008, is already history and we have no need to forecast developments. The first half of the second calendar year, 2009, will also have transpired when the parties next meet. The second half developments are somewhat uncertain but probably not entirely unpredictable. The third calendar year, 2010, is marked by uncertainty which is vigorously stimulated by federal government actions aimed at dissipating the recession in which we are currently mired. We support the County assertion that it cannot balance the interests of the taxpayers and employees with business as usual approaches.

Contract modifications for 2008 had they been timely adopted would have conventionally incorporated adjustments responding to preceding years' developments. Prevailing practice in comparable jurisdictions would be considered in promulgating a standard. In reaching back in time we find no support for NYSNA's 7% increase proposal. The rationale presented is that an increase of that dimension is required to offset the impact of Employer proposed efficiencies. The implicit presumption is that the quid pro quo for any costs paring concession no matter how justified is a countervailing salary increase. A more realistic approach is found in prevailing practice. The parties differ in their identifications of comparable jurisdictions and we support the Employer's selection of Columbia, Delaware, Montgomery, and Schoharie as being more comparable than the Association's which does incorporate Columbia but replaces the other County selections with Dutchess, Putnam, Ulster, Benedictine Hospital, Columbia Memorial Hospital, and Kingston Hospital. The Employer's citations are for jurisdictions which more closely match Greene's statistical market placement, size, income, and population characteristics. Practice comparably and parochially for calendar 2008 is clearly nominally 3% increases.. The Employer's (Exhibit Tab T.) shows 3.25% as a minimum among accepted comparable jurisdictions. The Employer's own concessions (Exhibit Tab G.) shows a 3% minimum increase for 2008 among its other Collective Bargaining Agreements.

The Employer offers that NYSNA's wage structure is distinguishable because it uniquely among the County's employee units benefits from hidden wages. It argues that freezing nurse wages will still provide a 2 to 3% wage increase due to hidden money. The County informs that it pays nominally \$55 additional for every hundred dollars of base pay and that may be a high number but it is incurred on behalf of the entire county payroll and does not support discriminating against the Nurses. The Nurses are unique beneficiaries

among all other County employees in the matter of health insurance but the County is independently proposing changes in that arrangement which will be independently reviewed subsequently here in. The remaining significant purported advantage is longevity payments to Greene County nurses. These are significant payments apparently exceeding those in at least two of the four cited comparable jurisdictions (County Exhibit I, Tab T., page 12) but they exceed those in Columbia County in only the 5th and 10th years and fall far below at the 15th and 20 years. However of the thirteen full-time bargaining unit members just six qualify for longevity payments though eligibility is pending for one more and increases will be forthcoming for two more. The most recent total amounted to 1.8% of annual salary (NYSNA Exhibit Tab B.) with about half being paid to two individuals who have served for 32 and 26 years respectively with the bulk of the remainder going to two others who have served nominally for 20 years. Firstly we are not persuaded this is a bloated benefit but we do conclude it is ample. However we cannot subscribe to the inference that a benefit paid a minority of the bargaining unit in recognition of service may be averaged out and imputed to constitute a hidden wage for the entire unit.

The productivity issue relating to the Certified Home Health Agency is of limited relevance. The County enjoys management rights and bears management responsibilities. If Greene Home Care cost is inflated by low productivity, and there has been no persuasive showing that it is in fact the case, the Nurses are not obligated to defray those added costs out of their wage entitlements. We do not have before us any County proposals or NYSNA responses thereto relating to operating methodology and efficiency.

In weighing and balancing these factors we conclude the proposal to deny any salary increase to members who were on the payroll in 2008 unfairly discriminates against them. We will therefore recommend a 3% across-the-board increase retroactive to January 1, 2008 payable to those employees who were then and continue to be in the County's employ.

We consider next calendar year, 2009, in which terms and conditions reflect developments in the preceding calendar year. The general economy disintegrated in the latter part of the prior year and we are constrained to recognize that it imposed changed conduct of our financial affairs on individuals and governments at all levels. We must now fairly balance diminished resources and preservation of employee entitlements and morale. We propose to achieve this by recommending freezing the 2009 salary schedule but granting full time nurses two \$600 lump-sum payments payable on June 15 2009 and December 15, 2009 respectively. Per diem nurses should be paid proportionate benefits based on hours worked relative to full-time hours.

We propose repeating the procedure in 2010 but restricting it to full-time nurses and coupling it with the institution of health care contributions effective June 15, 2010.

