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Newburgh, Town of and CSEA, Town of Newburgh Unit, Orange County Local 836

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Newburgh, Town of and CSEA, Town of Newburgh Unit, Orange County Local 836

Abstract

In the Matter of the Fact-Finding between The Town of Newburgh, Public Employer, and The Civil Service Employees Association, Town of Newburgh Unit, Orange County Local 836, Employee Organization. Case No. M2005-177. BEFORE: Jay M. Siegel, Esq., Impartial Fact Finder

Keywords

Newburgh, civil service employees association, M2005-177, 836

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Fact-Finding between

The Town of Newburgh,
Public Employer,

-and-

The Civil Service Employees Association,
Town of Newburgh Unit, Orange County Local 836,
Employee Organization,

**REPORT AND
RECOMMENDATIONS
PERB CASE NO. M2005-177**

-----X

BEFORE: Jay M. Siegel, Esq., Impartial Fact Finder

APPEARANCES: For the Town of Newburgh (Town)
Michael A. Richardson, Labor Relations Consultant

For the Civil Service Employees Association (Union)
Colleen Davies, Labor Relations Specialist, CSEA

BACKGROUND

The current Collective Bargaining Agreement (CBA) between the parties is dated January 1, 2001 through December 31, 2003 (Joint Exhibit 1). The bargaining unit has approximately 80 employees and is comprised of all full-time Town employees of the highway, fleet maintenance, sewer, water distribution, water filtration and recreation departments, as well as custodial staff, police dispatchers, clerical workers and the Assistant Animal Control Officer (Joint Exhibit 1).

The parties commenced negotiations on July 8, 2004. After twelve negotiating sessions failed to produce an agreement, the parties proceeded to mediation, which also failed to produce an agreement. Consequently, pursuant to Section 209 of the Civil Service Law, the undersigned was appointed as Fact Finder on July 13, 2006, by Richard Curreri, PERB's Director of Conciliation, to inquire into the causes and circumstances of

the dispute and to issue findings and recommendations for how the dispute should be resolved.

A hearing was conducted before the Fact Finder on November 15, 2006, during which substantial oral and documentary evidence and arguments was presented and submitted. The positions taken by both parties on the outstanding issues are quite adequately specified in the numerous hearing exhibits and oral and written arguments, all of which are incorporated by reference into this Report. Such positions will merely be summarized for purposes of this Report. After the hearing, the parties submitted additional exhibits. The record was closed upon the Fact Finder's receipt of these exhibits.

SALARY, LONGEVITY AND COMPARABLES¹

The Union contends that salary increases of 4.5% plus step increment are fair. It maintains that the average settlements in Orange County for similar bargaining units are slightly above 4.5% plus increment. The Union insists that its proposal is particularly reasonable in light of the fact that salaries in the Town are considerably less than those paid to other municipal employees in surrounding towns and villages.

With respect to longevity, the Union proposes to increase the Year 5 longevity from \$200 to \$400, the Year 10 longevity from \$600 to \$1,200, the Year 15 longevity from \$800 to \$1,600, the Year 20 longevity from \$1,000 to \$2,000, and to create a new Year 25 longevity. The Union asserts that its proposal is reasonable, even though it recognizes that there is not a great disparity between the longevity amounts paid to Town employees and the amounts paid to employees in surrounding towns and villages.

¹ Ability to pay shall not be addressed by the Fact Finder because the Town is not contesting the Union's contention that it has the ability to pay for a reasonable settlement.

Finally, in terms of comparables, the Union insists that the Town should be compared with other municipalities in Orange County. It argues that it has similar economic influences and a commonality in terms of the populations they serve.

The Town argues that most Orange County municipalities provided wage adjustments in the range of three to four percent for 2004 and 2005 and that the average settlement for 2006 and 2007 is 4%. The Town states that it is willing to provide increases of 3% to remain competitive. It further states that it may be willing to provide increases above 3% if the Union agrees to some of its most important proposals. The Town disputes the Union's contention that its salaries do not compare favorably with Orange County municipalities. It points out that many Newburgh employees work either 35 hours or 37.5 hours per week and that most of the other municipal employees in Orange County work 40 hours per week. Thus, according to the Town, for the wage comparison to be accurate, the annual wages for 35 hour per week workers must be adjusted upwards by 14.3% and the annual wages for 37.5 hour per week workers must be adjusted upwards by 6.67%.

