

**NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of the Fact-Finding Between

THE TOWN OF PENDLETON, Employer

- and -

TEAMSTERS LOCAL 264, Union  
(Highway, Water and Sewer Departments)

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**FINDINGS OF FACT AND  
RECOMMENDATIONS**

**Case No. M2011-024**

**BEFORE:** Lise Gelernter, Fact Finder

**APPEARANCES:**

For the Town of Pendleton:

Andrea L. Sammarco, Esq.  
The Sammarco Law Firm, LLP  
The Chapin Mansion  
1207 Delaware Avenue, Suite 219  
Buffalo, New York 14209

For Teamsters Local 264:

Joseph E. Nowak  
Business Representative  
Teamsters Local 264  
35 Tyrol Drive  
Cheektowaga, New York 14227

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**INTRODUCTORY STATEMENT**

The two issues to be resolved through the fact-finding process in this case are: 1) wage increases; and 2) employer and employee contributions to the cost of healthcare insurance.

Because of escalating healthcare costs nationwide, and the national economic downturn, these issues have become more and more difficult to resolve in many cases.

Both the Town of Pendleton (Town) and Teamsters Local 264 (Local 264 or Union) tried to resolve their differences on these issues in a reasonable and professional manner and their representatives, Andrea L. Sammarco, Esq. and Joseph E. Nowak, provided this Fact Finder with

arguments and data that assisted greatly in my efforts to make recommendations on the wage and healthcare insurance issues that took into account the parties' economic and labor relations conditions.

Section 209 of the New York Civil Service Law governs the fact-finding process in this case, but it does not set forth standards for a fact-finding report. In lieu of statutory standards directly applicable to this case, I have looked for guidance from the principles applicable to binding arbitration of contractual disputes. These principles provide that recommended terms for a contract should reflect the terms that the parties would have or should have agreed upon based on:

- a) a comparison with similarly situated employees and employers in similar markets;
- b) the ability of the employer to pay for the terms of the contract and the impact of the contract's terms on the public interest; and
- c) the terms of agreed-upon contracts in the same or comparable regions and for similar or comparable employees and employers.

*See* NY Civ. Serv. Law §209(4)(c)(v). Because the parties previously agreed to the terms of the contract that expired, my presumption is that the terms of the expired contract should continue unless there is a clear reason to change them, such as a change in conditions, a significant concession by one party or a clearly prevailing custom or practice that is applicable to the employer and the employees.

## **BACKGROUND**

### **Process Before Fact-Finding**

The Town and Local 264 are parties to a collective bargaining agreement (CBA) that expired on December 31, 2010. This was the first contract between the parties due to the Union

first being recognized in late 2006. Employer Brief, p. 2. After seven negotiating sessions, negotiations bogged down and the Union requested a Declaration of Impasse on March 28, 2011 and the parties met on three occasions with Mediator Lee Coppola on June 7, 2011, June 16, 2011 and October 10, 2011, but no agreement was reached. Declaration of Impasse; Town Request for Fact Finder. The Town requested the assignment of a fact finder on October 25, 2011, and on November 14, 2011, the Public Employment Relations Board appointed this Fact Finder. Town Req. for Fact Finder; PERB Appt. Letter. The parties met with me on December 14, 2011. In addition to Ms. Sammarco and Mr. Nowak, the parties were represented at the meeting by Joseph Frawley, Town Board Member, for the Town, and Craig Walter, Town Employee, for the Union.

At the December 14 meeting, the parties agreed that instead of holding a hearing, they would submit to the Fact Finder statements of their positions and supporting data by February 1, 2011, with any replies due on February 28, 2012. Both parties submitted their statements in a timely manner and the Union submitted a reply later in the month. I reviewed the parties' helpful submissions and, according to the parties' agreement on procedure, I mailed a list of questions I had on March 16, 2012 and the parties responded on April 26 (Town) and April 27 (Union).

### **The Parties**

The Town of Pendleton has 10 employees in the bargaining unit who work in the Highway, Water and Sewer Departments. Town Brief, Ex. D. In addition, the Town has 5 non-bargaining unit employees. Town Response to Questions, p. 2.