## **B. On-Call Compensation**

### **1. NYSNA's Position**

NYSNA has proposed increasing the "on-call" compensation from \$50 to \$65 per call-in period. (Section 5.02, c2 paragraph 5). New York State Department of Health Rules require Certified Home Health Agencies to provide necessary nursing services on a 24/7 basis. The working arrangement is to establish an on-call coverage between the end of the normal workday until 9 AM the following day as well as on weekends and holidays. The County conforms to the regulation by providing an on-call nurse to respond and make patient visits when required during these off hour periods. It compensates the on-call nurse with a \$50 payment for each period and in the event she or he is called upon actually to visit compensates hourly at one and one half times the individual's regular rate. NYSNA notes that the number of actual callouts are minimal having aggregated only twenty-one throughout the 2008 calendar year. It urges the compensation beyond the standby payment is minimal and that the \$50 payment inadequately compensates for the disruption of the employee's personal life. It further urges that the current rate has not been increased in 15 years during which time the intrinsic value of a \$50 payment has much diminished making an increase to \$65 necessary to update closer to the current value of the service.

### **2. County Response**

The County has offered data from the comparable jurisdictions which indicate a variety of practices ranging from compensatory time off to hourly pay at fractions of the regular hollowly entitlement. None of these appear to pay time and a half for approved actual visits when they occur.

### **3. Opinion**

As a whole, the comparisons do not support a conclusion of prevailing deficiency in the Greene practice and the fact of its long-standing does not persuaded that it is outmoded. We are therefore constrained to deny the NYSNA proposal to increase on-call compensation.

## **C. Section 7.03 Holidays: Scheduling**

NYSNA proposes a cost neutral redistribution of holiday compensation when the actual date of the holiday falls on a weekend but is observed by closing the County offices on the preceding Friday or following Monday. The Employees understand the County in the

course of the hearing on this matter indicated consent subject to the adoption of mutually agreeable contract language. That is consistent with the Employer's understanding and it informs it is preparing language for NYSNA's review.

#### **D. Section 10.05 Shift Differential**

##### **1. NYSNA's Position**

NYSNA proposes increasing weekend differentials to 17.5%. Currently the Employer pays a 15% differential for Home Care Agency care rendered on Saturdays and Sundays. It pleads that this differential has not been increased since 2002 when it was raised from 10 to 15% and it contends this payment has become more important because the obligation to serve has fallen on a decreasing number of employees because as County has come to rely increasingly upon per diem workers who do not bear a weekend obligation. It notes that Public Health employees fulfilling these weekend obligations, though doing so a voluntary basis, are not paid overtime rates but are required to take compensating days off during the regular workweek. Moreover, if there are no volunteers mandatory assignments can be made.

##### **2. County Response**

The Employer counters that the adoption of this change would impose a cost increase of one half of one percent of payroll and it pleads that the only justification offered by the Nurses was that there had been no increase in the last seven years. If further challenges the NYSNA claim that other facilities pay 1 1/2 times wage rate as being undocumented and without support.

##### **3. Opinion**

We cannot subscribe to NYSNA's position that there has been no increase in shift differential compensation over the last seven years. This issue is distinguishable from the on-call matter where it argued that a flat rate had become outmoded. In the present issue the compensation is not a flat rate but rather a percentage of the wage rate whereby the actual compensation has moved upward in lockstep with wages. The implementation of percentage based as opposed to fixed sum differentials is generally motivated by a wish to eliminate revisiting and renegotiating as the initial proportionality ages out. We therefore are constrained to support the Employer's denial of this effort.

### **E. Section 10.09 Longevity Differential**

#### **1. NYSNA's Position**

NYSNA proposes increasing longevity differential's as tabulated below.

Greene County					Columbia County	
Years	Present Differential		Proposed Differential		Years	Cumulative
completed	\$ per annum		\$per annum		\$ per annum	
	Increment	Cumulative	Increment	Cumulative		
5	700	700	800	800	5	400
10	850	1550	950	1750	10	1150
15	700	2250	900	2650	15	2625
20	800	3050	1000	3650	20	4625

#### **2. County Position**

The Employer resists on the basis of cost and that the only justification is that the employer should show added appreciation and recognize experience.

#### **3. Opinion**

We have addressed this issue earlier herein. The substance of our finding was that the prevailing explicitly cited schedule while not at the maximum was clearly not deficient. In further analysis comparing Greene and Columbia we find the total present Greene payments over 25 year aggregate to \$37,750 and NYSNA's proposal would raise the total to \$44,250 while Columbia County's schedule for the same 25 year would aggregate to \$39,125. We believe this provides added support to our prior inference. In a time of austerity we find the Association proposal unsupportable.

