NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

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LAWRENCE, VILLAGE OF,

Employer,

- and -

Case No. M210-328

CSEA, LOCAL 882 (LAWRENCE EMPLOYEES UNIT),

FACT FINDING

Union.

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APPEARANCES:

For the Employer:	Peter A. Bee, Esq. Bee Ready Fishbein Hatter & Donovan, LLP 170 Old Country Road, Ste. 200 Mineola, NY 11501
For the Union:	Stanley H. Frere, Labor Relations Specialist CSEA Local 882, AFSCME, AFL-CIO Long Island Regional Office 3 Garet Place Commack, NY 11725
Hearing before:	Owen B. Walsh, Attorney at Law 34 Audrey Avenue Oyster Bay, NY 11771
Meetings on:	October 23 and December 12, 2012
At:	Village Hall 196 Central Avenue Lawrence, NY 11559
Attending:	For Village: David Smollett, Village Administrator Peter A. Bee, Village Attorney Lena Fusco, Village Assessor For Union: Stanley H. Frere, LRS Alfonso Argento, Vincent Biondo, David Scarnelli.

BACKGROUND

The undersigned was appointed Fact Finder on August 22, 2012 by New York State PERB Director of Conciliation, Richard A. Curreri. He thereafter contacted the parties and after several discussions, scheduled the subject hearing to be held at the Administative Offices of the Village on October 23, 2012.

At the Hearing, the parties submitted a Joint Exhibit, a Letter dated January 24, 2012, from New York State PERB Regional Director, Philip L. Maier, who had been appointed Mediator in an impasse between the Village and the Union, and which set forth the Mediator's recommendations concerning the terms upon which the outstanding collective bargaining dispute might be resolved, to wit, he recommended a 4 year Agreement, (6/1/10 to 5/31/14), with no percentage wage increase on 6/1/10, but 2.25% increases, respectively, on June 1st in 2011, 2012 and 2013. Additionally, he proposed certain Contract modifications and rejected certain Village proposals, but the impasse continued, and has led to the instant Fact Finding proceeding.

POSITIONS OF THE PARTIES

The parties provided a copy of the Collective Bargaining Agreement for the prior contract period, which ended May 31, 2010, and they have been operating without a CBA since then. Also, the Union stated, the parties had been negotiating for over two years and "[t]he only major outstanding issues are

salary increases for the proposed five (5) year agreement."1

The Union then argued, cost of living expenses were such that their demands were not unreasonable, moreover from 2006 to 2012, a total of six fiscal years,

> "the Village has not raised taxes on the residents of the Village [and the same]… rate continues for the 2012-2013 fiscal year in the adopted budget."2

The Union then also observed that the Village has kept the taxes low and stable while still maintaining a:

> "very healthy unreserved fund balance [which] was 176.34% of their operating cost, [while] the Government Finance Officers Association [recommends only]… 16.7% of regular general fund operating expenditures[so that] the Village…had 150% more than what is recommended."3

The Union then declared that in tax years 2007 to 2010, the Unreserved fund balances ranged from 162.64% to 176.34% of their Operating expenses and concluded, the "Union demands … would not increase the Village budget and could be easily addressed by using the massive amount of money in the unreserved fund."4

On the other hand, the Village observed, "significant progress …[had been made at the December 12, 2012 Fact Finding session, with only the following]… areas of disagreement:"5

1. Withdrawal by the CSEA of its pending grievance over claimed "contracting out" of certain golf course work.

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1. Union Fact Finding Report, page 1.
2. Id. at page 2.
3. Id. at page 2, insertions mine.
4. Id. at page 3.
5. Village Factfinding Submission, page 1.

2. Whether the wage settlement should be made retroactive to employees who had left the payroll prior to the making of the new CBA.
3. Whether the contract should be for 5 years, vice four years as per the Mediator's Recommendation, and at a 2.25% pay rise.

