

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Fact Finding Between

TOWN OF TONAWANDA, Employer

- and -

TOWN OF TONAWANDA SALARIED
WORKERS' ASSOCIATION, Union

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**FINDINGS OF FACT AND
RECOMMENDATIONS**

Case No. M2018-050

BEFORE: Lise Gelernter, Fact Finder

APPEARANCES:

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I. INTRODUCTION

A. The parties. The Town of Tonawanda (Town) is a suburb just north of Buffalo, New York, with a population of 73,567 as of the 2010 census. Town brief, p. 26 The Town employs approximately 143 people in a bargaining unit represented by the Town of Tonawanda Salaried Workers' Association (SWA or Union) who are full-time salaried personnel working in several departments in the Town and who hold a variety of titles including Clerk, Accountant, Engineering Assistant, Labor Crew Chief, Housing Inspector, Wastewater Treatment Plant Operator, Dog Control Officer, Junior Forester, Maintenance Crew Chief and many more. Union

brief, p. 7; Jt. Ex. 2, CBA, Art. I.

B. Other bargaining units and non-unionized employees. There are two other bargaining units in the Town: 1) the Town of Tonawanda Police Club; and 2) the Hourly Employees Association of the Town of Tonawanda (HEATT). Town brief, pp. 46-47; Emp. Exs. 5, 9. HEATT represents mostly “blue collar” full-time employees and was the largest bargaining unit in 2017. Emp. Ex. 5, Art. I; Union Ex. 66, p. 1. There were 21 members of the Police Club unit in 2015. *See* Union Ex. 26. There is no indication that the three Town bargaining units’ relative sizes have changed much in the last few years. The Police Club and HEATT settled their most recent contracts in December 2019 (Police Club) and May 2018 (HEATT). Town Exs. 6, 9. There are also approximately 42 Town employees who are eligible for health insurance but who are not in any bargaining unit, many of whom hold managerial or confidential titles. Union Exs. 3, 42, 66, p. 9.

The base wage for a member of the SWA bargaining unit at the top step ranges from \$34,000 to \$76,000, with most salaries falling between \$35,000 and \$60,000, with an average of \$49,000. Union brief, pp. 9, 75; Jt. Ex. 2, Art. VII. Because the Town and the SWA have not agreed on a contract to succeed the CBA that expired on December 31, 2011, no unit member has received a raise since 2011.

Under the current Police Club contract, the base pay is \$85,805. Union brief, p. 75. In addition to the raises received previously under the current and prior contracts, they will receive future 2.5% wage increases in each year from 2022 through 2025. Emp. Ex. 9, ¶ 2. HEATT employees currently earn between \$16.69/hr. (Wastewater Cleaner) and \$31.71/hr. (Laboratory Assistant A). Emp. Ex. 5, Art. VII. Their contract provides for future wage increases of 3% each

year from 2022 through 2024. Emp. Ex. 6, ¶ 2(b).

The non-bargaining unit group of employees includes both full-time and part-time salaried and part-time hourly workers. Union Ex. 42, 1/4/21 minutes, pp. 6-11. There are approximately 100 job titles in the salaried group and their annual salaries listed in the January 4, 2021 minutes of the Town Board range from \$2,500 to \$129, 606. *Id.*, pp. 7-9. Approximately 37 titles have salaries of more than \$70,000. *Id.* The Town has the discretion to award its non-unionized employees the benefits and salaries it wishes, subject to the approval of the Town Board. *See* Union Ex. 42. The Town has provided raises to this group as follows: 2% in 2012, 1.5% in 2013, 2% in 2014, 1% annually from 2015-2018, and 2% annually from 2019 through 2021, which, according to the Union's calculations, is a cumulative 15.5% increase from 2012 through 2021. Union brief, p. 5.

C. The negotiation, mediation and fact finding processes. The collective bargaining agreement (CBA or contract) between the Town and the Union expired on December 31, 2011. Jt. Ex. 2, § 1.02. The parties first went through a fact finding process starting in 2017 in which I was appointed as the Fact Finder. The parties had asked me to submit recommendations solely on the issues of health insurance contributions and wage increases because they hoped to be able to resolve the remaining issues once there was a settlement on health insurance and wages. I issued my report and recommendation on December 29, 2017 in which I recommended the following:

1. Health Insurance Contributions: I recommended that all employees hired prior to February 28, 2011 should pay 5% of the health insurance premium starting in the year after there is an agreement on a contract. I also recommended a cap of \$2,100 on contributions, as was true

for the Police Club, and a switch to the POS 204 Plan. My recommendation did not change the current health insurance requirements for employees hired on or after February 28, 2011, which meant that they would continue paying 20% in their first four years followed by 10% contributions for the rest of their careers. Union Ex. 66.

2. Raises: I recommended that there be retroactive wage increases as follows: 2% for 2012, 1.5% for 2013, 2% for 2014 and 1% in each year from 2015 through 2017. The retroactive wages could be paid two lump sums: one within six months of adoption of an agreement and the other six months later. I recommended future wage increases of: 2% on January 1, 2018, January 1, 2019, and January 1, 2020, plus a 1% raise on October 1, 2020. *Id.*

The Union was willing to accept the recommendations but the Town Board rejected them at a public meeting on March 27, 2018. In his presentation to the Board at the meeting, the Town's attorney stated that the Town should not pay any retroactive wage increases and provided other reasons to reject the Recommendations.

<https://tonawandatownny.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2102&Format=Minutes> (last visited 7/22/21). The Town Board followed its attorney's advice. Instead, pursuant to Civil Service Law § 209(3)(e)(iv), the Town imposed a contract for January 1, 2012 through December 31, 2012 that had no increases in wages or other types of compensation.

Union Ex. 67.

The parties had several contract negotiation sessions in the first half of 2018, but were not able to reach an agreement. After the Union filed a Declaration of Impasses on July 11, 2018, the parties met with a mediator for three sessions, and without the mediator for three additional sessions. Unfortunately, the parties still were not able to reach an agreement. The Union filed a

Petition for Fact Finding on July 23, 2020 and PERB appointed me as the Fact Finder for the proceeding on September 17, 2020. Jt. Exs. 11, 12.