### **F. Propose New Section 10.12 Cellular Phones**

#### **1. NYSNA's Position**

The Association petitions for a recommendation that the Employer provide cellular phones and phone service to all regular and part-time nurses contending this will well serve the economic and safety interests of the parties. It states the nurses currently rely

upon cellular phones to meet their own job responsibilities and that they are not reimbursed for associated incurred expenses. They explain that many of their members are stationed where they do not have ready access to phones as they travel to a patient's homes. In the event of an accident or encountered danger NYSNA pleads they should have access to help through a cellular connection. Moreover they relate nurses receive their patient assignments in the morning but are often delayed and need to contact and notify subsequent patients. Beyond that they frequently contact patients during the day to discuss their treatment regimen and sometimes other healthcare providers to discuss appropriate treatment. Frequently, nurses relates they are unable to communicate with providers and must await return calls but when providers are unable to contact them they leave messages on voice mail which the nurse can access only upon return to the office. The problem is exacerbated with the shrinking availability of payphones and HIPPA regulations imposing confidentiality safeguards. While some nurses use their personal cell phones they have been personally absorbing all costs and though the County has now indicated a willingness to reimburse that does not solve the problem posed by the ability of any call recipient with caller I D to record the nurses personal phone number. NYSNA further responds to the County statement that cellular reception is poor or nonexistent in some County areas with the view that nurses will readily identify those areas and thereafter travel to the closest functioning location when necessary. The Employees takes note of the County statement that it is attempting to obtain a grant to pay for cellular phones and their use outside the office. It concedes a grant would be ideal but that the forthcoming dividends in worker safety and efficiency will compensate for the total cost to the County absent a grant.

## 2. County Response

The County acknowledges that cell phones can be productive tools for the Nurses and it does not dispute that most nurses currently use their personal phones. It further comments that it does not clearly understand why the Nurses would object to continuing this procedure if the employee were to be reimbursed to which management is amenable. It does however emphasize that county-wide cellular service is not in place but further agrees that, despite that, it could consider purchasing cell phones for employees in need of same if grant money become available,

## 3. Opinion

We think it beyond question that the Employer is responsible for providing employees with the tools required to fulfill their responsibilities. The fact that most nurses are currently relying upon their personal cellular phones speaks to the utility of the instruments and the fact that they have been doing so voluntarily and at their own expense to the degree of effectiveness. The Association argument favoring its proposal is

further supported by a clearly valid concern about protecting against disclosure of the employees personal phone number to clients. The cellular service may be imperfect but it has been shown to contribute to efficiency and quality of service. And, while not an absolute guarantor, it does bolster personal safety. We fully support NYSNA's position.. The Employer's reference to grants indicates its opposition is rooted in cost avoidance. Though some cost is involved it should be minimal. Prepaid plans where the user pays only for the minutes used are available and reliable. The subscriber is required to purchase the instrument but basic models are available at very modest prices. They will not take photographs or provide travel directions to the nearest restaurant but they do clearly transmit and receive both voice and text messages. We recommend adoption of the Association proposal to add a section to Article 10 of the CBA wherein the County will agree to provide cellular phones and defray the cost of service to nurses working out of the offices.

#### **G. Appeals of Disciplinary Action , Paragraph 4.02**

##### **1. County Position**

The County has proposed modifications to the existing contract Article 4, Post Probationary Discipline. Paragraph 4.02 regulating Appeal of Disciplinary Action. This provision empowers NYSNA to appeal disciplinary matters by writing to the County Administrator within a stipulated time interval. Section 4.03 Procedure and Time Limits: Meeting with County Administrator provides that the County Administrator shall meet with the disciplined employee and the designated NYSNA representative within a specified time interval. 4.04 Procedure and Time Limits: Arbitration stipulates that the Association if dissatisfied with the response of the County Administrator may elect to submit to arbitration. The Employer seeks to replace the phrase "County Administrator" where it appears in each of these paragraphs with "County Administrator or designee". The County supports this request by offering that the County Administrator has many duties and responsibilities some of which may be more suitably delegated to a subordinate.. The designee could be a Deputy County Administrator should one be appointed, or the Director of Human Resources where more specialized and knowledgeable about employment issues would be relevant or possibly the County Treasure where a payroll issue is involved.

