

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding Between
COUNTY OF SCHOHARIE

FACT FINDING REPORT
Case No. M2017-154

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000,
AFSCME, AFL-CIO, SCHOHARIE COUNTY UNIT OF SCHOHARIE COUNTY
LOCAL #848

Before: Timothy S. Taylor, Esq., Impartial Fact Finder

Appearances:

For the Employer: County of Schoharie
Roemer Wallens Gold & Mineaux LLP
James W. Roemer, Jr., Esq. of Counsel

For the Union : CSEA, Local 1000, AFSCME, AFL-CIO, Schoharie County Unit of
Schoharie Local #848
Angelique M. Bywater, Labor Relations Specialist

The Public Relations Employment Board (“PERB”) appointed a mediator to assist in the negotiations, but the parties were not able to agree on a contract. On June 21, 2018, Schoharie County petitioned PERB to appoint a Fact Finder. On July 31, 2018, PERB appointed this Fact Finder, pursuant to Civil Service Law §209 and §205.5(k). A fact-finding hearing was held on November 20, 2018. At the hearing, the parties summarized their positions and had a full and fair opportunity to present testimony and evidence in support of their respective positions. The parties agreed to a fact-finding process in which they submitted briefs and exhibits in support of their positions by December 10, 2018. Although there were several open issues, the parties

agreed to have the fact finder make recommendations only on the issues of health insurance and salary increases.

BACKGROUND

Schoharie County (“County”) is a small rural county in central New York, west of the Capital District area. In the 2010 census the population was 22,749. The county seat is Schoharie. The County employs approximately 275 people in a bargaining unit represented by Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Schoharie County Unit of Schoharie County Local #848 (“Union”). The collective bargaining unit consists of all employees of Schoharie County in the classified Civil Service except those employees employed by the Office of the Sheriff. These members work in several departments in the County and hold numerous titles. Council 82 represents two other employee bargaining units for employees employed with the Office of the Sheriff.

The County and Union met in negotiations for the purpose of determining a successor agreement to their 2016 Collective Bargaining Agreement, (“CBA”). The parties negotiated and ratified an agreement from January 1, 2016 through December 31, 2016. That agreement called for a lump sum payment of a half percent (0.5%) not added to the base salary and then effective January 1, 2017, a half-percent (0.5%) added to the base salary (County Brief Exhibit “B”).

In January 2017, the parties began negotiations for a successor contract. At this time, the County was in the process of changing health insurance consultants. The County wanted to look for: 1) potential cost savings, or 2) cost containment for the escalating cost of employer provided health care. The County hired Insurance consultants, Gilroy, Kernan and Gilroy (herein after “GKG”). The County and GKG met to discuss the rising cost of health insurance. GKG presented and proposed the CDPHP High Deductible EPO Plan (“CDPHP HD EPO Plan”) to the

CSEA contract negotiation team. The CSEA negotiating team met with the CSEA Health Benefits Specialist Chuck Guild to analyze the proposed “CDPHP HD EPO Plan” as compared to the current CDPHP HMO Plan and NYSHIP Empire Plan.

The CSEA negotiations team determined that the CDPHP HD EPO Plan was an “equally beneficial plan” compared to the CDPHP HMO plan. The contract negotiating team supported this plan with respect to replacing the CDPHP HMO plan option.

During negotiations and mediation, CSEA expressed concern that the CSEA Schoharie County membership in the CDPHP HMO plan may not be receptive to changing from a co-pay structured plan to a high deductible structured plan. Under a co-pay structured plan the employee goes to the doctor and pays a fix co-pay for the appointment. Under a high deductible plan an employee is responsible for the first two hundred and fifty (\$250.00) dollars of the deductible for an individual and five hundred (\$500.00) dollars of the deductible for a two-person or a family plan.

The CSEA team stressed that the membership would have to be educated as to the change of plan structure. The CSEA continued negotiations and the CSEA Health Benefit Specialist analyzed the proposed CDPHP HD EPO Plan. The CDPHP HD EPO was also compared to New York State Health Insurance Plan (“NYSHIP”).

The Union determined that the CDPHP HD EPO plan is comparable but not equal to or substantially equivalent to the NYSHIP plan. The County did not seek to eliminate the NYSHIP plan option but proposed to offer NYSHIP at an employee contribution rate of 20% of the premium for individual and 30% for the family plan. The CSEA contract team told the County that this proposal would not be acceptable to the CSEA membership at those contribution rates and counter proposed lower contribution rates for the NYSHIP Plan.