In a telephone conference in October 2020, the parties agreed to provide briefs and data in support of their positions, which they provided on March 26, 2021. Pursuant to the agreed procedure, I submitted written questions to the parties on April 15, 2021 and they responded on April 27, 2021. On June 8, 2021, I met in person at the Town offices with the parties' attorneys, the Town Supervisor, the Town Comptroller, the Town's Director of Labor Relations, the Personnel Office Director, the Union President and other Union officers and the Union's consultant. At that meeting, the parties attorneys' made short presentations and the attendees and I discussed questions and concerns that each of us had.

This time around, the parties have requested the Fact Finder to make a recommendation on all open issues, which are:

1. Health insurance
 - a. Premium contribution rates for employees
 - b. Medicare Part B reimbursement
 - c. Pre-Medicare retiree contributions
2. Wage increases
3. Stipend for waiver of health insurance
4. Medical notes for extended absences (Town issue)
5. Length of the contract
6. Longevity
7. Sick leave incentive

D. The Parties' Active Proposals. The Town stated that it is relying on its most recent package proposal, which it provided to the SWA on January 24, 2020, to represent what it is willing to accept in a new contract. Emp. Ex. 3. The Union had responded to the Town with a counteroffer on March 11, 2020. Emp. Ex. 4. In contrast, the Union stated that it was relying on

the proposals it made on June 5, 2018 in response to the Town's May 23, 2018 set of proposals. Union Exs. 8, 11. The Union explained that it considered the 2020 proposals to be null and void because neither party agreed to the other party's proposals by the deadline each party had set for withdrawing its 2020 offer. Town Answers to Fact Finder's questions (Answers), p. 2; Union Answers, pp. 2-3.

Since parties in a fact finding process carried out under the provisions of New York's Civil Service Law do not have to identify their "last best offer" or a "final offer" and the Fact Finder is not bound to make a recommendation on a choice between only the parties' specific offers on each disputed issue, I can consider each party's perspective on what it considers to be the best possible outcome for an agreement on a contract in making my recommendations. The statutory fact finding process allows the Fact Finder to take a holistic approach in considering all pertinent data and proposals, including the parties' latest preferences. Therefore, I will respect each party's wishes by considering the contract proposals the Town made on January 24, 2020 and the Union made on June 15, 2018 as their preferred outcomes.

E. Standards and Presumptions. 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 finder to follow to make an informed recommendation to the parties as required by Section 209. N.Y. Civ. Serv. L. §209(3)(c). In lieu of statutory standards directly applicable to this case, I have looked for guidance from the principles described in the statute applicable to binding arbitration of certain 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 N.Y. Civ. Serv. Law § 209(4)(c)(v).

In addition, 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 both parties have indicated a desire or need to change them, or there is otherwise 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 should be applicable to the employer and the employees.

II. THE TOWN'S FINANCIAL STATUS

The Union provided comprehensive financial analyses of the Town's finances that Anthony Hynes, a budget expert, had authored. Union brief, pp. 19-65; Union Hynes Exs. 1-52. The Town also provided important financial information about its fiscal management and health and its financial obligations. Emp. Exs. 10-18; Emp. brief, pp. 16-19. It would be impractical to go through all the data provided but the upshot is that the Town's elected officials and their staffs have managed the Town's finances prudently, and have avoided increasing taxes to the State law tax cap, an issue that is very important to Town residents. Town officials have managed this all despite some challenging financial issues.

The Town lost its largest taxpayer when the Huntley Power Generation Station closed on March 1, 2016. It had been paying the Town a payment-in-lieu-of-taxes (PILOT) since 2013 and made its last payment of \$2.2 million to the Town in February 2016. The Town received \$1.7

million from an Electric Generation Facility Cessation Mitigation program in 2017 and received additional funds in slowly decreasing amounts each year, receiving \$1 million in 2020. *Id.* The mitigation program ends in 2023. Union Ex. 66, pp. 4-5. Through good fiscal management and new businesses arriving and paying taxes in Tonawanda, the Town Supervisor was able to announce in his 2021 Preliminary Budget Message that the Town had been able to maintain a fund balance, which he likened to the Town's "accrued savings," of \$8 million in each of the past five years. Hynes Ex. 8, p. 7.

The Town had successfully faced reductions in the Huntley PILOT program previously. In 2013, the revenues from the Huntley plant decreased by 50% from \$4.4 million annually to \$2.2 million. The Town was still able to provide purely discretionary salary increases of between 2% in 2014, and 1% in each of the next four years to its non-bargaining unit employees. Union brief, p. 56. It also negotiated a contract with the Police Club union with cumulative raises of 17% for 2013-19. *Id.*

According to the fiscal analysis that Anthony Hynes created for the Union, the Town has maintained a healthy reserve fund and the Town's available unspent fund balances at the end of a fiscal year (FY) have increased each fiscal year from FY 2012,¹ with an available fund balance of \$40.6 million at the end of FY 2019. Hynes Ex. 1, p.11. After Mr. Hynes submitted his initial analysis, the data from the Town's FY 2020 financial records became available and he stated in a new financial report that the available fund balance at the end of FY 2020 was almost \$9.8 million more than FY 2019's available fund balance, which would bring it to a bit more than \$50.3 at the end of FY 2020. Hynes Ex. 53, p. 1. After considering the Town's full financial

¹The Town's fiscal year runs from January 1 through December 31. *See* Hynes Ex. 8, p. 3.

picture and the costs of the parties' proposals, Mr. Hynes said in his narrative report: "The evidence is overwhelming. The Town of Tonawanda can pay any reasonable salary increase recommended by the fact finder, including the [Union's] proposal with full back pay, without causing an undue burden on the taxpayers in the Town." Hynes Ex. 1, p. 17.

The Town did not budget in past years or this year for the possibility of retroactive wage increases because "the Town has never sought to tax its residents for wage increases unless they were budgeted for." Town brief, p. 23. The Union counters that the Town's decision not to budget for retroactive wage increases should not be used to justify no retroactivity in wage increases. At our meeting on June 8, 2021, I asked whether the parties' agreeing to future wage increases in amounts roughly equivalent to some of the Union's retroactive wage increase proposals would necessarily eliminate the Town's objection to retroactive wage increases. The Town's attorney acknowledged that the Town could not object to wage increases on the basis of retroactivity if the agreement did not have retroactive wage increases and stated that budgeting for future liabilities is always a much more prudent way to manage the Town's resources than budgeting for theoretical retroactive liabilities.