With respect to longevity, the Town notes that the Union is seeking to double the longevity rates. It maintains that Town employees receive competitive longevity payments compared to other municipal workers in the region and that no additional monies should be provided for longevity. In the Town's view, the existing salary schedule is inequitable and the inequity in the salary schedule must be considered along with longevity. Hence, longevity adjustments should not be made until the parties are able to negotiate changes to the salary schedule.

Finally, in terms of comparables, the Town asserts that the entire Hudson Valley region is comparable. It argues that there are many other units represented by the Union where the units have agreed to changes that are similar to those proposed by the Town in these negotiations.

At the outset, the Fact Finder concludes that those municipalities most comparable to the Town of Newburgh must be considered municipalities in Orange County. Most of the employees who work in Orange County have much in common with one another in terms of working conditions. The kind of work these employees perform is quite similar in these jurisdictions, as is the income of the various municipalities and their residents. However, the Fact Finder also considers the information submitted by the Town regarding municipalities outside of Orange County to be relevant in this proceeding. The Fact Finder reaches this conclusion because much of the Hudson Valley has conditions that are similar to those in the Town of Newburgh. They share not only a similarity in terms of working conditions and income, but many of the municipalities cited by the Town also share similarities in terms of the number of people they serve, services they provide and number of employees working for these municipalities. For these reasons, the Fact Finder will consider the data provided by the Town regarding other municipalities in the Hudson Valley outside of Orange County.

When negotiating a realistic contract, wages must be considered in the context of the municipality's ability to pay and how the salaries and proposed increases compare with neighboring municipalities. Thereafter, the analysis must address the impact of each parties' other economic and productivity proposals. In this round of negotiations, the Town is not claiming a lack of ability to pay. In fact, the Town is proposing wage

increases of 3% per year. However, the Town has expressed a sincere desire to rewrite many provisions in the CBA that it considers ambiguous. The Town is also seeking changes to issues that have a significant economic impact on the Town, such as the requirement to have two-person crews on sanders. The Town has expressed a willingness to pay for some of the changes it seeks. Since several of the language changes desired by the Town must be accomplished through traditional negotiations, they will not be addressed as part of this Fact-Finding. As a result, just as some of the Town's productivity and proposed language changes will have to be moderated, the economic advances desired by the Union must also be moderated. This is particularly appropriate in this dispute because the parties have not had a contract since December 31, 2003. Consequently, the Town will not receive the benefit of retroactivity on any of its proposals as it is simply impractical to retroactively implement most of its proposed changes. On the other hand, salary increases for unit members will be retroactive to the first day of the CBA. The fact that the Town will receive none of the changes it proposes to the CBA for the first three years of the agreement undoubtedly has economic repercussions and mandates moderation in the wage adjustments for those first three years.

The data suggests that the settlements in the neighboring municipalities for 2004 and 2005 generally range from 3% to 5%, although most of the settlements for those years are between 3% and 4%. For example, the Union submitted data showing that wages in neighboring New Windsor increased 3% in 2004 and 3% in 2005. The Union's data shows that the Town of Cornwall increased its salaries by 4% in 2004 and 3% in 2005 and that the Town of Goshen increased its wages by 5% in 2004 and 5% in 2005.

The Town's data featured several area Collective Bargaining Agreements with wage adjustments of 3% in 2005 and several at 4% for that year. Thereafter, the data submitted by both parties demonstrates that the settlement numbers spike upward to the point where in 2006 and beyond most of the settlements call for salary increases of at least 4% per year.

Since the Town will not be receiving any of the changes it desires in the first three years of the new CBA, the Fact Finder determines that it is appropriate for the salary settlement to be 3% for the first two years of the CBA. These increases are within the range of settlements in the area during those years and are appropriate in the context of this overall Report and Recommendation. The Fact Finder recommends a 4% increase for 2006. Even though the Town will not receive the benefit of any retroactive changes in the 2006 calendar year, this is appropriate because both parties have expressed a mutual interest in having salary schedule wages remain competitive and the area salary increases average approximately 4% for that year. In addition, some of the jurisdictions closest to the Town of Newburgh have negotiated increases in excess of 4% for 2006.