## 2. NYSNA's Position

The Association objects to any modification of the current CBA position stipulating that appeals from discipline shall be initiated by notification in writing to the County Administrator and that timely response shall be forthcoming from the County Administrator and that the response of the County Administrator shall be the basis on which the Union may opt to proceed to arbitration. The Employees have indicated they would be amenable to a change wherein the County Administrator or a Deputy County Administrator are specified. However it argues the Deputy position does not presently exist and a proposal for adopting language allocating a role to the person in that position is untimely. Beyond that NYSNA is fearful that the term "or designee" is not sufficiently definitive and opens the possibility that the designee might be the very same person who issued the discipline. In such an event, it argues that the grievant would be deprived of an independent review by a person who is by title presumably prepared to freshly appraise before making a judgment.

## 3. Opinion

In our view there is merit to both positions in this issue. The County Administrator should be free to delegate one of his responsibilities to a deemed to be qualified subordinate. The existing language limits that management option but it does afford the grievant a second hopefully independent review on the merits. We propose that the objectives of both parties may be met by adopting language limiting the choice of a designee to an individual who has had no prior involvement in investigating the matter or promulgating or serving the discipline. There is probably no need to attempt to classify designee qualifications as it seems unlikely that the Employer would entrust the function in anyone not enjoying the Administrator's full confidence.

## **H. Simultaneous Notification Issue – Appeal of Disciplinary Action**

### 1 County Proposal

The Employer proposes one further modification to Article 4, the Section 4.02, Appeal of Disciplinary Action by adding a line stating "a copy of the appeal shall be forwarded simultaneously to the Director of Public Health." The basis for the proposal is that the County's managerial expertise in delivering healthcare is vested in the Director of Public Health and that she or he should be immediately informed about any NYSNA appeals. The County states it is unclear about NYSNA's response to this proposal.

### 2. NYSNA's Position

The Association does in fact oppose adoption of this provision on the basis that it is inappropriate and unnecessary. It argues its members are deployed among different



County departments and Offices explicitly citing the County Jail Nurse who reports to the Sheriff's office and the Mental Health Nurses who report to the Director of the Mental Health Center. The Nurses contend the County Administrator has full latitude to contact any person as he or she may wish but that the established clear well-defined routing should be preserved.

### 3. Opinion

There has been no showing of deficiencies arising under the existing contractual language and we concur in the Association view that the Employer is not disadvantaged in that the Administrator enjoys an unfettered option to provide copies of the Association appeal document to his subordinates. We therefore recommend withdrawal of this proposal.

## **I. Summer Hours, Article 5, Section 5.01**

### 1. County Position

The Employer is proposing eliminating contractual language which provides for a normal workday of 6 1/2 consecutive hours exclusives of one half hour unpaid meal period from July 1 through August 31. This is a reduction of one half hour from the regular workday in effect at all other times and is referred to as "summer hours". The Employer's rationale is that this arrangement was adopted when County offices were in very old non air-conditioned structures in which working during the peak of summer days was exceedingly uncomfortable. Its offices are now housed in air conditioned structures obviating the need for curtailed work hours. The County maintains it has been paying for a full seven hour day year round and that employees should be required to work the full seven hours. It offers that four other unions do not have "summer hours" provisions in their CBA's and that the legislature plans to eliminate the practice for all county employees. Finally, it notes NYSNA represented nurses who are not working in offices are generally provided with the air-conditioned vehicles to use during working hours and which they may take home at the conclusion of the workday. It argues that neither Columbia, Delaware or Montgomery provide summer hours and that Schoharie does so only for employees hired before October 1, 1991.

### 2. NYSNA's Response

NYSNA urges that elimination of the summer hours would create an inequity between its members and CSEA members who work along side them in the same departments and continue on a summer workweek schedule. It further argues the Employer has calculated the hourly rate based on the presumption of a seven hour work day year round. It offers

that if a 6 1/2 hour day is accounted for in the calculations the hourly rate would increase in order to match the annual salaries set forth in Schedule A of the CBA. The Employees indicate willingness to ending the summer hours if the half hour per day extension is implemented for other County employees along with whom they work and if the hourly rate is increased to compensate for the added work time.

### 3. Opinion

We do not subscribe to NYSNA's salary calculation proposal. The Association provided no showing that the annual salary schedule was adopted incorporating a discount for the half-hour early release during the summer. It's claim that adoption of the proposal would create an inequity vis-à-vis members of the larger bargaining units with whose members work in conjunction with the nurses is a more compelling argument. It does appear to be more appropriate to achieve this change among the more numerous County employees before seeking to implement it for the nurses particularly where the latter, for whatever reason, are in the forefront of coping with diminished resources. We therefore recommend withdrawal of this proposal.