In 2020, the Town changed its position on retroactive wage increases slightly. In its January 24, 2020 package proposal, the Town offered a 12% wage increase retroactive to January 1, 2020 contingent upon the SWA agreeing to require retirees and their spouses to enroll in Medicare Part B at their own expense. Town brief, p. 23.² As discussed in further detail in the section concerning health insurance issues, Arbitrator Douglas Bantle had issued a 2017

²Since the offer was part of a package that expired on February 7, 2020 unless the Union accepted the total package by that date, it appears the period of retroactivity would have been short, depending upon when the parties reached an agreement.

arbitration award in which he found that the existing CBA between the Town and the SWA required the Town to reimburse retirees and their spouses for the cost of Medicare Part B, retroactive to 1998. The Appellate Division, Fourth Department court confirmed the award on April 27, 2018. The Town petitioned for leave to appeal to the Court of Appeals, but the Court denied the petition. Union brief, p. 93. In 2020, the Town spent approximately \$1.3 million to comply with the award's order to reimburse SWA members for Medicare Part B costs retroactive to 1998 and anticipates having to spend about \$90,000 each year to cover the ongoing reimbursements. Town brief, pp. 13-14; Union brief, pp. 91-93.

The bottom line is that the Town is in good financial shape, but only because it has tried to manage its finances appropriately and avoid large tax increases. It has managed to pay for raises for the police bargaining unit and the non-bargaining unit employees even when its largest taxpayer was closing down and it has paid for unexpected retroactive liabilities like the Medicare Part B reimbursements without seeking large tax increases.

III. HEALTH INSURANCE

Health insurance and wage increases were the two most dominant issues separating the parties. The issues are also interrelated since the Union sought wage increases to more than cover any increase in the cost of health insurance for employees while the Town sought to lower the steadily increasing cost of health insurance and its impact on Town finances. The Union provided comprehensive information on the health insurance programs in several comparable communities which showed that all local communities are dealing or have dealt with bargaining similar issues. Union Exs. 3, 36. The data provided on those comparable communities also showed from a very "big picture" perspective that the Town and its bargaining units' health

insurance programs are not grossly worse or better than most comparable communities. Because the health insurance solutions in each municipality are somewhat idiosyncratic and have several different moving parts, it is difficult to try to compare the details of the Town/SWA health insurance issues and those in other municipalities. Therefore, for comparison purposes, I have focused on the health insurance programs for the other bargaining units and for non-unionized employees in the Town. The situation of the non-unionized employees is instructive in showing what the Town chooses to provide in its unilateral discretion when it has no bargaining pressure from a union.

A. Active employees. The current monthly cost for the health insurance plan for the SWA bargaining unit is \$846 for single coverage and \$2,338 for family coverage. Union brief, p. 76. The chart below shows what the cost would be for employees for contributing to a percentage of the cost of health insurance:

Monthly Health Insurance Premium Cost by Percentage

Percentage	Single	Family
100%	\$846	\$2338
25%	\$212	\$ 585
20%	\$169	\$468
10%	\$85	\$234
5%	\$42	\$117

If employees pay a percentage of the premium costs, the Town pays the difference. So if an employee pays 5% of the current single monthly premium (\$42), the Town has to pay \$804 monthly.

1. The three classes of health insurance status for this bargaining unit. The Town and Union created three different classes of health insurance status over the years. 124 out

of the 143 members of the bargaining unit are currently enrolled in health insurance plans. Town brief, p. 20. The first health insurance class is composed of a group of 64 employees who were hired prior to April 1, 2004. They currently do not pay any part of the health insurance premium. There are 64 bargaining unit members in that class. Town brief, p. 20.

Since the 1995-1997 contract, there has been a group of employees who were required to pay 25% of the health insurance premium during their first three or four years on the job, depending on their date of hire. After that three or four-year period, the Town became responsible for 100% of the health insurance premium. *See* Union brief, p. 74. The 2002-2006 CBA provided that employees hired before April 1, 2004 (“pre-4/1/04 employees”) would pay 25% of the premium during their first four years and 0% thereafter. Jt. Ex. 4, §11.03. The subsequent contracts did not change the status of the pre-4/1/04 employees, so at this point, all of them have completed their four-year period of making a 25% health insurance contribution and the Town currently pays 100% of their premium. Jt. Ex. 2, § 11.03.

The second class of employees are those who currently pay a fixed dollar amount towards the premium. There are 19 bargaining unit members in this group and they were hired on or after April 1, 2004 but before February 23, 2011 (“post-4/1/04 employees”). Town brief, p. 20. The 2002-2006 contract required them to pay 20% of the health insurance premium during their first four years of employment and then \$145.09 per month for family coverage and \$51.78 for single coverage for the remainder of their time as employees. Jt. Ex. 4, § 11.03. The 20% percentage premium share for the first four years of employment for this group stayed the same through the current 2009-2011 contract but the post-four-year contribution amount changed to require a \$100 per month contribution for a family plan and \$50 per month for a single plan. Jt. Ex. 2, § 11.03.

This arrangement continues through the employee's retirement. *Id.*

The third class of employees pays a percentage of the health insurance premium throughout their careers with the Town. This group includes employees hired after February 23, 2011 ("post-2/23/11 employees"). The 2009-2011 contract provides that they must contribute 20% of the health insurance premium during their first four years on the job and then 10% of the premium after that, continuing through their retirement. *Jt. Ex. 2, § 11.03.* 21 bargaining unit members are currently paying 10% for the remainder of their career, and 20 members are paying 20% of the premium currently because they are in their first four years of employment. Town brief, p. 20.

2. Health insurance contributions in other bargaining units and for non-unionized employees.

a. The Police Club unit. In 2016, the Town and the Police Club agreed to a contract covering the years 2013 to 2019. As part of the deal for 17% in wage increases over seven years, the Union agreed to have all members of the unit hired prior to January 10, 2011 pay 5% of the health insurance premium up to a maximum of \$2,100 per year. *Emp. Ex. 8, ¶3.B.* Previously, these employees had not contributed anything to the cost of the premium. The 2016 contract continued the previous contract's requirements of a 20% contribution for the first four years and a 10% contribution for unit members hired after January 10, 2011. *Id.* The Police Club also agreed to convert the health insurance plan from the POS 229 to the POS 204 plan the Town had proposed. *Id.*, ¶3.A. For the current CBA covering 2020-2025, the Police Club agreed in November 2019 to gradually increase the bargaining unit members' health insurance premium share to 10% for everyone by 2025, with a cap of \$3,500 per year. Town brief, p. 11;

Emp. Ex. 9, ¶ 3; Union Ex. 23, ¶ 3.

