

State of New York Public Employment Relations Board

In the Matter of the Fact Finding between the:

Hudson River-Black River Regulating District,

-and-

CSEA Local 120 (Hudson-Black River District),

PERB Case Number: M2013-168

Fact Finder: Robert G. Bentley

Appearances:

For the District: Michael Clark, Executive Director
Hudson River-Black River Regulating District

For the Union: Charles Barley, Labor Relations Specialist
CSEA, Capital Region Office

I. Background

A) Organizational Background:

The Hudson River-Black River Regulating District (RD) is a New York State public benefit corporation that protects public health and safety by regulating the flow of waters in two neighboring watersheds in the Adirondack Region: the Upper Hudson River and the Black River. The District maintains dams (Conklingville Dam on Great Sagandaga Lake and the Stillwater Dam on Stillwater Reservoir); makes engineering decisions; and directs staff or hydro-electric facilities to release water at a specified rate for a specified period of time. CSEA Local 120 represents 12 employees of the District who carry out administrative and field work to accomplish the District's mission. This includes performing mainte-

nance work on the dams, doing field surveys of conditions, and issuing permits on portions of the State owned property.

B) Funding Background:

The funding sources for the Regulating District changed substantially as a result of a lawsuit brought by a downstream power company in 2008. Prior to 2008, the Regulating District received much of its funding from power companies that benefit from the release of water from the Great Sacandaga Lake reservoir. A U. S. Court of Appeals decision in that lawsuit ceased the payments previously made by the power companies. In May of 2010, as a result of this loss of revenue the Regulating District was forced to layoff approximately 12 employees, most of which were from the CSEA bargaining unit (CSEA brief p. 2).

The District levied assessments on the five counties benefitting most from the flood control efforts arising out of the operation of the Conklinville Dam. After an unsuccessful court challenge brought by the counties, the counties and the Regulating District reached an agreement resolving the money in arrears in early 2013 (CSEA Brief p.3).

II. Procedural History

The parties contract expired on June 30, 2012. The parties began negotiations on April 2, 2013. After several negotiating sessions, the parties reached a Tentative Agreement on July 3, 2013. On July 22, the Board of Directors of the Hudson River-Black River Regulating District rejected this tentative agreement.

After negotiations between the parties in August 2013, were unsuccessful, CSEA declared an impasse with PERB on September 20, 2013. Mediation failed to resolve the impasse. On January 14, 2014, PERB received a request from the CSEA for the appointment of a Fact Finder. On February 7, 2014, pursuant to New York Civil Service Law Section 209, the Public Employment Relations Board (PERB) appointed the undersigned to serve as Fact Finder.

III. Terms of First Tentative Agreement

The Impasse filing with PERB indicates that on July 3, 2013, the District and the Union reached a Tentative Agreement for a successor agreement to run from July 1, 2012 through June 30, 2015, with the following changes:

• General Salary Increase

1. Effective 7/1/12 - \$500 on base salary increase
2. Effective 7/1/13 a 2% general salary increase
3. Effective 7/1/14 a 2% general salary increase and
4. a \$125 lump sum paid in the first payroll period of December 2013;

• Provision of Dental and Vision Insurance into retirement

1. In the event the District provides dental and/or vision benefits in retirement to non-bargaining unit employees, such benefits shall be extended to the employees of the bargaining unit on the same terms and conditions commencing on June 30, 2015.

2. At the commencement of any new collective bargaining agreement, employees shall pay the same premiums for dental and/or vision benefits in retirement as they paid as an active employee.

• Adding the titles of Superintendent and Engineering Assistant to the bargaining unit

Article 1, "Recognition", shall be amended to add Superintendent and Assistant Engineer. Additionally the parties agree to meet and negotiate the Superintendent and Assistant Engineer salaries during the term of the contract.

IV. Fact Finding

At the Fact Finding session on March 3, 2014, the Parties reached agreement on terms for a three year agreement (July 1, 2012 - June 30, 2015). The parties agreed that the RD Executive Director would take this proposal to the RD Board seeking approval. The key terms were:

• General Salary Increase [Amend Article III subsection (A)]:

1. Effective 7/1/12 - No salary increase
2. Effective 7/1/13 - A \$1,000 lump sum, not added to base salaries

3. Effective 7/1/14 - An increase of 2% on base salaries (the salary schedules shall be increased to reflect same)

• **Longevity Increments** [Amend Article III subsection (C)]:

A \$400 increase to each Longevity payment.