An additional increase of 4% effective January 1, 2007, and 4% effective January 1, 2008 will allow unit members to maintain their relative standing vis-à-vis other municipal employees in the County. The Fact Finder recognizes that this means that salaries paid to Town employees may continue to lag behind the salaries paid to employees in some neighboring jurisdictions. Nonetheless, the Fact Finder determines that these increases are substantial and fair in the context of all of the changes recommended to the parties in the Report. In the Fact Finder's view, the only way for the Union to have any realistic opportunity to achieve raises in excess of these amounts over

the course of an entire agreement is for the Union to address some of the Town's most significant proposed language changes and productivity proposals.

Turning to longevity, the Fact Finder notes that the record reflects that Town employees are competitively compensated in the area of longevity. The evidence does not establish any justification for retroactive longevity increases in the first three years of the agreement. The Fact Finder notes that the current longevitys paid to Town employees are comparable to those paid to employees in the Town of Goshen and Village of Goshen (two of the Collective Bargaining Agreements cited by the Union) and that they are higher than the amounts paid to employees in some of the neighboring jurisdictions cited by the Town. However, the data shows that if the unit does not receive any improvements to longevity pay over the course of the entire contract it will start to lag behind many neighboring jurisdictions in longevity pay. Longevity increases are appropriate in 2007 and 2008 so that Town employees remain competitive in the area of longevity pay.

Accordingly, I make the following

RECOMMENDATION

The salary schedule shall be increased by 3% effective January 1, 2004; an additional 3% effective January 1, 2005; an additional 4% effective January 1, 2006; an additional 4% effective January 1, 2007; and an additional 4% effective January 1, 2008. The Year 5 and Year 10 longevity payments shall be increased by \$100 effective January 1, 2007 and an additional \$100 effective January 1, 2008. The Year 15 and Year 20 longevity payments shall be increased by \$200 effective January 1, 2007 and an additional \$200 effective January 1, 2008.

STIPEND FOR CLASS A LICENSE

The Union proposes that the determination in a recent Arbitration Award regarding the stipend for employees driving equipment for which they are required to hold a Class A CDL be added to the CBA. Specifically, the Union proposes that employees receive a stipend of 80 cents per hour for driving equipment for which they are required to hold a CDL.

The Town objects to this proposal primarily because it claims that the parties did not discuss this issue in any great detail during the negotiations. It also argues that there is no compelling reason for this stipend. It notes that some employees in the area receive a stipend for this work and others do not.

The Fact Finder has reviewed the Opinion and Award that provides a stipend for employees driving equipment for which they are required to hold a CDL. The Fact Finder notes that the Opinion was issued during this round of negotiations. Hence, it stands as the law of the contract until the parties mutually agree to change the meaning of the Award. Since the Town is paying 80 cents per hour for all hours that employees drive equipment for which they are required to hold a Class A CDL license, the Fact Finder concludes that the stipend should be added to the CBA. Keeping the stipend out of the CBA has the potential to lead to further misunderstandings and disputes between the parties. Consequently, I make the following

RECOMMENDATION

An 80 cents per hour stipend for all hours that employees drive equipment for which they are required to hold a Class A CDL license shall be added to the CBA.

VACATION BUYBACK

The current CBA allows bargaining unit members to accumulate up to a maximum of two weeks vacation. The Union proposes to give employees the choice of accumulating up to two weeks of vacation time or have the right to receive a cash payment for the per diem value of up to ten days per year. It argues that this proposal is beneficial to both parties. Employees benefit by increasing their wages and the Town benefits by having additional work performed.

The Town agrees with some aspects of this proposal. It acknowledges that some jurisdictions provide this benefit and that it has the potential to be beneficial to both parties. The Town contends that this benefit should be started on a smaller scale. It notes that the Town has a policy whereby non-unionized Town employees with at least ten years of continuous service may sell back up to forty hours of accumulated leave each year at the employee's rate of pay for that fiscal year (Town Exhibit 15). It argues that the Town's policy for non-unionized workers is an appropriate place to start.

The Fact Finder does not find compelling evidence to support the Union's request to initiate this benefit by allowing its employees to sell up to eighty hours of vacation each year. The evidence submitted to the Fact Finder establishes that the majority of employees in the area who are allowed to receive pay for unused vacation may sell up to forty hours in a year and that the right to receive pay for hours beyond forty is the exception rather than the norm. This persuades the Fact Finder that it is appropriate to allow employees to cash in up to forty hours per year at the employee's rate for that year. The parties can observe how this new benefit operates and determine if adjustments would be mutually beneficial in the future.