The Town stated that “it is the Town’s negotiations with the Police Club that have set the standard for health insurance premium contributions.” Town brief, p. 11. The Union noted in its brief that the base pay of Police Club members is much higher than that of SWA members. For the Police Club, the 2021 base pay is about \$85,805 and for the SWA, the average base pay is currently about \$49,000. Union Brief, p. 75. No one in the SWA earns above \$76,619. Jt. Ex. 2, § 7.01. Therefore, the financial impact of paying 10% of the health insurance premium is not as great for Police Club members as it would be for most SWA members. *Id.*

b. Hourly employees. The Hourly Employees Association (HEATT) and the Town had reached agreement on a tentative contract in December 2016, but that union’s members did not approve it. Union Ex. 66, p. 9. On May 1, 2018, the parties agreed to a contract for 2012-2024 that the union membership ratified. It requires bargaining unit members hired prior to May 1, 2018 to pay 5% of the health insurance premium as of January 1, 2019, and those hired on or after May 1, 2018 to pay 20% as of January 1, 2019 during their first four years and then 10% thereafter. Emp. Ex. 6, ¶3(c).

c. Non-bargaining unit workers. Each January, the Town adopts resolutions concerning the salaries and benefits of elected officials, non-bargaining unit workers, and part-time and temporary workers who are not part of the HEATT unit. Union Ex. 42. Under the 2021 resolutions, the Town continued its practice of having two health insurance classes of non-bargaining unit employees. Those employees hired between January 1, 2002 and April 1, 2004 have to pay 25% of the health insurance premium for their first four years with the Town and then nothing after that. All of those employees still with the Town have been employed for more than four years so they currently do not contribute anything to the health insurance

premium. Non-bargaining unit employees hired before January 1, 2002 also do not contribute to health insurance. Employees hired on or after April 1, 2004 pay 20% of the cost of health insurance during their first four years of employment and then after that, pay \$50 monthly for single coverage and \$100 per month for family coverage, like the post-4/1/04 SWA employees. Union Exs. 3, 42.

d. Health insurance in comparable municipalities. The Union provided comprehensive information on the health benefits for employees with comparable titles in comparable municipalities. Union Ex. 3. Because of the great variation among the communities, it was hard to detect a trend or a prevailing practice with respect to percentage versus dollar amount employee contributions, the amount of the employee contribution, if any, and the types of employees paying the health insurance contributions.

3. The type of health insurance plan the SWA unit has, compared to other units. Under the 2009-2011 contract, the Town changed to a Point of Service (“POS”) 229 base health insurance plan. Jt. Ex. 2, §§ 11.01, 11.02; Union brief, p. 74. The POS 229 plan has co-pays of \$5.00 for all services, and for prescription drugs, has co-pays of \$1/\$10/\$20, depending on the drug’s price category. Union brief, pp. 72-73. The Town estimates that the POS 204 costs about 5.2% less than the POS 229. Town brief, p. 12. For the SWA, the change to the POS 204 would save the Town \$157,930 over a year.

In 2016, with an agreement on a new contract, the Police Club unit switched from the POS 229 plan to a POS 204 plan as of July 1, 2016. The co-pays are \$15 for all services (three times the POS 229 co-pay), and for prescription drugs, the co-pays are \$5/\$15/\$35 (as compared with the POS 229 co-pays of \$1/\$10/\$20). Town brief, p. 12; Union brief, pp. 72-73; Emp. Ex.

8, ¶3.A. HEATT’s 2016 agreement (covering 2012-2024) made the switch to the POS 204 plan as of 2019, Emp. Ex. 6, ¶ 3(a).

4. The parties’ proposals.

a. Switching to a POS 204 plan and IRS plan adjustments. The Town and Union both proposed that the SWA also switch to the POS 204 plan and modify the Internal Revenue Service Section 125 Cafeteria Plan to make a debit card available for flexible spending participants.

b. Employee contributions. With respect to employee contributions to the health insurance premium, the Town’s proposal places employees in two different classes, depending on their start dates, whereas the Union’s proposal maintains three different classes of participants. The parties proposed the following:

Employment start date	Town proposal-employee contribution	Union proposal-employee contribution
Hired before 4/1/2004 (currently: \$0 contribution)		2.5%, increasing to 5% over two years, capped annually at \$600 single/\$1,800 family
Hired on or after 4/1/04, but before 2/23/11		20% for first 4 years; thereafter, \$50/mo. single/\$100/mo. family (no change from the current contract)
Hired before 2/23/11	5%, capped annually at \$1,000 single/\$2,500 family	
Hired on or after 2/23/11	20% for first 4 years, and 10% thereafter, with no cap on contributions (no change from the current contract)	20% for first 4 years, and 10% thereafter, with no cap on contributions (no change from the current contract).

Union brief, p. 73; Town brief, pp. 16-17; Union Ex. 11; Emp. Ex. 3.

The Town estimated that its proposal would save it \$87,699 per year and that the Union's 2020 proposal would have saved it \$111,793 per year. Since the Union's position is based on its 2018 proposal, it is not clear exactly how much that proposal would save the Town, but it definitely would result in savings since all 64 employees who pay nothing for health insurance right now would end up paying 5% of the premium.

5. The parties' positions.

a. The Town. The Town notes that its position is consistent with the health insurance structure of the contracts it negotiated with both HEATT and the Police Club under which all employees make contributions to the health insurance premium. The Town also notes that its health insurance proposal was contingent on the adoption of a package of savings that would justify the 12% retroactive to January 1, 2020 wage increase it proposed. Town brief, p. 22. Without an agreement to also change the contract's provisions for retiree health insurance (discussed below) and a change requiring a doctor's note after an absence of three or more consecutive days, the Town stated it would not agree to the 12% retroactive raise.

b. The Union. The Union notes that since 1995, it has agreed to contract revisions on health insurance that saved the Town a great deal of money. These revisions included: requiring employees to contribute to health insurance for a few years, restricting the health insurance offerings, and changed to a POS from a PPO plan. With respect to the Town's 2018 proposal, which would have required all employees hired before April 1, 2004 to pay 10% of the health insurance premium, the Union argued that this would impose too great a burden on its members. The average base pay of an SWA member is only about 57% of a Police Club's member base pay, making it unfair for the SWA members to pay the same amount for health

insurance as the Police Club's members. The Town allows its non-bargaining unit members hired after April 1, 2004, who earn more than SWA members, to pay only \$50 single/\$100 premium, making it "unconscionable for the Town to demand more from TOTSWA members than it demands from itself." Union brief, p. 75.