### J. Sick Leave, Section 7.08

#### 1. County Position

The County is proposes introducing a requirement for validating the need to take a paid sick leave day when it is taken in conjunction with other paid time off including personal leave time, holidays, or vacation days. The Employer offers that it is attempting to deal with the problems created when nurses extend leave time by using a sick day which seriously impacts scheduling for people who need care associated with hospital discharges. It relates that when an employee calls in sick it becomes difficult to get coverage and it is seeking to prevent or curtail misuse of sick leave.

#### 2. NYSNA's Response

NYSNA perceives the Employer to be engaged in discouraging utilization of health care benefits. It challenged the County to distinguish between the difficulty of covering far absent staff on any day with that of doing so in conjunction with personal leave days, holidays or vacation days and maintains it has received no persuasive response. In any case it emphasizes its members are all healthcare professionals who are trained and paid to diagnose illnesses and understand their implications. Requiring a nurse to make a medical visit merely to obtain a medical note in order to receive pay for a sick day is

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characterized as nothing less than absurd. It would, NYSNA asserts, compel an unnecessary medical visit additionally burdening an already taxed medical system and would require payment of unnecessary co-payments and further expose the employee to infection while sitting in a waiting room with other sick people. In addition it offers that the employee who should remain at home would be compelled to travel some distance to reach a medical office. The nurses, Counsel reiterates, know when medical attention is needed and also know when over-the-counter medication is adequate and when not being around already compromised patients who they could infect is the best policy. The proposed medical note requirement in order to utilize paid sick leave when is taken in conjunction with other un-worked paid days is the Association insists, unreasonable.

### 3. Opinion

The purpose of sick leave is implicit in its title and the Agreement (paragraph 7.08) explicitly confirms it is to be used when an employee contracts a disabling illness or disability. Claims of such occurrences in tandem with other paid non-work time may give rise to suspicions of "bridging" to extend paid personal time. Sometimes employees lose sight of the difference between personal time entitlements and sick leave. The Employer is entitled to implement reasonable oversight to discourage that practice. Balanced against this is the individuals legitimate interest in being empowered to utilize paid sick time when sick, without intrusion. We propose that these responsibilities and interests can be addressed by the adoption of a provision empowering the Employer at its option, to direct the employee to obtain medical validation when the employee calls in sick. However, in such cases the County shall reimburse the employee for costs incurred in obtaining the validation. If an employee declines to make the medical visit and advises his or her supervisor of the reasons therefor at the time of the call in, the Employer, if it does not concur in the reasoning, may deny payment with the subject being further addressable through the grievance procedure.

## **K. Retiree Health Insurance**

### 1. County Proposal

The County proposes to amending the current Agreement provision providing standards under which NYSNA members may continue to receive health insurance upon retirement. To this end the County Legislature adopted its Resolution Number 241-07 in July 2007. The Resolution applies only to "new hires" as it relates to health insurance upon retirement and does not impact employees who were NYSNA members at the time. The County offers that NYSNA is the only bargaining unit in which the CBA provides retiree health insurance.

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## 2. NYSNA's Position

The Association vigorously opposes this proposal arguing that the County is not empowered unilaterally to alter a CBA solely on the basis of passage of a Legislative Resolution. It insists that if this resolution were to supersede the CBA it would deprive employees of benefits granted them and contractually guaranteed when they entered into their employment. Among other changes the resolution doubles the eligibility requirement from 10 years of service to a new level of 20 years of consecutive employment. NYSNA notes that if it were to accept a change in the Agreement retroactive to January 1, 2008 it would penalize three full-time members hired after that date. And were it to agree to the August 2007 date set forth in the Resolution it would adversely affect one other full-time member hired after that date and prior to January 1, 2008.

## 3. Opinion

We consider first, the Association assertion that the unmodified application of the Resolution provisions would impose an ex post facto deprivation of established employment terms in place and controlling pursuant to the CBA at the time of hire. One of the five "at risk" cases involves a person hired less than three weeks after the Legislature's specified cutoff date. Two of the other four were hired less than six months later with the other two joining a full year or slightly more later. Obviously the resolution of this issue will have no immediate economic impact on either any employee or the County. The question is one of fairness and the integrity of the CBA and we believe both considerations can be respected by agreeing upon adoption of the resolution provisions with an implementation date of January 1, 2009 and we so recommend.