The County rejected any counter proposals from the CSEA. The County maintained its demand that employees with NYSHIP pay 20% for individual and 30% for family. The CSEA rejected the demand as the contribution rates were not viable nor an attainable option for the CSEA Schoharie County membership.

Sixty percent (60%) of the members in the bargaining unit participate in the NYSHIP plan. During mediation with the CSEA, the County entered into successor bargaining agreement with the other two bargaining units, both represented by Council 82. The County offered the CSEA bargaining unit a similar package it offered those two bargaining units.

The CSEA negotiating team did not feel the County's offer put the CSEA bargaining unit on parity with the other units in the County with respect to the proposed monetary increases. The County maintained that once the other units agree to successor CBA as with respect to health insurance, CSEA should as well.

The parties met several times to negotiate a new contract without success. The County filed a Declaration of Impasse with the Public Relations Board (PERB) on January 12, 2018. Pursuant to the Declaration of Impasse, Assistant Director Bill Conley met with the County and the Union on three occasions and successfully mediated a Memorandum of Agreement ("MOA") between the parties.

On May 22, 2018, the CSEA contract negotiation team took a vote as whether to bring a tentative agreement to CSEA membership for a ratification vote. Five out of the nine CSEA contract negotiation team members signed a MOA (County Brief Exhibit "D") and supported bringing the tentative agreement to membership for a ratification vote. The membership overwhelmingly voted down the tentative agreement.

STANDARDS

Civil Service Law § 209(3)(c) governs the fact finding process. I have reviewed the Statute and will use the following principals to guide my recommendations: 1) a comparison with similarly situated employees in similar markets, 2) the ability of the employer to pay for the terms of the contract, and 3) the terms of agreed upon contracts in the same or comparable regions and for similar or comparable employees and employers.

POSITION OF THE PARTIES'

Union's Position

The Union argues that the mindset of its membership is relevant and needs to be considered. The fact-finding recommendations should promote harmonious labor relations between the parties. The Union contends that a majority of the CSEA bargaining unit members had the mindset that the County's proposed contribution rates were a deliberate attempt to force CSEA membership out of NYSHIP. The County's proposed NYSHIP contribution rates are cost prohibitive.

The Union argues that the County's proposed contribution rates for NYSHIP are higher than the contribution rates for same State employees based on wages. The rates are also higher than contribution rates for employees in other counties.

The Union maintains that other CSEA employees in other counties pay lower rates. In Nassau County the CSEA employees rates is 0%, in Orange County for employees hired after 8/22/87 the rate is 12% and capped at \$1200/ \$2200. In Sullivan County, county employees hired 8/1/00 thru 10/24/05 pay the rate of individual \$350/yr. family \$950/yr. Those hired after 10/24/05 pay 10%.

In Rockland County for those hired 1/1/94 thru 4/8/96 the contribution rate is Individuals 10%, Family 12% for 5 years , then 0%. Hired 4/9/96 thru 12/31/97- Ind. 12%, Fam. 14% for 10 years, then 0%. Hired 1/1/98 thru 12/31/99- Ind. 14% Fam. 16% for 12 years, then 0%. Hired after 1/1/00- Ind. 14%, Fam 16% for 15 years, then 0%.

In Fulton County, 50% of premium (Individual or Family) for the first year of employment. For those hired before 3/11/13, Individual 0% after 1st year, Family 50% of dependent coverage. For those hired after 3/11/13, Individual 20% after 1st year, Family 50% of dependent coverage with full credit given for cost of individual premium.

The Union asserts that from 2016-2018, NYSHIP rates were steadily increasing. Since then NYSHIP rates have stabilized. The Union believes the 2019 NYSHIP rates have not been released. The Union maintains that for Schoharie County to achieve cost savings, a majority of the CSEA bargaining unit will have to enroll in the CDPHP HD EPO plan. GKG's numbers reflect that the 2019 health insurance premiums for the CDPHP HD EPO plan will see approximately a twelve (12%) increase in premium cost for those employees in the other two bargaining units who participate in that plan. While those in the CDPHP HMO for 2019 will see approximately a five (5%) percent increase in premium cost. Comparing the CDPHP HD EPO premium increases to the projected NYSHIP rates, NYSHIP is approximately three (3%) percent less than the premium increases for the CDPHP HD EPO.

The Union proposes that the Fact Finder recommend employee contribution rates for NYSHIP that will be a viable option for those employees who choose or may need NYSHIP. The Union recommends that the employee contribution rate be lowered from 20% to 15% for individual coverage and lowered from 30% percent to 18% for family coverage.