The Fact Finder notes that employees are entitled to three weeks of vacation per year after five years of service. Employees with less than three weeks vacation should be prohibited from selling back vacation days as they should be using their more limited amount of vacation time for its intended use. Consequently, I make the following

RECOMMENDATION

All employees who have completed five continuous years of service shall be eligible to sell back up to forty hours (thirty five hours for clerical workers to correlate to five work days) of accumulated vacation leave at the employee's rate of pay for that year. The election should be made between December 1st and 15th and payment should be made by March 31st of the next year.

SICK LEAVE

Several aspects of sick leave remain in dispute. The current CBA is silent regarding the use of sick days for family illnesses and the record reflects that employees in the Town of Newburgh have not, for the most part, enjoyed this benefit. The Union is proposing that employees be allowed to use all sick leave accruals for illnesses in the immediate family and the Town is proposing that this be limited to forty hours a year. The Union argues that if employees are allowed to use this benefit to tend to sick family members that they will be more conservative in their use of sick time. The Union asserts that the practice in many municipalities is that employees are allowed to use sick leave to care for ill family members. The Town disputes that assertion, contending that some municipalities restrict the use of sick time and that others do not.

Other disputed aspects of the sick leave proposals include the Town's desire to prohibit sick leave from being used in increments of less than two hours. According to

the Town, this would nullify the current practice allowing employees to use sick time in increments as small as they wish. The Town argues that a cap of two hours is necessary for organizational purposes and that most municipalities have caps of either one hour or two hours.

The Union argues that the cap has a detrimental effect on productivity. It insists that the flexibility regarding leave time is beneficial to the Town because it allows employees to leave for quick medical appointments, return to work and be productive. The Union points out that some jurisdictions, including Town of New Windsor, allow sick leave to be used in one hour increments.

Finally, the Town points out that the current CBA does not have a definition of sick leave. It proposed a clear definition that sick leave could be used for illness and injury, medical and dental appointments that could not be made outside the workday and for up to forty hours a year for family illness. The Town contends that the parties need to have a clear definition of sick leave in order for all of these changes to be effective and fair to both sides.

This topic is an area where compromises will be mutually beneficial to both parties. After carefully reviewing both parties' positions on all of these issues, the Fact Finder concludes that there is a way to accommodate a majority of both parties' concerns. The Fact Finder is convinced that the Town's proposal regarding the definition of sick leave as set forth in Section 5.2.10 and 5.2.11 of its proposals is fair and reasonable to the extent that it defines what sick leave may be used for. Clarity in contract language leads to greater understanding between parties and the existing CBA fails to properly address the parameters of sick leave. However, the Fact Finder disagrees with the Town that

employees should be prohibited from using sick leave in blocks of less than two hours. This has the potential to unfairly force employees to waste their leave time in circumstances where they can see a local physician and return in an hour. The Fact Finder concludes that sick leave credits should be allowed to be used in increments of no less than one hour. This is also consistent with some of the Collective Bargaining Agreements in the area.

Finally, the Fact Finder observes that the evidence establishes that most municipal workers in the region are not permitted to use sick leave for family illnesses in an unlimited way. In fact, most of the Collective Bargaining Agreements in the area limit the use of family illness leave time to forty hours in a year or require employees to take unpaid leave pursuant to the Family Medical Leave Act after using 40 hours of paid sick leave to care for a member of the immediate family who is ill or injured. In light of these facts as well as the fact that unit members currently do not enjoy this benefit, the Fact Finder concludes that allowing employees to use up to forty hours per year for family illness is fair and appropriate at this time. It assures the Town that its employees will continue to be productive and not be out of work for paid family illnesses for extended periods of time and it provides employees with greater paid leave than they currently enjoy if they have a sick or injured member of the immediate family. Accordingly, the Fact Finder makes the following

RECOMMENDATION

The parties shall agree to the Town's proposed definitions for proper use of sick leave and family sick leave as set forth in Sections 5.2.10 and 5.2.11 of Town Proposal 25, except that sick leave may be used in increments of no less than one hour and an

employee may use up to forty hours a year (thirty five hours for clerical to correlate to five work days) for family illness.