• **Adding the titles of Superintendent and Engineering Assistant to the bargaining unit (Amend Article I) :**

1. Add Superintendent and Engineering Assistant to the list of titles in the bargaining unit effective June 30, 2015.

2. Upon entering into the Union, the individuals incumbent in these titles shall be entitled to their salary and benefit levels earned pursuant to the Management/Exempt Guidelines.

On June 9, 2014, the Regulating District negotiating team notified the CSEA Labor Relations Specialist that after speaking with several members of the Board, they believed that the Board would reject the March 3rd negotiated agreement, but that the Board would consider a proposal to add a fourth year to the contract including a 2% increase. The parties memorialized a Tentative Agreement in a June 9, 2014, "Memorandum of Agreement" providing for general salary increases of 0% for July 1, 2012, \$1,000 not added to base on July 1, 2013, 2% added to base on July 1, 2014, and 2% added to base on July 1, 2015. The revised Memorandum of Agreement also required a \$400 increase to each longevity payment.

On July 8, 2014, during the Board's regularly scheduled meeting, the six members of the Board adjourned to executive session to discuss collective bargaining issues. The Board did not vote on the tentative agreement as proposed but resolved (Resolution 14-22-07) to authorize the Executive Director to execute a revised version of the June 9, 2014, agreement provided that numbered paragraph 4, calling for a \$400 increase per longevity increment, be stricken from the proposal.

Without agreement on all terms, the impasse continued and consistent with the discussions among the Fact Finder and the two parties at the March 3rd meeting, both parties filed briefs with the undersigned. The Structure of the Fact Finding Process is not defined in great detail in the statute (Section 209 of Civil Service Law). Fact Finders in other jurisdictions typically use the following criteria to develop recommendations:

1. Are there employees in public or private employment, in comparable communities, who perform similar services to those of the members of this bargaining unit? If so, how do the wages, hours, and conditions of employment compare?
2. The interests of the public and the financial ability of the District to pay
3. Comparison of peculiarities in regard to other occupations (e.g. hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training and skills)
4. Relevant information about the history of collective bargaining agreements between the District and this bargaining unit

The undersigned has reviewed and considered all the information in the briefs in making findings and recommendations.

V. Discussion of Outstanding Issues

The impasse between the RD and its CSEA bargaining unit is over total compensation; specifically the sections of the agreement on the General Salary Increases and Longevity Increments. The parties have reached mutually acceptable resolutions of all other issues by virtue of their June 9, 2014, Tentative Agreement.

The RD has offered salary freezes and increases patterned after the statewide CSEA bargaining units in 2012-16 contracts. Its position is that this provides adequate compensation for its employees and it has been unwilling to increase Longevity Increments.

The CSEA compares its employees to employees in the statewide contracts who have larger 5 year and 10 year Longevity Increments as part of their compensation package. It has offered to accept the General Salary provisions offered, if their members are granted a \$400 increase in each of the five Longevity steps in the successor agreement.

The parties respective views of the existing compensation arrangements for statewide CSEA employees vs RD employees are polar opposites. The RD asserts the RD employees are paid at a higher rate than State employees performing similar work and that the increase in Longevity Increments would exacerbate this imbalance. The CSEA asserts the RD employees are paid at a lower rate

than State employees performing similar work and, to progress toward a more equitable situation, the Longevity Increments must be raised to narrow the gap. This underlying disagreement must be addressed if the parties are to reach a successor agreement.

Compensation – General Salary Increases

- RD Proposal:**
1. Effective 7/1/12 - No salary increase
 2. Effective 7/1/13 - A \$1,000 lump sum, not added to base salaries
 3. Effective 7/1/14 - An increase of 2% on base salaries*
 4. Effective 7/1/15 - An increase of 2% on base salaries*
- *(the salary schedules appended to the collective bargaining agreement shall be increased to reflect same for #3 and #4)

Positions of the Parties:

The undersigned requested each party to address comparisons of wages and working conditions of RD employees with any other public or private employees, in comparable communities, who perform similar services. The RD asserts that many RD job rates are higher than similarly graded NYS employees, and several RD employees enjoy compensation in excess of the applicable job rate.