The Union further recommends that the County fully fund the deductible for the term of the contract for employees currently enrolled in the CDPHP HMO plan and for those CSEA bargaining unit members who leave NYSHIP and enroll in the CDPHP HD EPO plan.

The Union requests that the fact finder recommend a seven (7) year collective bargaining agreement for the period January 1, 2017 through December 31, 2023. The Union proposes the following wage increases:

Effective January 1, 2017 to December 31, 2017 – 0% salary increase.

Effective January 1, 2018, to December 31, 2018 – 0% salary increase.

Effective January 1, 2019, a 4.25% salary increase.

Effective January 1, 2020, a 2.1% salary increase.

Effective January 1, 2021, a 2.25% salary increase.

Effective January 1, 2022, a 2.25% salary increase.

Effective January 1, 2023, a 2.25% salary increase.

The Union in making its proposal and recommendation is mindful that Schoharie County is not a wealthy county. During negotiations, the Union withdrew many of its monetary proposals. The Union contends that the County's proposal on NYSHIP employee's contribution rates is unaffordable. The Union urges the County to fully fund the deductible for the term of the contract to encourage members to migrate to the CDPHP HD EPO.

County's Position

In August of 2011, Tropical storm Irene devastated Schoharie County. In the village where the County office building is located, dozens of homes were destroyed. Some were never rebuilt and remain vacant. The County maintains that the negotiating history between the County and the Union is important because it reflects an understanding and recognition by

both parties that Schoharie County is not a wealthy county and, therefore, there is a need to keep tax rates in check, as well as overall expenses. In 2011, the County and CSEA entered into negotiations for a successor agreement to the one that was set to expire on December 31, 2011. After some two and a half years of negotiations, in April 2013, a Memorandum of Agreement was reached and signed and ratified by both parties. The Agreement covered January 1, 2012 through December 31, 2015. The wage adjustment was as follows:

Effective January 1, 2012- 0%

Effective January 1, 2013-1.0%

Effective January 1, 2014- 1.5%

Effective January 1, 2015 – 2.0%

The parties negotiated and ratified an agreement covering the period January 1, 2016 to December 31, 2016. The agreement called for a .5% salary increase to be added to base salaries effective January 1, 2017. While the negotiations with CSEA for a 2016 contract were ongoing, the County provided documentation to CSEA that the County's increased costs for health insurance in 2016 was approximately 1 million dollars, and that the increased premium contributions for 2017 was also approximately \$984,0000.00. The county informed CSEA and the other Unions that the approximately 1 million dollars increase annually in health insurance premium contributions incurred by the County were the equivalent of a 4.0% wage increase if applied to the County payroll.

Schoharie County is one of the few upstate public employers that continues to participate in the New York State Health Insurance Plan known as NYSHIP. Until a CDPHP alternative plan was introduced, employees were automatically enrolled in the NYSHIP Empire Plan. In recognition of the ever increasing and higher premiums associated with the NYSHIP program,

the County sought to induce employees to switch to a less expensive, but nonetheless, comprehensive health insurance plan by introducing the CDPHP plan as an alternative program. As the NYSHIP premiums continued to escalate from an already high base, the County proposed that employees hired on or after May 1, 2013 who elected to enroll in the NYSHIP program would pay 100% of the difference in premiums between the NYSHIP plan and the CDPHP plan in addition to the applicable premium co-payments for the CDPHP plan. Although the provision that encouraged employees who were hired on or after May 1, 2013 resulted in new hires almost exclusively choosing the CDPHP over the NYSHIP plan, the fact remained that an overwhelming majority of members in County employ, including the CSEA bargaining unit, remained participants in the NYSHIP program.

In the period of time between the latter half of 2016 and the first quarter of 2017, the County determined that the increasing health insurance premium rates primarily attributable to the NYSHIP plan but also partially attributable to the CDPHP plan were escalating to the point where the County could no longer afford to pay its portion of the ever increasing health insurance premiums and also offer pay raises to its workforce. It was at this point in time that the County elected to change health insurance consultants/advisors and retained the firm of Gilroy Kernan & Gilroy (“GKG”). In addition, the health insurance provision in the Collective Bargaining Agreement between the County and CSEA contained the following provision: In the event that the County seeks to make any changes in health coverage, it will notify CSEA immediately. CSEA will be an equal partner in a committee to examine any new health care issues or plans. Any choice of a new health care plan that the employer selects will be subject to the Grievance Procedure if the new health insurance plan is not substantially equal to the benefits of the current plan.