CASH OUT OF SICK LEAVE CREDITS AT RETIREMENT

The current CBA states: “Unlimited sick leave accumulation for any days above 165 – a bonus shall be paid upon retirement based on the final average salary.” The Union maintains that payment of this bonus has never been resolved between the parties. It seeks language that would assure that its members receive a payment for all unused sick days above 165. It argues that this is a common benefit and that it will give its members further incentive to accumulate sick leave time if they know they will be paid for it at the time of retirement.

The Town agrees that employees should receive pay for unused sick leave at retirement. The Town is trying to balance the interests of the employees with the interests of the taxpayers. To that end, the Town proposes a cap of sick leave pay at retirement. It suggests paying up to 320 hours for eight hour per day employees and up to 165 hours for seven hour per day workers.

The evidence establishes that virtually all public employees in the area receive some right to cash out unused sick time at retirement. There is no uniformity however, in terms of the rates of pay and amount of time that can be cashed out. After carefully considering the evidence, the Fact Finder makes the following

RECOMMENDATION

At the time of retirement, each employee shall be paid at his or her current rate for up to 50 accumulated sick days above 165. This would allow eight hour per day employees to cash out up to 400 hours and seven hour a day employees to cash out up to 350 hours.

BEREAVEMENT LEAVE

The Union proposes increasing bereavement leave from three days to five days. It argues that three days is an insufficient amount of time to grieve when a person is dealing with the death of someone in his or her immediate family. It notes that many of the neighboring jurisdictions to Newburgh provide five days of bereavement leave and that the Town provides five days of bereavement leave to its non-unionized employees.

Consistent with its employee handbook for non-unionized employees, the Town has proposed five days of bereavement leave for the death of a spouse, child, parent and sibling; three days for the death of a spouse's parent, grandparent, child's spouse, and grandchild; and one day for parent's sibling, sibling's spouse and sibling's child. The Town suggests that the parties did not have any substantial discussions regarding this issue.

The record clearly establishes that most of the jurisdictions close to Newburgh provide five days of bereavement leave for the death of immediately family members. Accordingly, the Fact Finder makes the following

RECOMMENDATION

Bereavement leave shall be increased from three days to five days for the deaths of the employee's spouse, child, parent, or sibling. The CBA should remain at the current leave amounts for all other relatives listed.

FILTER PLANT WORK SCHEDULE

The Town has proposed that it have the right to schedule employees to work at the Filter Plant on a second shift from 3:00 p.m. to 11:00 p.m. The Town insists that the current CBA is unduly restrictive as it only allows for one shift between the times of 8:00

a.m. and 4:30 p.m. The Town contends that it has the need for evening work at the Filter Plant and that it should not be forced to pay overtime for work that is a regular occurrence.

The Union is not opposed to allowing the establishment of a new shift. The Union is objecting to this proposal primarily because it contends that the Town is understaffed at the Filter Plant. The Union asserts that over the past several years, the Town has reduced the workforce from five operators to three operators. It insists that additional staff is needed to effectively operate the Filter Plant.

It is a fundamental right of management to decide when it should provide services to its constituents. The Fact Finder concludes that the Town should not be restricted from operating an evening shift at the Filter Plant. The Town has determined that it needs to operate in the evening and the Union does not object to the establishment of this shift. Accordingly, I make the following

RECOMMENDATION

The Town shall be permitted to establish a 3:00 p.m. to 11:00 p.m. shift at the Filter Plant.

UNPAID MEAL PERIOD

Town employees are currently paid for meal time. The Town proposes that all meal periods become unpaid and that employees receive the overtime rate for all hours worked beyond an employee's regular workday or regular work week. The Town is willing to increase all hourly wage rates to assure that employees do not suffer any loss in annual wages due to the loss of paid meal time.

The Town states that the reason for this proposed change is that employees are allowed to leave the workplace even though meal time is paid. It suggests that the Town may be liable for any actions or injuries that might occur during this time. It also maintains that most employees in the area do not receive pay for meal time. As a result, the Town believes that employees tend to think their hourly wages are lower than they actually are because they are divided by all work hours plus meal time creating a lower hourly wage than is actually the case. The Town also claims this change is warranted because virtually all other municipalities in the area have unpaid meal periods.