6. Discussion. The parties both agree on changing over to a POS 204 plan and revising the IRS 125 Cafeteria plan, which makes it easy to echo their agreement in my recommendations on those issues. As to health insurance contributions, since the 2017 fact finding process, both parties' proposals have made small accommodations for the other party's concerns, although I recognize that their proposals were contingent on agreements on other issues, particularly wage increases. The Union's proposals have some members paying more of the health insurance premium than was true in its 2017 proposals. The Town is now willing to cap contributions at \$1,000 single/\$2,500 family for employees hired before February 23, 2011 with a 5% contribution rate.

Both parties continue to be inconsistent in their approach to health insurance contributions (as was true in 2017) which I attribute again to some tactical decisions that may be part of the of the bargaining history between the parties. On the Town's part, it continues to treat its non-unionized employees much more favorably than its unionized workers. Non-bargaining unit employees earn more, on average, than SWA members. Although the Town wants all unionized workers to pay 10% of their health insurance premiums, its non-bargaining unit members and elected officials hired before April 1, 2004 currently pay nothing towards their health insurance. The remaining non-unionized employees and elected officials pay 20% of the premium for their first four years and then \$50 single/\$100 family per month after that, which is

about 5% of the current premium. Further, with a flat contribution rate, the non-unionized workers are guaranteed that their total outlay will never change even if premiums go up. This inconsistency, which the Town Board could have changed unilaterally, creates an appearance of punishing employees who are unionized.

As for the Union, it continues to protest that a 10% contribution for pre-4/1/04 employees would “place an undue hardship upon bargaining unit members and their families,” Union brief, p. 75, but it has accepted and is willing to continue accepting a 10% contribution for post-2/23/11 employees. Further, there appears to be no rationale for the Union’s slightly different treatment of the pre-4/1/04 and post-4/1/04/pre-2/23/11 classes of employees. The Union proposal would require pre-4/1/04 employees to ultimately pay 5% of the premium (currently \$42 single/\$117 family), with an annual cap of \$600 single/\$1,800 family, but would have those employees hired between April 1, 2004 and February 23, 2011 continue to pay \$50 single/\$100 family. Although the post-4/1/04/pre-2/23/11 class paid 20% of the premium during their first four years and the pre-4/1/04 employees did not, at this point, more than six years after the last post-4/1/04/pre-2/23/11 worker made a 20% payment, there is no justification for tinkering with small differentiations between the two groups. The two groups’ payments per month are similar, but not identical, and the annual cap for pre-4/1/04 employees would equalize single plan payers among the two groups but not family plan payers. It would make more sense to treat all employees hired before February 23, 2011 in the same way, if only to avoid confusion.

7. Recommendations.

a. Switching to a POS 204 plan and IRS plan adjustments. I

recommend what both parties proposed: switching the SWA unit to a POS 204 plan and making

the proposed IRS plan adjustments.

b. Employee contributions.

i. Pre-2/23/11 hires. Both parties agree that pre-4/1/04 employees should pay 5% of the health insurance premium, although the Union would have an intermediate step of a 2.5% contribution for two years. Since pre-4/1/04 workers have never paid premiums before, a stepped increase makes sense, although one year between steps is sufficient. This means that the pre-4/1/04 employees should pay 2.5% of the premium in the first full year of the contract and 5% thereafter. As I discussed above, I do not think that a slightly different arrangement for post-4/1/04/pre-2/23/11 employees makes sense and recommend that they also pay 5% of the premium starting in the second year of the contract. Because they are already making close to a 5% contribution to health insurance, the 2.5% contribution for the first year of the contract should not apply to this group. Rather, there should be no change in their contributions for the first year of the contract and they would switch to the 5% contribution rate in the second year, along with the pre-4/1/04 employees. This recommendation is basically consistent with the parties' proposals: 1) the Town also had proposed a 5% contribution for pre-2/2/3/11 employees; and 2) the Union had proposed a 5% contribution for pre-4/1/04 employees and close to a 5% contribution for post-4/1/04/pre-2/23/11 employees.

Both parties proposed a cap on premiums for employees paying 5% of the premium, with the Union's proposal of \$600 single/\$1,800 family and the Town's proposal of \$1,000 single/\$2,500 family. The Union's proposed cap does not allow too much room for premium increases before the cap takes effect, but the Town's proposed cap allows the employee to bear some of the cost if premiums go up. However, I recommend that the cap for the single plan be

\$750, and the cap for the family plan be \$2,100 in order to have the caps both kick in when premiums go up about 50% for both types of plans.³ Therefore, the parties should adopt a cap of \$750 single/\$2,100 family.

ii. Post-2/23/11 hires. I recommend that post 2/23/11 hires keep the same contribution regime that it is in the current contract, which is what both parties proposed. This means that post-2/23/11 employees will pay 20% of the premium for their first four years and then 10% thereafter. The parties should consider placing a cap on contributions to maintain some consistency among the bargaining units. The Police Club, whose members earn much more, on average, than SWA members, have a \$3,500 cap. Emp. Ex. 9, ¶ 3. The hourly employees also have a cap which rises to \$1,000 single/\$2,500 family in 2023. Emp. Ex. 6, ¶ 3(d).

c. Additional rationale. My recommendations are consistent with the Police Club's CBA, with some variations that account for the lower average salary in the SWA unit and the parties' proposals. Under the Police Club CBA, members hired after January 10, 2011 also paid 20% of the premium during their first four years and then 10% thereafter, which is the same recommendation I have made for post-February 23, 2011 SWA hires. Emp. Exs. 7, ¶ 1(d)(viii); 8 ¶ 3.B.2; 9 ¶ 3. The Police Club's more senior employees hired before January 10, 2011 currently pay 6% of the premium, and it goes up one percentage point each year until it reaches 10% in 2025. Emp. Ex. 9, ¶ 3. For the SWA, instead of following the Police Club, I have recommended both parties' proposals for a lower 5% contribution for employees hired prior to April 1, 2004. As discussed above, since the parties's proposals also envisioned either a 5% or

³5% of the current premium is \$42/single, \$117/family, making the annual outlay \$504 single/\$1,404 family.

close to a 5% contribution for pre-2/23/11 hires, my recommendation is consistent with the parties' near agreement.