## **L. Health Insurance Premium Sharing Article 9, 9.02 D.**

### 1. County's Proposal

The County proposes an amendment requiring any NYSNA member hired after January 1, 2008 to contribute 15% of the premium costs of individual or dependent Health Insurance coverage. The Employer offers that NYSNA unit members are the only County employees with a few rare special exceptions, who do not now contribute toward the premium costs. It charges NYSNA unequivocally stated that when management/confidential employees, exempt employees and elected officials begin

contributing towards health insurance premiums NYSNA members hired as of that date would contribute 15% toward health insurance premiums. It offers that since January 21, 2009 newly hired management employees do contribute 15% toward monthly premiums crossing the bar which the association itself had erected. It notes further that most other County employees contribute and that nurses in all the comparable communities contribute to the health insurance premium costs.

## 2. NYSNA's Response

The Association agrees it did in the course of negotiations through the mediator indicate being amenable to implementing contributions by new hires when and if management/confidential employees, exempt employees and elected officials began contributing 15% toward health insurance. NYSNA understood that these groups like its own members were exempted from making contributions. It acknowledges receiving a County letter dated March 31, 2009 informing that management personnel hired after January 21, 2009 now contribute 15% but NYSNA's Counsel questions whether the management/ confidential category encompasses exempt employees and elected officials. It further offers an arithmetic assessment of the burden NYSNA members would bear at the 15% contribution level which amount to \$967 per annum for individual coverage and \$2808 per annum for family coverage. It admonishes that this requirement imposed upon newly hired people significantly decreases disposable income and adversely impacts upon the attractiveness of County employment.

## 3. Opinion

Preserving the attractiveness of County employment is a legitimate concern but it is fundamentally a management concern. In our view both history and reason side with the Employer on this issue and while there should be no retroactive deductions, we do not concur in the Association's effort to limit to new hires after January 21, 2009. NYSNA members hired after January 1, 2008 who are receiving health insurance coverage should be obligated to contribute 15% of the premium cost of both individual and/or dependent coverage with deductions commencing June 1, 2010.

We recommend the extended implementation date against the backdrop of the salary recommendations.

## **M. Tuition Reimbursement**

### **1. County Proposal**

The current CBA obligates the Employer to reimburse regular employees for tuition and fees incurred and not paid for by others in pursuing advanced studies with the potential to improve job performance or in pursuit of a nursing degree. The proposed language reiterates that the benefit is available only to "regular" employees and then seemingly redundantly adds a line stating that "Part-time Employees are ineligible for tuition reimbursement." The proposed revision would limit reimbursement to a maximum of six credits per year whereas the current limit is nine credits per year. Where the existing language requires only that the coursework be related to the pursuit of a nursing degree or improved job performance the proposed language states the coursework must be "directly job-related" with a determination on whether it meets that standard being vested in the sole discretion of the Department Head. The County further proposes instituting a requirement that the employee remain in County employment for a minimum of two years following completion of the semester and if the employee fails to do so she/he will be obligated to return the full amount of the reimbursement paid him or her. In the current agreement the reimbursement recipient is obligated to continue in his or her employment for a minimum of one year following completion of the semester. The proposed revision further stipulates the employer may recover the reimbursement from any money due the employee upon separation.

### **2. NYSNA's Response**

The Association acknowledges virtue in the County's efforts to reduce expenses and proposes that advanced training contributes to better job performance. It informs that though only an associate degree in nursing is a prerequisite to obtaining registered nurse licensure many nurses work to obtain bachelor degrees and none can achieve nurse practitioner status without advanced study. Association Counsel is disquieted by the possibility that a department head at his or her discretion might deem such study not to be "directly job-related." NYSNA further pleads that extending the continuing employment requirement beyond one year is particularly hazardous in the present turbulent economic times when long-term employment in any single position is problematic. In multi-paycheck families one may need to relocate to accompany a spouse whose employment situation has changed and forecasting for two years is fraught with risk. The Association characterizes as unconscionable empowering the Employer to deduct from employees

final paycheck potentially rendering the employee destitute. The Association further relates that no bargaining member has utilized this benefit over the past three years and none have sought approval during the present year. It urges that this provision has not been costly and that it may be an important benefit for some individual seeking additional education and can be an attractive provision in a recruitment benefit package.