The Union objects to this proposal. It contends that it will have an adverse effect on each employee's leave accruals, retirement benefits and overtime.

The evidence presented establishes that a majority of the municipalities in the area provide an unpaid meal period. The Town submitted collective bargaining agreements from 13 different local units, 11 of which provide an unpaid meal period.

The Fact Finder notes that unit members will derive some real economic benefits by making this change. Its hourly wages will be increased to comport with the change in procedure. Thus, its annual wages will now be divided by 35 or 37.5 hours per week instead of the current system of dividing hourly wages by 40 hours in a week. This will lead to increased overtime rates for all unit members since the hourly base will be higher. Since the unit will derive a benefit by making this change and the evidence establishes that it is the norm in the area, I make the following

RECOMMENDATION

Effective January 1, 2008, all full-time clerical employees will receive an unpaid, duty-free meal break not to exceed sixty minutes. All other full-time unit members and part-

time unit members working more than six hours in a given day will receive an unpaid, duty-free break not to exceed thirty minutes. Hourly wages shall be adjusted upward to correspond with this change so unit members suffer no loss in annual wages as a result of this change.

OVERTIME PAY IN LIEU OF COMPENSATORY TIME

The Town has proposed eliminating the right of employees to receive compensatory time. It proposes that employees will receive time and one half for all hours worked over the regular workday and/or regular work week and that they may not convert that time to compensatory leave.

The Town points out that when an employee elects compensatory time in lieu of overtime, he or she must receive one and one half hours of compensatory time for every hour worked. Thus, an employee who works eight hours of overtime is entitled to 12 hours of paid leave at a later date.

In the Town's view, the reason for compensatory time is to allow employees to take leave time when the Town is not busy with work activities. However, the Town wishes to eliminate compensatory time because it often costs the Town more money than if it paid employees at the overtime rate for the additional time. This is the case because the Town often has to assign other employees at overtime rates to cover employees utilizing compensatory time.

Finally, the Town argues that most local municipal employees either have no compensatory time or have significant limitations on compensatory time.

The Union strongly objects to the Town's proposal. It insists that the Town has repeatedly failed to replace positions lost through attrition. In the Union's view, this has

caused many of its employees to be overworked and, as such, greatly desirous of utilizing compensatory time. The Union also points out that both the City of Middletown and the Town of Goshen allow its employees to take compensatory time.

The record clearly establishes that a majority of employees in the area either have no right to compensatory time or have a limit on the amount of compensatory time they may utilize each year. The record also reflects that employees in the Town of Newburgh have not been limited in the amount of compensatory time they may take each year.

These factors suggest to the Fact Finder that a compromise is appropriate regarding compensatory time as both parties have legitimate arguments in support of their respective positions. A limitation on the use of compensatory leave time is warranted in light of the fact that almost all local Collective Bargaining Agreements have such limitations. Notably, of the fourteen Collective Bargaining Agreements submitted by the Town, seven groups had caps on the amount of compensatory time they could use each year, six groups were prohibited from using compensatory time and one group had unlimited use of compensatory time. At the same time, the evidence does not support the Town's proposal to prohibit employees from having the option to utilize compensatory time. Accordingly, I make the following

RECOMMENDATION

The parties should adopt language providing that the maximum conversion of work hours into compensatory leave by an employee shall not exceed sixty hours of compensatory leave in a given year, which would convert into a maximum of 90 hours at the rate of time and one half.

HEALTH INSURANCE

The current CBA provides that anyone hired before January 1, 2002 shall contribute 20% of the total health insurance premium for a period of 24 months and thereafter the Town pays 100% of the cost of health insurance. The CBA further provides that anyone hired after January 1, 2003 will contribute 20% of the total health insurance premium for a period of 36 months and thereafter the Town pays 100% of the cost of health insurance.

The Town proposes that all employees hired after January 1, 2003 be required to continue paying 20% of the cost of health insurance throughout their employment. It maintains that the family premium will cost approximately \$15,000 annually and that this is so costly that significant cost sharing is necessary.

In support of its proposal, the Town argues that the State of New York and most municipalities near the Town require employees to contribute toward the cost of health insurance throughout their employment. The Town maintains that some relief is warranted in this area.

