

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
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In the Matter of Fact-Finding

-between-

PERB Case No. M2010-266

Town of Pleasant Valley

Fact Finder's Report and  
Recommendations

-and-

International Brotherhood of Teamsters  
Local 456 (Blue Collar Unit)

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Appearances:

Town of Pleasant Valley

Gellert & Klein, PC

75 Washington Street

Poughkeepsie, NY 12601

By: David R. Wise, Esq., and Elizabeth M. Corrado, Esq.

International Brotherhood of Teamsters

Local 456

160 So. Central Avenue

Elmsford, NY 10523

By: John Henry – Labor Consultant, Steve Albrecht, Jr., Shop Steward.

Richard M. Gaba, Esq. – Fact Finder

Hearing Date: May 23, 2011 at Town Hall.

**BACKGROUND**

Local 456 IBT, (Union) was recognized by the Town on April 14, 2010 as the exclusive negotiating agent for a unit of ten full time blue collar employees in the Town's highway department, including motor equipment operator, working foreman, mechanic and laborer. In their efforts to negotiate a first collective bargaining agreement (CBA) the parties met on July 14, July 19, August 9, August 23, September 15 and December 15, 2010. Following the last meeting the Union declared an impasse. One mediation

session was held on February 15, 2011 with mediator Michael Monfils. The Town and the Union identified eight key issues that remained open for submission to a fact finder. The Union made a request on March 17, 2011 to Richard A. Curreri, the PERB Director of Conciliation, to appoint a fact finder. On April 8, 2010, I was appointed Fact Finder. With agreement of the parties I set May 23, 2010 at 10:00 AM as the date for a hearing at the Town Hall. The parties presented testimonial and documentary evidence for my consideration, and as part of the process there were efforts made by me and the parties to resolve some of the open issues.

### **THE ISSUES**

- Effective date of agreement
- Wage increases
- Overtime after 8 hours per day
- Holidays – number and eligibility
- Sick days – number
- Health insurance – retiree eligibility
- Discipline – vesting
- Jury duty pay

### **POSITIONS OF THE PARTIES**

#### **Effective date of agreement:**

The Union wanted a three year CBA effective April 14, 2010, the date of its recognition by the Town. The Town was adamant that it would not agree to any retroactive pay, but was willing to compromise by having the CBA effective as of January 1, 2011, for other negotiated items.

#### **Salary increases:**

The Union has requested three hourly rate increases each effective on April 14<sup>th</sup> of a three year CBA. The Town will not agree to any automatic wage increases. Any raises must be based upon increases in the Town's major funding sources, i.e. sales tax

and mortgage tax. Pleasant Valley is a small town with a small tax base to fund government operations. Sales and mortgage tax collections have been steadily declining and against the backdrop of a weak economic outlook, especially troubling is the possibility of a legislated tax cap. The Union offered a compromise of a one year contract with a 2% raise retroactive to January 1, 2011. The Town has not offered any wage increase at this time. The Union introduced a schedule of 2008 hourly rates for twenty towns in the nearby area compiled from CBAs. The MEO rates go from \$16.30 to \$24.58. The Town rate was \$20.70, which placed it at eighth from the top. When it came to mechanics, there were listed rates for twelve towns, going from \$18.25 to \$28.89, with Pleasant Valley being the lowest. Foreman was listed for seventeen towns, going from \$16.80 to \$31.72, with Pleasant Valley at \$23.18, just about the mean. The current hourly rates for the Town's MEOs range from \$15.49 to \$21.36. The foreman earns \$23.89, the mechanic earns \$18.87, the laborer earns \$13.00 per hour. The Union pointed out that the Consumer Price Index for all urban consumers (CPI-U) for the year ended in March 2011 increased for all items by 2.7%, which includes fuel oil and gasoline which increased by 27.5% and 34.0% respectively for the same period. The Town introduced its audited financial statements for 2008 and 2009 which show that annual revenues from sales and mortgage taxes have steadily declined over the period from 2006 to 2010 from \$1,028,626.00 to \$623,228.00.

**Overtime after 8 hours per day:**

The Town proposes paying overtime only after 40 hours per week as is provided for in the Fair Labor Standards Act. It claims that highway employees often work long hours during a week which makes daily overtime an unnecessary expense. The Union

produced a schedule of nine nearby towns showing that seven of the nine pay overtime at time and one-half after eight hours per day.

**Holidays – number and eligibility:**

Of the nine towns listed, four grant twelve paid holidays, three have thirteen paid holidays, one has ten holidays, and one has fourteen holidays. The Union’s request is for thirteen holidays with full pay. The Town has offered twelve holidays with pay provided the employee works the day before and the day after the holiday. Of the nine listed towns only one has the restriction proposed by the Town.