### 3. Opinion

The Association persuasively notes this has been a no cost unimplemented benefit at least in recent history and there is nothing to indicate drastic changes looming. There has been no abuse and the proposed changes would not meaningfully reduce the cost should an employee utilize the provision. It appears the potential for realizing cost savings through adoption of the proposed revisions is extremely small. While minimal incremental savings can sometimes aggregate to meaningful levels that is well beyond merely unlikely here. The zealous pursuit of cost cutting need not lead one to engage in remanufacturing paperclips. We support the Association position on this issue and will so recommend.

## **N. Substance Abuse Testing Procedures.**

### 1. County Proposal

The County at the urging of Greene County Undersheriff Worth proposes adding a new article to the CBA providing Substance Abuse Testing Procedure only for that NYSNA member employed as a nurse at the County Jail referred to by the parties as the "Jail Nurse". The procedure is currently in place and operative for every Greene County Sheriff's Office employee with the exception of the Jail Nurse. All other of these employees are represented by different unions; namely, AFSCME Counsel 82, CSEA, or the Administrative Personnel CSEA unit. The Employer informs that identical contractual language is in place in the other three CBA's and in its proposal in the matter at hand. The Undersheriff testified that the Jail Nurse is the in house full-time medical person who is responsible for dispensing medications, performing intake evaluations, and providing oversight of ailment claims by inmates. In that capacity she dispenses controlled substances to inmates where authorized and has custody of the inventory. The County pleading is that all Sheriff's Office employees are subject to random drug testing

and that is merely seeking promulgation of a contractual provision extending in place practice to the Jail Nurse. The Employer emphasizes that is merely seeking consistency vis a vis other workers in the sheriff's Department but urges that such a requirement is particularly appropriate for the Jail Nurse as she or he alone has the greatest drug-related inmate contacts and should properly be subject to at least the same drug/alcohol testing procedures as all other Sheriff Department employees

## 2. NYSNA's Response

NYSNA does not categorically reject the premise that its member employed at the Jail should be exposed to alcohol or drug testing. But it does contend that the Jail Nurse's employment status is distinguishable from that of the members of the other bargaining units. Specifically it notes that the NYSNA member alone must be licensed by the New York State Education Department and that a degree in nursing and successfully passing a licensure exam are prerequisites to obtaining that license. Beyond that it urges the special requirements attached to the licensed status requires employers to report to the State Education Department all suspensions and terminations and mandates that nurses must report same when seeking license renewals. The Employees maintain no other Sheriff's Department employees are subjected to such high restrictions on their right to practice their professions.

The Nurses assert the proposal neglects to consider the potential impact of random testing on a registered nurse. The procedure it notes, allows for the termination of an employee testing positive or failing to comply with the procedure and also ensures that the Sheriff's decision to terminate his final and not reviewable. For a nurse, this termination could impact on her or his ability to maintain or renew a license and end the nurse's professional career. Moreover it cautions that a suspension or termination which is subsequently rescinded because it was found to be based on a false-positive, would nonetheless have been reported and presumably recorded in the Education Department records. NYSNA does however acknowledge an increase in the frequency of alcohol/drug abuse among nurses and accepts the County rationale for seeking oversight safeguards. But, it believes the procedure applied to the Jail Nurse should accommodate to the special characteristics of that employment. It has proposed language which would first restrict testing to situations marked by reasonable suspicion and/or unbiased evidence of impaired job performance. Where positive test results emerge it would limit the remedy to medical leave conditioned on the nurse's full participation in an acceptable



treatment plan. The nurse would be entitled to use all paid time accruals and enter into a Return-to-Work contract upon completion of treatment. The Employer would be required to hold in confidence all testing and results and an employee testing positive would be entitled to a leave of absence after the first positive test in a two-year period. NYSNA urges this procedure would ensure the integrity of the Sheriff's Department preserving public trust and confidence while at the same time protecting its member from the potentially devastating consequences of random testing on his or her career and livelihood.

### 3 Opinion

Firstly, it is inconceivable that the County would require a contractual authorization to act against an employee whose conduct and/or developing job performance deficiencies reasonably arouse suspicions of alcohol and/or substance abuse. Hence, NYSNA's proposal would in some measure simply codify a pre-existing management right. Moreover, the "reasonable suspicion" requirement as a prelude to testing might implicitly stigmatize the nurse as it would disclose that his or her conduct and/or deteriorating job performance to be symptomatic of alcohol/substance abuse. In contrast, random testing is viewed as nothing more than the luck of the draw. Absent more explicit proof this writer finds the arguments that an individual's employment and licensure would be lost after a false positive had been rescinded unpersuasive. However, assuming *arguendo* that there is some remote possibility of such a disastrous outcome, one must question why that outcome is attributable to "random" selection as opposed to a "reasonable suspicion" motivation. Indeed, we believe one would intuitively conclude that mistaken reliance upon a false positive would more likely occur where the motivation for testing the employee was based on "reasonable suspicion".