The Union objects to the Town's health insurance proposal. It argues that contributions are not equitable because its employees are not competitively compensated. It also notes that Town Board members receive fully paid benefits for life. Finally, the Union maintains that there are several local municipalities in the area that do not require their employees to contribute anything close to the amount proposed by the Town. For example, in the Village of Goshen, employees only contribute 5% for the first five years of employment and in the Town of Goshen employees contribute \$350.00 per year

toward health insurance premiums. Finally, the Town of Cornwall employees do not contribute toward the cost of health insurance.

Health insurance continues to be one of the most difficult and contentious labor-management issues because of its importance to employees and their families and because its cost has grown so dramatically over the past several years. Both parties have made extremely persuasive arguments in support of their respective positions.

The fact remains that health insurance increases over the past few years have been staggering and there is no objective evidence that the increases will significantly decrease in the near future. What is even more compelling to the Fact Finder is that family coverage is likely to increase by at least \$1,000.00 each year. When these facts are considered along with the evidence that shows that most municipalities now require some premium contributions, it becomes apparent that there is a need for new employees to contribute toward health insurance premiums throughout their employment. There is no doubt that if new hires do not start permanently sharing some of the health insurance premium burden, it will have an adverse affect on the Town's budget and its ability to deliver services in the future.

After reviewing the data, it becomes apparent that employees are contributing 10% or more toward the cost of health insurance in many municipalities in the area. Employees are contributing at least 10% in Blooming Grove, Montgomery, Lloyd, Shawangunk, Gardiner and La Grange, among others. Under these circumstances and based upon the foregoing, I make the following

RECOMMENDATION

For employees hired on or after January 1, 2007, the Town will pay 90% and the employee will pay 10% of the health insurance premium throughout their employment.

ELIMINATION OF TWO-PERSON CREW IN SANDER

The current CBA requires that two employees be assigned to operate each snow plow and sander at all times. The Town proposes to eliminate the requirement of two employees operating a sander. It insists that there is no operational reason to have two employees operate a sander and that it is safe for one employee to operate a sander. It asserts that in the State of New York and throughout Orange County most employees operate sanders alone. In support of this contention, it submitted 13 Collective Bargaining Agreements, all of which were silent in terms of the requirement to have two employees operate a sander.

The Union strongly objects to this proposal. It contends that assigning two people to a sander at all times is a serious safety issue not only for its unit members but for the community. It also contends that most neighboring municipalities have a practice of a two people in a truck at all times.

Both parties have raised legitimate issues regarding this proposal. On the one hand, the Town's data suggests that two-person sanders are not the norm. On the other hand, the Union says they are necessary for safety reasons and more prevalent than they appear to be. The Fact Finder cannot reach any final conclusions regarding the information presented and the Fact Finder finds that this issue needs more serious investigation and discussion. Accordingly, I make the following

RECOMMENDATION

The Town and the Union shall establish a joint committee comprised of three individuals designated by the Town and three individuals designated by the Union to investigate and develop a joint report regarding the issue of sanding. At a minimum, the committee shall, commencing in January 2007, meet at least quarterly and set up procedures to jointly assess how neighboring municipalities are handling sanding operations, i.e., whether one or two people are working on the trucks. The joint committee should issue a report regarding its findings no later than December 31, 2007.

PROBATIONARY PERIOD FOR NON-COMPETITIVE POSITIONS

The Town proposes changing the probationary period for non-competitive class employees from 26 weeks to 52 weeks. The Town notes that the probationary period is five years under the Civil Service Law. The Town insists that its proposed change is reasonable because one year is a sufficient time period to determine if an employee is able to meet the requirements of the job. The Town also contends that most municipalities in the area have probationary periods of 52 weeks.

The Union objects to the Town's proposal. It asserts that the Town has failed to show any examples when the Town had difficulty with the six month probationary period.

Upon review, the Fact Finder agrees with the Town that the majority of municipalities in the area have a probationary period of at least 52 weeks for non-competitive class employees. One year is a reasonable amount of time to determine if an employee can meet the requirements of the job and a time period of less than 52 weeks appears to the Fact Finder to be insufficient. Accordingly, I make the following

RECOMMENDATION

The parties should adopt language stating that the probationary period for all unit members in non-competitive positions hired on or after January 1, 2007, shall be 52 weeks.