Teamsters Local 264 represents the Town's 10 employees in the Highway, Water and Sewer Departments. The job titles are: Deputy Highway Superintendent, Deputy Water/Sewer

Superintendent, Sewer/Water Maintenance, Equipment Operator, General Maintenance, Truck Driver, Laborer Class I, Auto Mechanic and Laborer Class II. 2010 salaries negotiated for employees hired before January 1, 2008 range from \$22.89 per hour to \$20.60 per hour. For employees hired after January 1, 2008, the highest hourly rate in 2010 was \$18.03 per hour and the lowest was \$14.37 per hour. CBA, Appendix A.

**The Town's Finances**

The Town adopted a 2012 budget of \$1,261,252.00 for general fund appropriations, \$911,084.00 for highway appropriations, \$ 564,223.44 for Water Maintenance Fund activities and \$410,742.00 for Sewer Improvement appropriations. Town Brief, Ex. A. The chart below shows the appropriations and estimated revenues for each source, which are the fees and other non-tax revenues dedicated to each department. The taxes, a separate funding source according to the tax levy ledger sheet the Town provided, are in the third column.

	<b><u>Appropriations</u></b>	<b><u>Estimated Revenue</u></b>	<b><u>Estimated Tax</u></b>
<b><u>General Fund</u></b>	\$1,261,252.00	\$1,094,100.00	
<b><u>Highway</u></b>	\$ 911,084.00	\$ 617,300.00	\$206,418.00
<b><u>Water Maintenance</u></b>	\$ 564,223.44	\$ 321,400.00	\$134,355.95
<b><u>Sewer Improvement</u></b>	\$ 410,742.00	\$ 278,122.00	\$132,620.00

Town Brief, Ex. A, p. 16. In order to meet the appropriated amounts for the entire town (which also included the appropriations, revenues and taxes for the Fire and Refuse districts), the amount to be raised by taxes for 2012 was \$1,389,693.70. \$2,316,122.00 in revenues for the Highway,

Water, Sewer and other Departments and an “unexpended balance” of \$363,163,74 were also included in the Town budget to meet the total appropriated amount of \$4,068,979.44. *Id.*

Actual expenditures may vary, of course, from the appropriated amounts. For 2011, the appropriation for the relevant departments is shown below, compared with the actual expenses and revenues dedicated to those departments.

	<u>Actual Expenses</u>	<u>Appropriations</u>	<u>Actual Revenue</u> <sup>1</sup>
<u>Highway</u>	\$910,568.20	\$963,106.00	\$807,628.38
<u>Water Maintenance</u>	\$451,771.04	\$565,269.89	\$369,693.45
<u>Sewer Improvement</u>	\$406,651.17	\$403,863.00	\$374,214.87

Town Brief, p. 8; Exs. J and A, pp. 8, 10, 12.

**DISPUTED ISSUES AND FACT-FINDING RECOMMENDATIONS**

**I. Wage increases**

The provisions of the expired contract and the proposals of the Town and Local 264 on wage increases are summarized below:

<u>Expired CBA</u>	<u>Town Proposal</u>	<u>Union Proposal</u>
2008 -- 3%	1.25% for all years of the contract period (originally 0% for all years)	3% for all years of the contract period
2009 -- 3%		
2010 -- 3%		

CBA; Town Brief, p. 6; Union Proposal, 6/16/11.

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<sup>1</sup>This “Revenue” number appears to include taxes as well as user fees and other revenue sources; the “Estimated Revenue” in the previous chart included all revenue except taxes, which

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appeared in the last column of that chart.

The Town's 2012 budget assumed a 1% wage increase for all Town employees. The Town proposed an additional .25% "as a sign of good faith." Town Brief, p. 7. Because New York Law now prohibits municipalities from increasing their property taxes more than 2% annually or the inflation rate, whichever is lower, the Town argues that it could not cover more than a 1.25% wage increase, based on its 2012 tax levy. Town Brief, pp. 8-9. A 2% tax increase would net only \$ 9,467.82 from highway, water and sewer user fees and taxes, and a 3% wage increase each year for the 10 bargaining unit employees would impose an additional cost of \$14,716.45 in 2010; \$15,157.94 in 2011; \$15,612.81 in 2012; and \$16,081.06 in 2013. In contrast, a 1.25% annual increase would have cost \$6,131.85 in 2010 and topped out at \$6,363.67 in 2013. Town Brief, p. 7. It should be noted, however, that a 2% increase in the total town estimated taxes of \$1,389,693.70 would yield \$27,793.87. Obviously, those funds could not all be used for only the highway, water, and sewer departments and there are many competing Town services that are also experiencing cost increases, but to the extent the taxes collected can be allocated to the highway, water and sewer departments, there might be additional funding available.