In addition to the CSEA bargaining unit, there are two other bargaining units within Schoharie County employees, both affiliated with the Office of the County Sheriff. The Collective Bargaining Agreements covering each of these bargaining units also contained similar provisions regarding representatives of each bargaining unit being included in any committee to examine new health care plans. Throughout calendar year 2017, numerous meetings between the County, the various Union representatives, representatives of County retirees, met with representatives of the Gilroy group in order to explore various health insurance plan design options, the goal of which was to provide a high level of health insurance coverage at a reduced premium.

The County, CSEA and the two other Unions representing County employees engaged in a protracted series of meetings relating to the development of a new health insurance plan designed to provide a high level of health insurance benefits but reduce the overall cost of health insurance to the County not only initially, but on an annual ongoing basis. Traditionally, the NYSHIP program has been increasing its health insurance rates by approximately 9.0%, largely contributing to the \$1 Million annual increases in health insurance costs to the County. As a result of those meetings and three mediation sessions with PERB Mediator Bill Conley, the parties reached a Tentative Agreement subject to ratification. Unfortunately, the CSEA membership failed to ratify the Tentative Agreement.

The County submits that the best evidence of “Fact Finding” is to look at the MOA that the parties reached but failed ratification. The County argues that even though the MOA was not ratified, it is the right deal under the existing factual circumstances.

The long history of modest pay increases negotiated between the parties, coupled with the ever escalating health insurance premium costs faced by the County, fully support the MOA that

was reached between the parties in that that Agreement maintained a very good health plan, lowered premium contributions for most members of the bargaining unit, capped out-of-pocket annual medical expenses for the employees at \$250 for individual coverage and \$500 for family coverage and also afforded pay increases in exchange for the premium contribution increase relief, which the County obtained.

The County argues that the Agreement reached between CSEA and the County provided a benefit to both sides. In addition, the other two bargaining units in the County each ratified a MOA which contained identical provisions as they relate to health insurance, both plan and premium contributions.

It is respectfully submitted that the Fact Finder strongly consider issuing a report that adopts and embodies all of the terms and conditions of employment contained in said MOA. The County proposes the following contract terms be adopted:

1. Salary Increase:
 - a. January 1, 2017- 0%
 - b. January 1, 2018- 4.25%
 - c. January 1, 2019 – 2.1%
 - d. January 1, 2020 – 2.25%

2. Longevity add \$500 to each current level effective 1/1/2019
 - a. 7 years \$1000.00
 - b. 13 years \$1500.00
 - c. 19 years \$2000.00

3. Effective 8/1/18, the County is authorized to replace the current CDPHP Health Insurance Alternative with a new CDPHP Consumer Driven Plan. When the Consumer Driven Plan becomes available to members of the bargaining unit, Article V, Section 1 of the current Collective Bargaining Agreement shall be amended to read as follows:

- a. August 1, 2018, or as soon thereafter as practicable and feasible, the health plans offered to members of this bargaining unit shall be the NYSHIP Empire Plan, with medical and psychiatric enhancements, and the Capital

District Physicians Health Plan Consumer Driven exclusive provider organization plan with national network coverage. Initially, this plan will have a \$5,000 individual deductible and a \$10,000 two-person (when offered) and family deductible. Effective 1/1/2019, the employee/retiree will be responsible for the \$250 of the deductible for individual coverage and the employee/retiree will be responsible for \$500 of the deductible for two-person and family coverage. The County will have the responsibility for funding the deductible through a County funded Health Reimbursement Account. The amount of the deductibles can be changed by the County; however, the employee/retiree responsibility will remain at \$250/\$500.

- b. For retirees who move out of the area of coverage and are Medicare eligible, the County will pay towards a Medicare Advantage Plan (payment to the insurer) the same amount as if they still lived in the Schoharie County coverage area and were covered by the CDPHP Medicare Advantage Plan. If the cost of the alternative Medicare Advantage Plan is less than what would have been paid for in the local area, then that is the amount the County will pay.
 - c. Effective 8/1/2018, with the implementation of paragraphs "a" and "b" above, the following premium contributions shall be applicable to these health insurance plans:
 - NYSHIP: Individual 20% of premium; Family 30% of premium
 - CDPHP Consumer Driven Plan: Individual 5% of premium; Two-Person & Family 15% of premium.
 - d. Employees, both pre and post Medicare eligible, will contribute towards their respective premium at the same percentage in effect in the collective bargaining agreement that was in effect at the time of their retirement.
 - e. For retirees over the age of 65 covered by this agreement, the County will provide a Medicare Advantage plan, which may include co-pays rather than an HRA, substantially equivalent to the current CDPHP Consumer Driven Health Plan. County will continue to pay Part B Medicare premiums.
4. Medicare Part B will be paid by the employer for retirees.