OTHER PROPOSALS

As to all other proposals of both parties, I find insufficient justification to recommend their adoption.

CONCLUSION

The changes that have been recommended are warranted based on the evidence presented and the arguments of the parties. This negotiations dispute is more than three years old. This is not beneficial to either labor or the Town. I strongly urge the parties to adopt the recommendations without changes so they can move forward, reap some of the benefits of the recommended changes and enjoy two years of labor peace. Otherwise, this dispute is likely to continue well into 2007. This will not be helpful to the parties.

SUMMARY OF RECOMMENDATIONS

1. Salary and Longevity - The salary schedule shall be increased by 3% effective January 1, 2004; an additional 3% effective January 1, 2005; an additional 4% effective January 1, 2006; an additional 4% effective January 1, 2007; and an additional 4% effective January 1, 2008. The Year 5 and Year 10 longevity payments shall be increased by \$100 effective January 1, 2007; and an additional \$100, effective January 1, 2008. The Year 15 and Year 20 longevity payments shall be increased by \$200 effective January 1, 2007; and an additional \$200 effective January 1, 2008.

2. Stipend for Class A License - An 80 cents per hour stipend for all hours that employees drive equipment for which they are required to hold a Class A CDL license shall be added to the CBA.

3. Vacation Buy-back - All employees who have completed five continuous years of service shall be eligible to sell back up to forty hours (thirty five hours for clerical workers to correlate to five work days) of accumulated vacation leave at the employee's rate of pay for that year. The election should be made between December 1st and 15th and payment should be made by March 31st of the next year.

4. Sick Leave - The parties shall agree to the Town's proposed definitions for proper use of sick leave and family sick leave as set forth in Sections 5.2.10 and 5.2.11 of Town Proposal 25, except that sick leave may be used in increments of no less than one hour and an employee may use up to forty hours a year (thirty five hours for clerical to correlate to five work days) for family illness.

5. Cash Out of Sick Leave at Retirement - At the time of retirement, each employee shall be paid at his or her current rate for up to 50 accumulated sick days above 165. This would allow eight hour per day employees to cash out up to 400 hours and seven hour a day employees to cash out up to 350 hours.

6. Bereavement Leave - Bereavement leave shall be increased from three days to five days for the deaths of the employee's spouse, child, parent, or sibling. The CBA should remain at the current leave amounts for all other relatives listed.

7. Filter Plant Schedule – The Town shall be permitted to establish a 3:00 p.m. to 11:00 p.m. shift at the Filter Plant.

8. Unpaid Meal Period – Effective January 1, 2008, all full-time clerical employees will receive an unpaid, duty-free meal break not to exceed sixty minutes. All other full-time unit members and part-time unit members working more than six hours in a given day will receive an unpaid, duty-free break not to exceed thirty minutes. Hourly wages shall be adjusted upward to correspond with this change so unit members suffer no loss in annual wages as a result of this change.

9. Compensatory Time – The parties should adopt language providing that the maximum conversion of work hours into compensatory leave by an employee shall not exceed sixty hours of compensatory leave in a given year, which would convert into a maximum of 90 hours at the rate of time and one half.

10. Health Insurance Contributions – For employees hired on or after January 1, 2007, the Town will pay 90% and the employee will pay 10% of the health insurance premium throughout their employment.

11. Probationary Period – The parties should adopt language stating that the probationary period for all unit members in non-competitive positions hired on or after January 1, 2007 shall be 52 weeks.

12. Elimination of Two-Person Crew in Sander - The Town and the Union shall establish a joint committee comprised of three individuals designated by the Town and three individuals designated by the Union to investigate and develop a joint report regarding the issue of sanding. At a minimum, the committee shall, commencing in January 2007, meet at least quarterly and set up procedures to jointly assess how neighboring municipalities are handling sanding operations, i.e., whether

one or two people are working on the trucks. The report of the committee should be issued no later than December 31, 2007.

Dated: January 3, 2007
Cold Spring, New York

Jay M. Siegel, Esq.
Fact Finder

STATE OF NEW YORK)
COUNTY OF PUTNAM)

I, Jay M. Siegel, do hereby affirm that I am the individual described herein and who executed this Instrument which is my Report and Recommendation.

Dated: January 3, 2007

Jay M. Siegel, Esq.
Fact Finder