Due to a recent change in New York law, in order to increase taxes by more than 2%, the Town residents would have to approve the increase by a 60% vote. In response to my inquiry as to the evidence supporting the Town's statement that it "could not generate greater revenue from tax increases," the Town replied that the "Town Board had been surveyed and reported strident opposition amongst constituents to any proposed tax cap override by referendum or otherwise." Town Response, p. 4. If wage increases exceeding 1.25% were imposed, the Town stated, there was a "very likely prospect of staffing cuts to bring finances into line." Town Brief, p. 9.

The Town also has additional fiscal constraints. The Town's pension costs for fiscal years 2010-2012 exceeded the New York State Comptroller's projections by 400%, with the following increases over the previous year: 2010: 50.5%; 2011: 54%; 2012: 40.1%. The total cost of the pension contribution each year was: 2010: \$60,515; 2011: \$93,325.00; and 2012: \$131,812.00. Town Brief, p. 8. In addition, in 2011, for the first time in town history, the expenses exceeded the revenues for the Highway, Water and Sewer Departments. Town Brief, p. 8.

Health insurance costs for the Town have also risen quickly. The bargaining unit's health insurance premiums for the Town are currently \$165,025 annually, which represents an increase of \$53,217 since 2009. Town Brief, p. 4. The average health insurance premium for 10 bargaining unit employees is therefore about \$16,500. The Town pays an additional \$57,476 in health insurance premiums for the other five Town employees who are not members of the bargaining unit. Town Response, p. 3. This means that the average health insurance premium for non-bargaining unit employees is approximately \$11,500.

The Town also argued that it already paid some of the highest wages for comparable positions in other Niagara County municipalities. Town Brief, pp. 9-10; Ex. N. The Town's chart on 2011 wages showed that for a Laborer, Pendleton paid \$20.60/hour. The Town of Wilson had the lowest wage by far for Laborers for snow, at \$14.50/hour. Four other towns had somewhat lower wages than Pendleton for the Laborer title: \$18.10/hour (Lockport); \$18.80/hour (Wheatfield); \$19.44/hour (Niagara); \$19.83/hour (Newfane). The Town of Hartland slightly exceeded Pendleton's Laborer wage at \$20.75/hour. Similar patterns exist for other job titles. All the Town's information on comparative wages appears in the Appendix to

this report. Although Pendleton is on the higher end of the wage rates for similar titles, it is not grossly out of line with most of the surrounding municipalities.

In addition, the Town argues, other municipalities are seeking wage freezes as well as wage increases in the 1% range. The only example the Town provided of a negotiated freeze was in the City of North Tonawanda, where the CSEA public works employees agreed to wage freezes in years 1 and 2 of a four-year contract, followed by raises of 1.25% in years 3 and 4, along with “health insurance changes.” Town Brief at 11.

The Union presented a chart of the negotiated wage raises in all the towns in Niagara County with which it has collective bargaining agreements for highway, water and sewer employees for varying periods between 2010 and 2014. The lowest annual raise was 2%: in Wilson, there was a raise of 2% in 2011 and 2012, but that was preceded by a 7.7% increase in 2010. In Wheatfield, there are 2% annual raises 2012, 2013 and 2014. Hartland, Lewiston (Town and Village) and Youngstown had an average increase of 3% each year for 2010-2012. The Village of Middleport had a 2.65% raise in 2010, 2.6% in 2011, 2.75% in 2012 and 2.7% in 2013. The Town of Newfane had an annual 2.5% raise from 2010 through 2013. Union Report, attachment. All of the Union’s wage raise data is attached in the Appendix to this Report.