The Police Club has a cap on health insurance contributions of \$3,500. My recommendation of a \$2,100 cap for the family plan for pre-2/23/11 hires accounts for the differential between salaries in the two bargaining units. As I mentioned above, although I adhered to the parties' proposals for post-2/23/11 hires, the parties should consider a cap for that group of employees as well.

Because my recommendations save the Town money, at least for the immediate future, its fiscal status will improve and the Town's ability to pay for the raises I recommend in the next section of this Report is not in doubt. In contrast, I recognize that a 5% contribution, coupled with the higher co-pays of the POS 204, is not an insignificant burden for employees with an average \$49,000 salary who have planned their financial lives presuming that they would contribute either nothing or a set amount for health insurance. However, since I am also recommending raises as part of the entire package, the affected SWA members should be able to manage the additional cost, especially since unit members hired after February 23, 2011 already pay 10% of the premium out of their current salaries.

B. Retirees-Medicare premium reimbursement. Since the 2017 fact finding process, the Town's responsibility to reimburse its SWA retirees for Medicare B premiums has changed from \$0 to full reimbursement retroactive to 1998. In 2020, due to Arbitrator Douglas Bantle's April 27, 2017 arbitration award (Bantle Award) the Town had to reimburse SWA retirees for Medicare Part B premium payments that they or their spouses had made retroactive to 1998.

Previously, SWA retirees and their spouses had paid Medicare Part B⁴ premiums out of their own pockets.⁵ In 2020, the Town paid out \$1.3 million in retroactive payments after the Appellate Division, Fourth Department denied the Town’s petition to vacate the award and the Court of Appeals denied the Town’s request for leave to appeal. Town brief, p.14; *Town of Tonawanda and Town of Tonawanda Salaried Workers’ Association*, 160 A.D.3d 1477 (4th Dept. 2018), *lv. to appeal denied* 32 N.Y.3d 908 (2018). The Bantle Award also required the Town to continue the Medicare Part B reimbursement prospectively.

1. The parties’ positions. The Town has proposed to end its Medicare liability by requiring Medicare-eligible retirees to pay the entire cost of Medicare while the Town pays for a Medicare Supplemental Plan. Town brief, pp. 17-18; Union brief, p. 92; Emp. Ex. 3, ¶ 4.B. It supports its proposal by noting the unexpected financial burden the retroactive and prospective Medicare reimbursements to SWA retirees impose on the Town. The Town also notes that HEATT retirees do not receive any reimbursement for Medicare costs and that the Police Club agreed to a limited Medicare reimbursement for its retirees. At our June 8, 2021 meeting, the Town’s attorney said that the quid pro quo for any salary increases is the adoption of its proposal on Medicare, along with other cost savings proposals the Town made.

The Union opposes this proposal because of the new financial burden it would place on retirees and contends the Town has not offered any “quid-pro-quo economic improvements in the area of salary” in exchange for this revision. Union brief, p. 92. The average family’s current Medicare costs are \$4,644.72 per year, and the “average married [SWA] member’s benefit is

⁴Medicare Part B covers visits with and services received from medical professionals and other non-hospital, non-nursing home-related services.

⁵ The base current monthly cost for Medicare B is \$148.50.
<https://www.medicare.gov/Pubs/pdf/11579-Medicare-Costs.pdf> (last visited 7/25/21).

\$120,762.72 over the average life expectancy of the employee and spouse,” the Union calculates. *Id.* Requiring retirees to pay for Medicare would result in a “windfall” for the Town, the Union argues. *Id.*

2. Discussion

a. Medicare Part B in other units. In 2011, the Police Club was the first union to win an arbitration award finding that its contract with the Town required the Town to reimburse its retirees who had been hired prior to April 1, 2006 for Medicare Part B premiums, but, according to the Town, in 2006, the Town agreed that for retirements after April 1, 2006, the reimbursements would be limited to \$1,062 per year. Town brief, p. 13; Bantle Award, p. 9. In their January 10, 2011 agreement, the Police Club and the Town agreed that the Town should reimburse all retiree-members for Medicare Part B premiums up to \$1,275 annually. Town brief, p. 13; Emp. Ex. 7, ¶ 1(d)(v). The yearly Medicare Part B premium is currently \$1,782. The outcome of several pending grievance arbitrations will determine whether the retirees are also entitled to reimbursement for their spouses’ Medicare Part B premiums. Town brief, p. 13.

The Town has never been required reimburse the HEATT bargaining unit members for their Medicare Part B costs. However, that Union brought a lawsuit seeking reimbursement for Medicare and the Town’s motion to dismiss the case was still pending as of June 8, 2021. Town brief, p. 13.

b. The Bantle Award. Since 1998, SWA employees who retire have been entitled to continued health insurance from the Town, with those contributing to the premium continuing the same contribution rate in their retirement. Jt. Ex. 2, §§ 11.03, 11.05. As is true for many other CBAs, when they are eligible for Medicare, the CBA requires them to

enroll in it. Jt. Ex. 2, § 11.05. The Town had never reimbursed SWA retirees for their Medicare premiums until the Bantle Award required it. After the Police Club won the 2011 arbitration proceeding concerning its retirees, on April 17, 2012, the SWA formally requested that the Town also reimburse their retirees paying for Medicare because the two unions' contract language on this issue was similar. Bantle Award, p. 9. When the Town refused the SWA's request, the Union ultimately filed a demand for arbitration on December 12, 2012, which led to the Bantle Award in 2017. *Id.*, p. 10.