The RD maintains that its proposal on General wage increases specified above is sufficient to provide adequate compensation of its employees in this bargaining unit.

Below is CSEA's rationale for the compensation improvement they seek:

"At the time of this report, there are no known job descriptions in place. CSEA and the Regulating District have discussed establishing job descriptions at great length over the years, but no final version of job descriptions have been agreed upon.

In the absence of job titles, CSEA has reviewed allied and related organizations for employees who perform the same or similar tasks as those performed by CSEA Local 120 members. We surveyed the positions and based our comparison on the *actual* duties performed by Local 120 members measured against what we contend are the same or similar jobs performed by other organizations using other job descriptions. Almost all of the analogous positions we looked at are employed by the State of New York and the Canal Corporation."

The CSEA brief provides specific information on the comparisons it made, including NYS Department of Civil Service Classification Standards which include a job's duties, classification criteria, independence of operation, supervision exercised, minimum qualifications along with other distinguishing characteristics. CSEA also asserts that for the first two years of the proposed settlement, with no raises to the salary schedule, inflation results in a loss of 3% of purchasing power (CPI-U of 1.5% inflation for both 2012 and 2013).

Discussion:

Fact Finders may not generally engage in such a detailed examination of job content. However, because of the fundamental disagreement of the parties regarding overall compensation in comparison to State employees, the undersigned sought to determine the general trend of salary levels of RD jobs vs. comparable NYS jobs where employees of both organizations perform similar work. This is not to infer that an exactly comparable job can be found for each RD position. Positions with one employer are rarely (if ever) identical to positions at another. However, knowing the relative value another employer assigns to similar duties can be instructive when trying to determine a fair and equitable wage for RD positions in general.

Since there are no finalized job descriptions for RD positions at this time (CSEA Brief p.9) the primary focus for comparison is on filled positions where employee duties have been provided in the CSEA Brief (p.10-16).

Below is an analysis of the most populated job titles at the RD and one vacant position mentioned in the briefs. This overview encompasses 11 of the 13 bargaining unit positions the parties addressed in their briefs.

Sr. Administrative Asst. (5 Incumbents)

CSEA asserts that the RD Sr. Administrative Asst. positions are comparable in duties to the Administrative Asst. position in the State (allocated to Salary Grade 18 — job rate salary as of April 2012, \$65,190). I have examined the duties of the RD Sr. Administrative Assistants (CSEA Brief p. 6-7) in comparison with the NYS Classification Standard for Sr. Administrative Assistant and Administrative Assistant (CSEA Brief Exhibit C) and find the RD Sr. Administrative Asst. posi-

tions have a high degree of comparability with the NYS Administrative Asst. positions.

The RD asserted in general that for several titles RD employees were paid above the RD job rate for the position. The average salary of the 5 RD Sr. Administrative Assistants as of June 30, 2012, is \$55,719. By comparing actual salaries, this gives context to the RD's contention that some employees are paid above the RD job rate.

Principal Plant Operators (3 Incumbents)

Principal Plant Operators (PPO) perform duties related to the operation and maintenance of dam sites and reservoirs. The average salary of the three PPO's is \$47,889. CSEA asserts that the NYS positions of Chief Lock Operator in the NYS Thruway Authority are comparable in duties. While this comparison does not have as high a degree of comparability as the Administrative Asst. positions discussed above, these positions have a reasonable degree of comparability. There is enough similarity that the comparison is instructive. The Chief Lock Operator positions are not allocated to a State salary grade. However these salaries are public information available on www.seethroughny.net. In general Chief Lock Operators were paid \$3,000-5,000 more annually, in 2012, than Principal Plant Operators.

Sr. Field Asst. (2 Incumbents)

Sr. Field Assistants administer all aspects of the permit system. CSEA asserts that the Sr. Field Assistants perform similar work to the NYS position of Environmental Conservation Officer (ECO). The police officer status of ECO's represents a major difference from Sr. Field Assistant positions.

While there are some similarities in the functions of these positions the undersigned does not see a sufficient degree of similarity to find this comparison instructive to this Fact Finding.