In response to my question as to whether the Union had any response to the Town’s contention that it may be forced to lay off workers if a 3% raise were imposed, the Union stated that it ‘would not like to see any Town employee laid off [whether or not the employee is in the bargaining unit].’ In addition, the Union stated that it “believe[d] that if the Town held a vote for a referendum to increase taxes by a half (1/2)% above said 2% tax cap” that the voters would approve the increase by the necessary 60% vote.

### **Recommendation on Wage Increases**

In conjunction with the healthcare insurance terms I recommend below, I recommend that there be a 1.25% wage increase to be made (retroactively) on January 1, 2011, and then 2% wage increases on January 1 in 2012, 2013, and 2014. This assumes a contract termination date of December 31, 2014 because the parties' previous contract was for a four-year period.

The Employer's ability to pay and the public interest have been taken into account in this recommendation. The Town showed that due to the recently imposed 2% cap on tax increases without a 60% majority vote, it faced additional pressures that comparable towns did not face when they previously negotiated their CBAs. The Town also acknowledged that a 0% wage increase might not be fair and had increased their offer to 1.25%, even though the 2012 budget assumed only a 1% increase. However, it is clear that even though other towns might have negotiated their CBAs prior to the 2% tax cap, they still face the same fiscal pressures as Pendleton. Nonetheless, no comparable town had a wage increase of less than 2% per year, and several town's raises were between 2.5% and 2.75%. Because Wilson's 7.7% increase in 2010 was an "outlier," I did not consider that to be indicative of a trend. The Union's demand for a 3% increase in each of the contract's years was not unreasonable, but in light of the fact that Pendleton is at the higher end of the wage scale for neighboring towns, and that a 2% raise is the minimum raise negotiated in all of the towns with which the Union has a contract for comparable employees, a 2% raise appears to be a very conservative and reasonable wage increase.

Taking into account the retroactivity of this recommendation, the Town's increasing fiscal pressures, and the fact that the Town determined it could cover a 1.25% raise, I recommend a 1.25% raise for the first year only (2011) as it represents a significant difference

from other comparable towns and from the prior contract's wage increases. However, for the remaining years of the contract, 2% raises are reasonable given what other comparable towns are doing and Pendleton's fiscal status. To cover the raises, the Town has the option of seeking a tax increase in September of greater than 2% should that be necessary, determining that it can draw additional funds from general tax or other revenues, or making other adjustments in its budget. I recognize that the Town threatened that a 3% wage increase could necessitate layoffs, but it appears that there is some room for 2% raises within the Town's revenue and tax streams. For example, a 2% increase in the total Town estimated 2012 taxes of \$1,389,693.70 would yield \$27,793.87, which would more than cover the raises.<sup>2</sup> In addition, the recommended changes in health insurance premiums discussed below will result in some savings for the Town.

## **II. Health insurance premiums**

Under the expired contract, the Town pays for 100% of the cost of health insurance for all bargaining unit members.<sup>3</sup> The Town had proposed that employees contribute 50% of the cost of the monthly health insurance premium, whereas the Union had proposed that only newly hired bargaining unit employees should make a 3% contribution to the cost of insurance, with remaining employees continuing with the current system of 100% employer contributions.

Town Brief at 2; Bargaining Proposals of Town and Union.

The Town argued that the rapid rise in health insurance premiums requires that

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<sup>2</sup>The Town estimated that a 3% raise would cost \$16,0810.06. Town Brief at 7.

<sup>3</sup>Article 19 of the CBA provides that if the Town offers coverage that is comparable to the Teamsters Health and Hospital Plan, the bargaining unit member is "responsible for payment of the amount by which the cost coverage under the [Teamsters plan] exceeds the cost of comparable coverage offered by the Town." However, so far, the Town has never offered alternate comparable coverage, so no bargaining unit member has contributed anything to the cost of health insurance. Town Response, p. 3; Union Response to Questions, p. 2.

employees start contributing to healthcare costs at the high rate of 50%. From 2009 to 2011, the Town faced a 34.4% rise in premiums for single coverage and 35% for family coverage. Town Brief at 4. The current premium for health insurance for all bargaining unit members is \$165,026.00.