Arbitrator Bantle dealt with the question of whether the Town had violated Section 11.05 of its CBA with the SWA when it refused to reimburse retirees for Medicare Part B premiums they paid for themselves and their spouses. Bantle Award, pp. 2-3. The contract does not state affirmatively that the Town must reimburse retirees for Medicare, but he found that the contract's requirement that "health insurance premiums shall be made on behalf of an employee who retires" applied to both the premiums for retiree health insurance before the employee was Medicare-eligible and to Medicare premiums in the post-Medicare eligibility period. He noted that although the contract requires retirees to enroll in Medicare when they are eligible, it does not say anything about the retirees paying for Medicare. In contrast, the contract's only discussion of who pays for retiree health insurance requires the Town to pay "health insurance premiums on behalf of an employee who retires." Jt. Ex. 2, § 11.05. Arbitrator Bantle also found that the Town's responsibility to reimburse for Medicare premiums brought it into compliance with Section 11.01, which requires the Town to "furnish[] . . . a plan providing benefits that are substantially equivalent to those of the POS" available for non-Medicare eligible employees. Jt. Ex. § 11.01. If the Town had to pay for the POS for retirees, but not for

Medicare, it would not be a “substantially equivalent” level of health insurance, Arbitrator Bantle reasoned. Bantle Award, pp. 15-31.

c. Analysis. The Town’s liability for Medicare reimbursement arises from contract language that has been in place since 1998.⁶ Because an incorrect interpretation of the contract language is what led to the Town owing over \$1 million retroactively to its retirees, the Union does not “owe” the Town a quid pro quo to maintain that benefit. Rather, the balance of bargaining power weighs in the Union’s favor on this issue because the Town is seeking to strip or reduce an existing benefit from the current contract to which it is a party. At the bargaining table, the Town would have to offer a quid pro quo to achieve the savings it seeks.

This appears to be how it played out with the Police Club. Not only did the Police Club not give up the Medicare reimbursement benefit that an arbitrator had determined the contract required, its contracts with the Town increased the reimbursement from \$ 1,062 to \$1,275 annually and also provided wage increases of 2.25% in 2012, 17% from 2012 through 2019 and \$2.25% each year from 2020 through 2025. Union Exs. 23, 24; Town Ex. 7.

The Town noted that the Police Club negotiations “have set the standard for health insurance premium contributions.” If that is the case, it is reasonable to assume the parties would arrive at a Medicare reimbursement agreement containing something similar to the Police Club’s agreement that nonetheless reflects the differences between the two bargaining units. In the Police Club’s case, the arbitrator found that the earlier contract required Medicare reimbursements for eligible retirees and it apparently did not address specifically the issue of reimbursement for retiree spouse Medicare payments. Town brief, p. 13. The Police Club’s

⁶The parties appear to agree that revisions to the contract over the years did not change the meaning of the operative language. Bantle Award, p. 16.

agreement in 2011 sweetened the deal for the employees by increasing the previous \$1,062 cap on reimbursement about 20% to \$1,275. In the SWA's case, the arbitrator found that the contract required 100% Medicare reimbursement for retirees and their spouses since 1998. At the bargaining table, this would place the SWA in a stronger bargaining position than the Police Club on this issue because the SWA currently enjoys a 100% uncapped reimbursement rate for retirees and their spouses under the contracts that both parties signed.

The Town is seeking a change in the CBA that has been in place for a while, which the Union opposes. I think it is unlikely that the parties would agree to the change the Town seeks without a corresponding concession from the Town that would justify the Union's acquiescence. Therefore, I recommend that there be no change in the contract's requirement that the Town reimburse SWA employees 100% of the Medicare premium they pay for themselves and their spouses.

Looking to HEATT's lack of Medicare reimbursement is not a valid comparison because there is no indication that HEATT ever had the right to reimbursement enjoyed by SWA and Police Club retirees. Therefore, HEATT did not give up anything on Medicare reimbursement when it negotiated the current contract because it did not have anything to give up.

d. Recommendation. I recommend that the parties make no change to the Medicare reimbursement provisions and continue the Town's full reimbursement to all retirees and spouses of Medicare costs.

C. Retirees-Contributions before eligibility for Medicare.

1. The parties' proposals. The SWA's proposal appears to continue the current treatment of retirees before they are eligible for Medicare: 1) persons hired before April 1, 2004

pay no contribution to pre-Medicare health insurance; and 2) all other retirees pay the same contributions they made while actively employed. Union Ex. 11. The Town's proposal would make some slight changes: 1) for retirements before January 1, 2024, all retirees would pay nothing for health insurance before they are eligible for Medicare; 2) for post-January 1, 2024 retirements, the \$ 0 contribution benefit would end at 36 months after retirement, at which time retirees would have to pay \$50/mo. single/\$100/mo. family until they are eligible for Medicare.

Although the Town's proposal appears to be more generous than the SWA's and has the advantage of leading to a simpler administration of the retiree benefit, I am recommending that the parties make no change to the pre-Medicare eligibility health insurance regime, as the SWA has proposed. This saves more money than the Town proposal because the post-4/1/04 hires would be paying part of the premium for the entire period they are not eligible for Medicare. Further, it would not disrupt the expectations of current retirees.

2. Recommendation. The parties should make no change to the current contract's provisions for pre-Medicare eligible retirees.

IV. WAGE INCREASES

Because their contract expired in 2011, the SWA bargaining unit has not had a raise since then. The raises in the 2009-2011 contract, settled in September 2011, were 2% in 2009, retroactive to January 1, 2010, and 2.75% in 2010 and 2011. Union brief, p. 12. The 2007-2008 contract provided for 3% raises for each year of the contract, as did the contract covering 2002-2006. Union brief, p. 11.

The CBAs between the Town and the other bargaining units have provided raises over the years. The Police Club and HEATT raise provisions are summarized below:

Police Club July 2016 CBA:

Year	Wage increase
2013 (retro)	1%
2014 (retro)	1%
2015 (retro)	2%
2016	3%
1/1/17	2%
7/1/2017	1%
1/1/18	2%
7/1/18	1%
1/1/19	2%
7/1/19 (last year of CBA)	2%

Emp. Ex. 8, ¶ 2.

Police Club December 2019 CBA: In the CBA dated December 19, 2019, the Police Club CBA provided for 2.5% raises in each of the six years of the contract, from 2020 through 2025. Emp. Ex. 9, ¶ 2.

HEATT 2018: The 2018 CBA provides no retroactive raises but has raises of 5% in 2018 and 2019 and 3% per year from 2020 through 2024 when the contract expires. Emp. Exs. 5, Art. VII; 6. ¶ 2.

Non-unionized employees: For the non-unionized employees, the Town has provided the following discretionary raises:

Year	Wage increase
2012	2%
2013	1.5%
2014	2%
2015	1%
2016	1%
2017	1%
2018	1%
2019	2%
2020	2%
2021	2%

Union brief, p. 5.