Vacant Position (Clerk/Receptionist)

The RD proposes comparison of the RD Clerk/Receptionist position with either Clerk 1 or Clerk 2 NYS positions. The RD points out that the job rate for the

State Clerk 1(Grade 6) position (in 2012) was \$34,317, and for Clerk 2 (Grade 9) was \$40,136. The job rate for the RD Clerk/Receptionist position is \$41,606. Since this position is currently vacant, there is no finalized job description, and there are no other Clerk/Receptionist positions, it is difficult to compare it to other jobs. However it seems clear that this position must interact with the public and use considerable independent judgement. Comparison with the State's Clerk 2 title seems reasonable.

Compensation — Longevity Increments

CSEA Proposal: Each of the five (5) longevity increments shall be increased by \$400

Discussion:

The RD Longevity Increments start earlier but are considerably lower than the NYS employee Increments. The parties have chosen to structure their payments in this fashion and I do not recommend any change in the structure of Longevity Payments to which the parties have agreed.

The RD argues that to grant a \$400 increase in all Longevity Increments would result in RD employees earning \$4,650 more in Longevity payments than State employees when projecting future payments over a 25 year career. However the RD based its projections on all employees receiving the pre 1999 level Longevity Increments. Two thirds of the employees are not eligible for the pre 1999 level Increments. Substituting the post 5/21/99 Longevity payments produces results (See Attachment "A") different from those in the RD Brief. The existing RD contract produces \$22,000 in payments, the State Longevity benefit would be \$28,750, and the \$400 increase in the RD Longevity Increment would be \$30,400, over a 25 year career. Even with a \$400 increase in Longevity Increments, RD employees would still generally receive substantially lower overall compensation than their State counterparts.

The lack of any increase in Longevity Increments would ignore the salary trends indicating RD employees are generally paid less in salary, and less in Longevity Increments than State employees who perform similar duties. It also would ig-

nore that it has been over 20 years since Longevity Increments have been increased.

VI. Ability of the RD to pay

The Regulating District Budget Report (Union Exhibit “K”) which projects anticipated revenue and expenditures covering 2014-18, shows an anticipated surplus of \$1,181,442. CSEA argues that the Regulating District can afford a four year agreement with its CSEA represented employees that would cost approximately \$15,000 per year.

The RD negotiating team reached tentative agreement on settlement terms on three occasions, which indicates that the RD had the capacity to fund each Tentative Agreement.

In its brief the RD states that it “...has budgeted for the increases contemplated in the proposal with or without the increase in longevity increments”. The RD argues that the Board has made an offer of adequate compensation to the CSEA unit.

VII. Collective Bargaining History¹

In 2010, the U. S. Court of Appeals decision resulted in a major loss of funding and the layoff of approximately 12 employees, mainly from the CSEA unit. CSEA states that the RD asked the union to partner with them during this financially difficult time and it did (CSEA brief p.3). CSEA asserts that most employees took on more work and more responsibility and they are deserving of consideration for fair and equitable compensation when compared to other workers performing similar work.

¹ In the exchange of briefs there was discussion of an Improper Practice charge, between the two parties, filed with PERB. PERB has a process for the consideration of Improper Practice charges that is separate from the Mediation and Fact Finding processes. The undersigned has no role in the resolution of Improper Practice charges and I have not considered information in the briefs on this subject.

The most immediate bargaining history includes the negotiating teams' two formal tentative agreements and a third agreement, during Fact Finding.

CSEA also notes that the Longevity Increments in the statewide agreements were substantially increased in the 2007-11 State contracts. The RD has not increased CSEA Longevity Increments since 1991.

VIII. Findings

1) While the Clerk/Receptionist position, if filled, may be an exception, the overall finding is that there is convincing evidence that the RD employees are paid less than State employees performing similar work.

2) The five RD Senior Administrative Assistants are paid substantially less than their State counterparts, and the three Principal Plant Operators also have salaries lower than a comparable State position.

3) In a comparison of Longevity Increment payments, projected over a 25 year career, in general, the RD employees' current benefit is substantially lower than the benefit for State employees (covered by the contract used for salary comparisons).

4) Based on the Regulating District Budget Report's projections, the statements in the RD's Brief, and the tentative agreements, the RD has the ability to pay.

5) The last increase in Longevity Increments was in 1991.

6) The tentative agreements during the current negotiations reflect similar perceptions of both party's negotiators on what constitutes a fair and equitable settlement.