**FACT FINDER DISCUSSION AND RECOMMENDATION ON COMPENSATION,
LONGEVITY AND HEALTH INSURANCE.**

Compensation and Health Insurance are vital components of any labor agreement. The agreed upon wages and health benefits will also affect the County's taxpayers. The parties have negotiated a memorandum of Agreement which both contract negotiation teams approved for membership ratification. The membership voted down the MOA. However, the negotiation teams stand by the MOA as a fair deal that encompasses the demands and needs of both the County and the Union. I have reviewed all of the materials submitted. I find that the parties' negotiated MOA, although not ratified by membership, represents, with slight modifications, a fair compromise which addresses the needs of both the County and the Union.

My recommendations recognize the increasing cost of health insurance and the need of the County to limit its financial obligation. The County's proposal provides an incentive for union members to switch health insurance plans from NYSHIP to CDPHP HD EPO. The savings in health insurance premiums make possible the wage increases set forth in my recommendations. The Fact Finder makes the following recommendation:

1. Salary increases:

- a. 2017 +0%
- b. 2018 +0 % effective 1/1/2018
- c. 2019 +4.25% effective 1/1/2019
- d. 2020 +2.1% effective 1/1/2020
- e. 2021 +2.25% effective 1/1/2021
- f. 2022 +2.25% effective 1/1/2022
- g. 2023 +2.25% effective 1/1/2023

2. Longevity- add \$500 to each current level, effective 1/1/2020

- h. 7 years: \$1,000
- i. 13 years: \$1,500
- j. 19 years: \$2,000

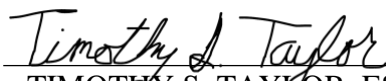
3. Effective 5/1/19, the County is authorized to replace the current CDPHP Health Insurance Alternative with a new CDPHP Consumer Driven Plan. When the Consumer Driven Plan becomes available to members of the bargaining unit, Article V, Section 1 of the current Collective Bargaining Agreement shall be amended to read as follows:
 - a. May 1, 2019 or as soon thereafter as practicable and feasible, the health plans offered to members of this bargaining unit shall be the NYSHIP Empire Plan, with medical and psychiatric enhancements, and the Capital District Physicians Health Plan Consumer Driven exclusive provider organization plan with national network coverage. Initially, this plan will have a \$5,000 individual deductible and a \$10,000 two-person (when offered) and family deductible. Effective 5/1/2019, the employee/retiree will be responsible for the \$0 of the deductible for individual coverage and the employee/retiree will be responsible for \$0 of the deductible for two-person and family coverage. The County will have the responsibility for funding the deductible through a County funded Health Reimbursement Account. The amount of the deductibles can be changed by the County; however, the employee/retiree responsibility will remain at \$0 for 2019.
 - b. Effective 1/1/2020, the employee/retiree will be responsible for the first \$125 of the deductible of an individual plan and for the first \$250 of the deductible for a family plan. Effective 1/1/2021, the employee/retiree will be responsible for \$250 of the deductible of an individual plan and \$500 of the deductible for a family plan. For retirees who move out of the area of coverage and are Medicare eligible, the County will pay towards a Medicare Advantage Plan (payment to the insurer) the same amount as if they still lived in the Schoharie County coverage area and were covered by the CDPHP Medicare Advantage Plan. If the cost of the alternative Medicare Advantage Plan is less than what would have been paid for in the local area, then that is the amount the County will pay.

- c. Effective 5/1/2019, with the implementation of paragraphs "a" and "b" above, the following premium contributions shall be applicable to these health insurance plans:
- NYSHIP: Individual 17.5% of premium; Family 25% of premium
 - CDPHP Consumer Driven Plan: Individual 5% of premium; Two-Person & Family 15% of premium.
- d. Employees, both pre and post Medicare eligible, will contribute towards their respective premium at the same percentage in effect in the collective bargaining agreement that was in effect at the time of their retirement.
- e. For retirees over the age of 65 covered by this agreement, the County will provide a Medicare Advantage plan, which may include co-pays rather than an HRA, substantially equivalent to the current CDPHP Consumer Driven Health Plan. County will continue to pay Part B Medicare premiums.

4. Medicare Part B will be paid by the employer for retirees.

The Fact Finder in reaching his recommendation considered all of the parties' argument and strongly urges them to consider this fact finding report as a fair and reasonable blueprint for a new collective bargaining agreement.

Dated: February 8, 2019


TIMOTHY S. TAYLOR, ESQ.
FACT FINDER