The Town submitted data showing that highway, water and sewer employees in surrounding towns paid for health insurance as follows:

<b>Town</b>	<b>% paid by employee</b>
Cambria	0%
Hartland, Royalton	10% for employees hired after 2005; 0% for remainder
Lockport	15% for new hires; [not known if remainder pay any part]
Newfane	30% for first five years

Town Brief, Exhibit E; Town Response, p, 1. The Town did not identify any communities where employees are contributing 50% towards the cost of health insurance.

The Union submitted data on the health insurance contributions employees make for those towns with which the Union has a CBA for highway, water and sewer employees in Niagara County.

Town	% paid by employee
Cambria, Hartland, Lewiston (Town and Village), Middleport, Newfane, Royalton, Youngstown (Village)	0%
Wheatfield	10%
Wilson	20% for employees hired after December 31, 2000; 0% for remainder

Union Fact Finder Report, Attachment; Union Response, p. 2. In response to the Town’s concern about the huge escalation in health insurance costs, the Union pointed out that for the Teamsters Health Plan, the Town has “guaranteed rates going out to the end of the year 2014.” Union Rebuttal, p. 1.

**Recommendation on Employee Health Insurance.**

I recommend that contingent upon the acceptance of the wage raises recommended above, and a contract that expires on December 31, 2014, that all employees be required to pay 3% of the health insurance premium cost prospectively. Although there are still several Niagara County towns where the employer pays 100% of the cost of the health insurance cost (Union Fact Finder Report, Attachment), there seems to be a clear trend to having employees contribute towards that cost. The Union recognized this by proposing a 3% contribution for new employees.

There was no evidence that employees anywhere pay 50% of insurance premiums, as the Town had proposed. Although the Town’s data showed that Newfane employees pay 30% “for the first five years,” Town Brief, Ex. E, it was not clear what happened after that point. Furthermore, according to the Union’s information, for the employees the Union represents in Newfane, employees contribute 0%. Union Fact Finder Report, Attachment.

The Union had proposed that only new hires be required to contribute 3% of the health insurance costs, but I recommend that this requirement be extended to all employees for three reasons. First, two-tiered health insurance premium contributions split the bargaining unit unnecessarily, fragmenting the unit's community of interest and the Union's responsibilities to its members. Second, given that in those towns where all the new employees represented by the Union pay some contribution to health insurance, they are contributing 10% or more of the cost, if all employees in Pendleton are contributing, a much lower percentage can be paid by each employee. Third, the Union had proposed a 3% contribution for new hires; this would seem to indicate it is an acceptable contribution to make even for the lowest-paid members of the bargaining unit.

I recognize that a 3% contribution will erode the benefit of a 2% raise, but it will not obliterate it. The average health insurance premium for the bargaining unit members is \$16,500; a 3% contribution would be \$495. Since the contribution requirement would be prospective only, prior to contributing to the healthcare costs, employees will have already received the 1.25% retroactive raise for 2011 that I recommended. In addition, they will have received the 2% wage increase for 2012. Assuming that employees work 40 hours per week for 50 weeks per year, the lowest wage earner at the 2010 rates earns \$28,470 per year; the highest paid worker earns \$45,780 per year. Even without adding in the 2011 and 2012 raises, a 2% raise based on current rates for the lowest paid employee would yield an additional \$574; for the highest paid employee, the yield would be \$915.60. Even though the health insurance contribution does decrease the benefit of the wage raise, it is still a reasonable requirement because employee contributions for health insurance are more common than not, 3% is on the low side compared to

neighboring communities where employees contribute, and the Town has shown that it is facing some difficulty in dealing with the escalating cost of health insurance.

### **CONCLUSION**

My recommendations are based on the information and arguments that the parties presented to me and are what I have concluded are the most reasonable and practicable resolutions of the open issues between the parties. I urge the parties to adopt these recommendations to break their current impasse.

May 30, 2012  
Amherst, New York

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Lise Gelernter  
Fact Finder

## **APPENDIX**

Copies of the Town's data on comparative 2011 wages and the Union's data on negotiated wage raises are attached. Town Brief, pp. 9-10 and Exhibit N; Union Report, Attachment.