In support of its contentions, the Village declared, as to its first point, that there is no explicit "no subcontracting" clause in the expired CBA.6

The Village stated that although the prior CBA expired May 31, 2010, no formal bargaining for a successor began until the Fall of 2010 and it was not until the Summer of 2011 that the issue of subcontracting was raised by the Union when the Village notified the Union that it was considering the abolition of certain labor positions at the Village Golf course as it believed the work could be better handled by a vendor and their attempt to negotiate the issue, was rejected by the CSEA. So, the Village then proceeded with the layoffs in December, 2011, and entered into a vendor contract for certain functions at the Golf Course.

It was at this juncture, the Village declared, that the CSEA filed a grievance in which it claimed:

> "for the first time that the disputed vendor contract was 'subcontracting' that was barred by the 'past practice' clause of the expired CBA."7

6. Village Factfinding Submission, page 1.
7. Id. at page 2.

In contradiction, the Village declared, it had initially proposed, in Contract negotiations, that:

> "all 'past practices' be eliminated, and that the written CBA be the sole source of entitlement for employee working conditions."8

From this posture, the Village argued, its proposal to eliminate unwritten past practices was never withdrawn, and the exchange of letters between the parties in the summer of 2011 [concerning the topic of "subcontracting", in connection with the Village's Golf/Club (administrative and ground maintainance operations)]:9

> "make farcical the CSEA's current claim that the Village never previously raised this issue."10

The Village stated that in order for it to agree to a financial package with the Union, and to know the extent of its fiscal obligations, the Union had to withdraw its grievance as it exposed the Village to a claim for damages for the alleged improper layoff and vendor contract. The Village position does not appear unreasonable, and as a matter of fact, I so find.

Regarding retroactivity of any wage settlement to separated employees, unchallenged Village research disclosed that "there is no 'past practice' of retroactive raises to employees who left service during the period of retroactivity."11

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8. Village Factfinding Submission, at page 2.
9. Exhibits A to C, Employers's Position, dtd. 1/7/13.
10. Village Factfinding Submission, at pages 2-3.
11. Id. at page 3.

Finally, the Village asserted, "a four year agreement is sufficient and still leaves the parties … thru May of 2014 to operate under a new CBA … [so a]nother year (through 2015) is hardly necessary and projects too far into the future given the uncertain economic times."12

FINDINGS AND RECOMMENDATIONS

This proceeding followed a Mediation by PERB's Regional Director Maier in which certain salary increases and a contract term, see above, were recommended. The Village believed a four year term "sufficient," moreover, the Union stated it would only "agree to an additional year on the term of the agreement…if and only if there is a joint proposal by the parties[;]"13 however, in view of the current date and the time remaining on a CBA, that commenced on June 1, 2010, it accordingly appears that a four year contract term is in order, and I so find.

Respecting the issue of salary increases, the Village has not indicated that it is unable to pay a 5% increase per year, over the contract term sought by the Union, but that is not, in itself, enough to recommend it; instead, the 2.25% wage increase per year, for 4 years, per Regional Director Maier's Recommendation (See Joint Exhibit), appears reasonable and without more by the Union than the Village's ability to pay, I too so find.

12. Village Factfinding Submission, page 4.
13. CSEA Response to Employers Settlement, dtd. January 2, 2013.

As to retroactivity of wages to former employees, it is clear, after the uncontradicted research by the Village, that:

> "there is no 'past practice' regarding payment of retroactive raises to employees who left service during the period of retroactivity … [and the Village argued it should not be required] … to retroactive 'bonus' employees who no longer work for the Village (and who are no longer represented for collective bargaining purposes by the CSEA)."14

For the above stated compelling reasons, I find that only those current employees, having continued employment during the period of retroactivity, are entitled to a retroactive wage increase at the 2.25% rate heretofore recommended by Regional PERB Director Maier, for the periods indicated.

CLOSING

It is anticipated that the foregoing Findings and Recomendations will be of assistance in resolving the impasse.

Respectfully submitted,

OWEN B. WALSH

Dated: Oyster Bay, New York
13 March 2013

Copy to: Peter A. Bee. Esq.
Bee Ready Fishbein Hatter & Donovan, LLP
For Village of Lawrence

Stanley H. Frere, LRS
CSEA Local 802, (Lawrence Employee Unit)

Richard A. Curreri
PERB Director of Conciliation

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14. Village Factfinding Submission, pages 3-4, insertions mine.