**Sick days – number:**

The Town has proposed ten paid sick days per year, while the Union has requested twelve sick days per year with an accumulation of two hundred days.. The Town argues that in such a small unit even ten days places a strain on the staff and will result in overtime to cover absent employees, thus placing a financial burden on the Town. In the eight jurisdictions listed, one has fifteen days, one has thirteen days, three have twelve days and two provide ten days per year. There are some limitations on accumulation and payment for unused sick leave.

**Health insurance – retiree eligibility:**

The Town proposes an increase in employee contribution to health care premiums. Currently the employees contribute \$12.60 bi-weekly toward single coverage and \$25.20 bi-weekly for family coverage. The Town proposes a contribution to the \$1,513.64 monthly premium for the family plan of 3% or \$50.40. In addition the Town seeks a three year phased in program in which the employees would contribute 10%, 12% and 15% of the premium cost. The Union proposes no increase in the contribution and a

cap on co-payments. The comparison provided by the Union covers eight municipalities in the area and the contributions cover a wide range of variables, from a small percentage of base salary to 25% of the premium. In order for an employee to receive the benefit of participating in the Town health plan upon retirement the Town proposes the attaining of age 55 and 15 years of service. The Union proposal requires no age or service requirement.

**Discipline – vesting:**

The Town proposes vesting rights in accordance with Section 75 of the Civil Service Law. The Union seeks disciplinary protection after the employee has completed the civil service mandated probationary period. The Town argues that all of the employees are in the non-competitive class and would receive statutory protection after five years of service. The Union urges that once an employee has completed the probationary period mandated by the Civil Service Commission that employee deserves the protections otherwise accorded by statute.

**Jury duty pay:**

The Union proposes the payment of a full day's pay for each of the days spent on jury duty. The Town's position is that it should not be required to pay more than the statutorily required amount of \$40 per day. The Town says that in such a small department the absence of one employee will likely cause the necessity of paying overtime, thus placing an undue burden on the Town's finances.

## **DISCUSSION AND RECOMMENDATION**

### **Salary increases:**

The hourly rates of the unit members appear to be average in the surrounding area. The cost of living, however, has increased dramatically in the area of gasoline and fuel. The Town claims its wage freeze position is supported by its decreasing revenues played against an increase in expenses and a bleak economic outlook. I recommend, however, that unit members be given an hourly rate increase of one percent (1%) effective January 1, 2011 and an additional increase of one percent (1%) effective July 1, 2011.

### **Overtime after 8 hours per day:**

The vast majority of area municipalities pay their employees overtime at time and one-half after eight hours per day. I recommend that the Town commence overtime payment at time and one-half after eight hours per day effective July 1, 2011.

### **Holidays – number and eligibility:**

Although only one of the neighboring towns imposes the “day before and day after” restriction on holiday pay, its use may serve to cut down on planned absences and reduce overtime. Twelve paid holidays is an appropriate number. I recommend that the Town grant twelve paid holidays together with the requirement that an employee must work the regularly scheduled work day before and after the holiday in order to be eligible for holiday pay.

### **Sick days – number:**

While most municipalities grant more than ten days of paid sick leave annually, because of the small size of the unit I recommend that the employees be granted ten days

of paid sick leave per year with the ability to accumulate unused sick days to a maximum of one hundred days.

**Health insurance – retiree eligibility**

Since this procedure is taking place with reference to formulating a first collective bargaining agreement and negotiations are likely to commence again within the next few months, I recommend that the current health plan and employee payments remain in effect at least through December 31, 2011. As far as taking health coverage into retirement, that should be the subject for further negotiations. There is insufficient demographic information in the record for me to make a recommendation on that issue.

**Discipline – vesting:**

Civil Service Law Section 75 provides protection for non-competitive employees after five years of employment. In a small unit it is likely that management will know very quickly whether it is satisfied with its employees and their performance. Employees are entitled to protection against unwarranted discipline after a much shorter period of satisfactory service. I recommend that employees in the non-competitive and labor class be afforded due process protection in the form of a “just cause” grievance procedure after one year of employment with binding arbitration, administered by PERB, as its final step.

**Jury duty pay:**

It is the duty of every eligible person to serve their community by doing jury duty when required to serve. While complying with the Union’s request for full pay is not likely to constitute a burden to the Town, I recommend that Jury Duty Pay be limited to the statutory amount.

**Effective date of agreement:**

I recommend that the effective date of a one year agreement be January 1, 2011.

Respectfully submitted by:

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Richard M. Gaba, Esq.  
Fact Finder  
June 8, 2011