NYSNA's proposes the adoption of certain remedial procedures which would impinge upon the Substance Abuse Procedure policy subjecting employees testing positively and/or failing to comply with procedures and rules to termination at the Sheriff's discretion with his/her decision being final and not reviewable. The other three employee units have apparently subscribed to this vesting of authority without adverse results and as the Sheriff is not mandated to terminate one would hope that extenuating circumstances and the possibility of rehabilitation and restoration would be considered. This is a subject worthy of discussion but we are insufficiently conversant to offer any recommendation about that aspect. We do however conclude the weight of merit on the issue as a whole much favors the County's proposal and its adoption should not be delayed by a discussion of possible refinements which the parties may at some time consider.

### **III Recommendations**

The undersigned having considered the positions of the parties and the criteria set forth in PERB Regulations and Procedures recommends as follows:

#### **A. Wages**

We recommend implementation of a 3% across-the-board increase retroactive to January 1, 2008. We further recommend freezing the 2009 salary schedule but granting full-time nurses two \$600 lump-sum payments the first payable on June 15, 2009 and the second on December 15, 2009. Per diem nurses would be paid proportionate benefits based on hours worked relative to full-time hours. For the third contract year, 2010, we recommend repeating the 2009 payment but restricting payments to full-time nurses and coupling it with deferring the institution of healthcare premium contributions for those becoming obligated to assume such payments to June 15, 2010

#### **B. On-Call Compensation**

We recommend withdrawal of the NYSNA proposal to increase on-call compensation.

#### **C. Section 7.03 Holidays: Scheduling**

The parties are agreed in principle and in the process of preparing adoptable language obviating need for a recommendation.

#### **D. Section 10.05 Shift Differential**

We recommend withdrawal of this proposal

#### **E. Section 10.09 Longevity Differential**

We recommend withdrawal of this proposal.

#### **F. Proposed New Section 10.12 Cellular Phones**

We recommend adoption of the Association proposal for nurses working out of the offices.

#### **G. Section 4.02 Appeal of Disciplinary Action**

We recommend modifying existing CBA language to permit the County Administrator to delegate responsibility for reviewing disciplines to a subordinate subject to the restriction that the designee shall have had no prior involvement in investigating , formulating or serving the discipline.

#### **H. Section 4.02 Appeal of Disciplinary Action -- Simultaneous Notification**

We recommend withdrawal of this proposal.

#### **I. Article 5, Section 5.01, Summer Hours**

We recommend withdrawal of this proposal.

J. Section 7.08, Sick Leave

We recommend adoption of language empowering the Employer at its expense, the option to direct an employee calling in sick when the sick time would extend personal time-off to obtain medical validation. Employees declining to do so would be deprived of sick pay subject to appeal under the grievance procedure.

K. Retiree Health Insurance

We recommend adoption of the County proposal amended to an implementation date of January 1, 2009.

L. Article 9, 9.0 2D, Health Insurance Premium Sharing

We recommend that NYSNA members hired after January 1, 2008 who are receiving health insurance coverage shall become obligated to contribute 15% of the premium cost of both individual and/or dependent coverage with actual deductions commencing June 15, 2010.

M. Tuition Reimbursement

We recommend withdrawal of this proposal.

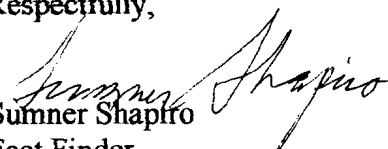
N. Substance Abuse Testing Procedures

We recommend adoption of the County proposal relating to this issue.

The above address all issues brought before the undersigned Finder in the present impasse.

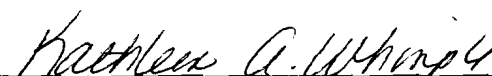
Slingerlands, New York  
May 30, 2009

Respectfully,

  
Sumner Shapfro  
Fact Finder

State of New York )  
  )  
County of Albany )

Sworn to me this 1<sup>st</sup> day of June, 2009

  
\_\_\_\_\_  
Notary Public

KATHLEEN A. WHIMPLE  
Notary Public, State of New York  
No. 01WH6000631  
Qualified in Schenectady County  
Commission Expires December 22, 2009