IX. Conclusion

The above factual findings weigh in favor of an increase in compensation beyond that contained in the General Salary portion of the June 9, 2014, Tentative Agreement. I agree that the Tentative Agreement calling for increased Longevity Increments, based upon this factual foundation, is reasonable.

Tentative Agreements are a key part of the bargaining process. Both the Regulating District Board and the CSEA Local 120 members empowered their representatives to bargain on their behalf, while maintaining the final authority to sign

off on the bargain. Most Tentative Agreements address the major interests of each constituency to some extent and are therefore ratified. In the bargaining process both constituencies must rely on their respective negotiators to fine tune their general direction. It is not appropriate for either side — whether it be the union membership or the board of directors, to second guess every specific aspect of the deal. It is the exception when negotiators' tentative agreements are not ratified.

In the current impasse, the first Tentative Agreement was rejected by the RD Board. The subsequent agreement reached by the parties during Fact Finding was discussed with several Board members and the RD negotiating team advised the CSEA Labor Relations Specialist that they believed the Board would reject this second agreement but the Board would consider a proposal to add a fourth year to the contract including a 2% increase. That same day the two negotiating teams prepared the Tentative Agreement of June 9, 2014, (RD Brief Exhibit "G"). Subsequent conversations could lead one to reasonably believe that appropriate direction was given for a revised version. Either party's failure to ratify such an offer one month later is counter productive to the negotiation process. The current lengthy Impasse (2012 contract expiration) has strained a generally productive labor/management relationship between the RD and CSEA Local 120. It is important to the long term health of the party's relationship to reach a successor agreement quickly.

The two negotiating teams deserve great credit for their efforts to strike a balanced bargain in the successor agreement. The core elements of an equitable settlement contained in their June 9, 2014, Tentative Agreement are fair and reasonable. However, it is not uncommon for negotiated improvements to be phased in. While the Factual Findings I have reached justify a \$400 increase in all Longevity Increments, I recommend that such increase be accomplished as indicated in the recommendations below.

X. Recommendations

Recommendation #1. Article III “Compensation”, subsection (C), entitled “Longevity Increments” be amended effective 7/1/ 2012, so that each of the five (5) longevity increments shall be increased by \$300 for all employees; and effective 7/1/13 so that each of the five (5) longevity increments shall be increased by an additional \$100 for all employees

Recommendation #2. The parties accept all elements of the June 9, 2014 Tentative Agreement with the exception of item #4 which shall be replaced by **Recommendation #1** in this Report.

I urge both parties to accept these recommendations without seeking further changes. Efforts by one side or the other to alter the balance of the recommended settlement will likely be counterproductive to an agreement.

Respectfully submitted,



Robert G. Bentley
PERB Fact Finder

October 8, 2014

Attachment A

Revised Table 1

Years of Service	Longevity Increment		Options	
	Regulating District	State Employee	\$300 Increase	\$400 inc.
0 (Hiring date)				
1	0	0	0	0
2	0	0	0	0
3	0	0	0	0
4	0	0	0	0
5	\$400	0	\$700	\$800
6	\$400	0	\$700	\$800
7	\$400	0	\$700	\$800
8	\$400	0	\$700	\$800
9	\$400	0	\$700	\$800
10	\$800	0	\$1,100	\$1,200
11	\$800	0	\$1,100	\$1,200
12	\$800	\$1,250	\$1,100	\$1,200
13	\$800	\$1,250	\$1,100	\$1,200
14	\$800	\$1,250	\$1,100	\$1,200
15	\$1,200	\$1,250	\$1,500	\$1,600
16	\$1,200	\$1,250	\$1,500	\$1,600
17	\$1,200	\$2,500	\$1,500	\$1,600
18	\$1,200	\$2,500	\$1,500	\$1,600
19	\$1,200	\$2,500	\$1,500	\$1,600
20	\$1,600	\$2,500	\$1,900	\$2,000
21	\$1,600	\$2,500	\$1,900	\$2,000
22	\$1,600	\$2,500	\$1,900	\$2,000
23	\$1,600	\$2,500	\$1,900	\$2,000
24	\$1,600	\$2,500	\$1,900	\$2,000
25	<u>\$2,000</u>	<u>\$2,500</u>	<u>\$2,300</u>	<u>\$2,400</u>
Total	\$22,000	\$28,750	\$28,300	\$30,400