A. The parties' proposals and positions.

1. The Town's proposal. The Town proposes the following:

Year	Amount
2020 (retro)	12%
2021	2.5%
2022	2.5%
2023	2.5%
2024	2.5%
2025	2.5%
2026	2.5%

Town brief, pp. 1-2; Emp. Ex. 3, ¶ 2.

The Town posits that its proposal for the SWA is consistent with the HEATT wage

increase structure in the 2018 CBA. HEATT's CBA does not provide for any retroactivity but granted raises of 5% in 2018 and 2019 and 3% per year from 2020 through 2024 when the contract expires. The HEATT employees made significant changes in health insurance benefits by converting to the POS 204 plan and having all bargaining unit members contribute to health insurance premiums in January 2019. Although the Town does not consider the Police Club's wage structure to be a valid comparison for the SWA due to the potential availability of interest arbitration for the police and the differing nature of the two units' jobs, the Town notes that all the Police Club raises have also come with union concessions on health insurance, including a 2016 switch to the POS 204 plan.

The Town was opposed to any retroactivity for the SWA beyond 2020 because it had not budgeted for SWA raises in past years and because of the impact that more retroactivity would have on taxpayers. Because of the bargaining impasse, the SWA members' continuation with the current, more expensive POS 229 health insurance program has come at a cost to the Town of approximately \$157,341 per year. Town brief, p. 26. The low or \$ 0 contributions that SWA employees make for health insurance plus the Medicare Part B reimbursement for retirees has also placed a financial burden on the Town.

The Town emphasized that any raise for the SWA would be contingent upon the SWA agreeing that retirees would pay for the full cost of Medicare Part B, as is true for HEATT. The Police Club agreed to limit Medicare reimbursement to \$1,275 each year starting in 2011 as part of the package that resulted in their wage increases.

2. The Union's proposal. The Union proposes the following wage increases:

Year	Amount
2013 (retro)	3.5%
2014 (retro)	2.0%
2015 (retro)	2.0%
2016 (retro)	1.5%
2017 (retro)	1.5%
2018 (retro)	3.0%
2019 (retro)	3.0%
2020 (retro)	3.0%
2021	3.0%
2022	3.0%
2023	3.0%
2024	3.0%

Union Ex. 11, ¶ 1(ii); Union brief, p. 66.

The Union argues that the “modest increase” it proposes “is necessary to close the gap between the wages of Union members and those in comparable communities,” citing to the wage comparisons it provided for several other nearby similar municipalities. Union brief, p. 67. In addition, the Union points the Fact Finder to the Police Club’s aggregate wage increases between 2013 and 2025 of what it calculated to be 34.25%. Union brief, p. 70; Union Exs. 4, 23, 24. The SWA also cited the cumulative 15.5% in raises that the Town gave to its non-bargaining unit employees who still do not contribute more than \$50 single/\$100 family per month for health insurance. *Id.*, p. 71, 75. Many non-bargaining unit employees “perform similar services, are required to have similar skills and work under similar working conditions as many of those

employees in [the SWA] bargaining unit,” the Union argues. Union brief, p. 71. As to comparisons with the Police Club, even though the SWA employees are not police officers, many of them face similar physical demands in jobs that require someone on duty 24 hours per day, 365 days per year, and have to respond to emergencies. This includes the Town’s Paramedic Corps, Highway Department employees and Dispatchers. Union brief, pp. 71-72.

The Town can afford the retroactive raises, according to the Union and its fiscal expert. The Union argues that a comprehensive analysis of the Town’s overall fiscal health shows that it has consistently been in good financial shape and that it can pay for the proposed retroactive and prospective raises without a significant impact on its fund balance or tax levy and without implicating the tax cap. Union brief, pp. 56-65.

3. Discussion. The Town’s bargaining position of almost no retroactive pay is not consistent with the retroactive raises it agreed to with the Police Club and the raises it used its discretion to provide to its non-bargaining unit employees. In addition, based on the financial analysis that the Union provided that the Town did not refute, the Town can afford reasonable retroactive wage increases. I recognize that the Town is in good financial shape because of its careful fiscal stewardship of taxpayers’ funds and takes a reasonable position on living within the budgets it adopted. However, the health insurance program changes and the increase in employee contributions that I have recommended save the Town money and also meet the Town’s demand for concessions on health insurance as a quid pro quo for wage increases.

The Town’s position is that planning for raises and other financial liabilities prospectively rather than retroactively is a more prudent fiscal policy. Therefore, in order to keep wage increases in line with that policy, the Town’s objection to retroactive raises could be erased by

providing an equivalent raise prospectively that would have the same cumulative result as retroactive raises.

The Town took a step to close the gap between the parties' positions on total wage increases by making the concession of proposing a one-year retroactive raise of 12%. The Union's proposed retroactive wage increase adds up to 19.5% without accounting for the compounding effect of raises upon raises. This is the same non-compounded sum of raises that the police received from 2013 through 2020. On prospective raises, the Union proposes .5% more each year than the Town's yearly wage increase proposal of 2.5%. An annual increase of 2.5% prospectively is consistent with the Police Club's current CBA. If the Union's proposal on retroactive wage increases is combined with the Town's proposal on prospective wage increases, the SWA would have the same percentage increases as the Police Club.

I don't think the HEATT salary increases should serve as a model for the SWA because of the interrelationship between salaries and health insurance. The Town stated that the Police Club's agreement on health insurance contributions sets the standard for the other bargaining units. Consequently, the Police Club's wage increases should set the standard for the SWA. In addition, although the health insurance recommendations I made for the SWA contract are similar to the HEATT contract's provisions, the two unions have very different situations with respect to Medicare Part B reimbursement by the Town. Pursuant to the Bantle Award, the SWA contracts have required full reimbursement since 1998 whereas the HEATT unit has never had the right to reimbursement.

It is inherently difficult to compare the SWA situation with the wage and benefits packages of other municipalities because of the variation in titles, benefits provided, prior wage

increases and other wage components. Due to the “apples and oranges” nature of a comparison, I have not used other municipalities’ wage increases as a basis for my recommendations.

Since I have recommended that the parties refrain from making any changes in the Medicare Part B reimbursement for SWA retirees, if the SWA receives the same retroactive and prospective percentage wage increases as the police, the lack of a Medicare Part B reimbursement cap would create a gap as compared with the Police Club. As the Town noted, the police raises since 2011 also came with the Police Club conceding on Medicare reimbursement with the imposition of a yearly cap of \$1,275. However, my recommendation to have no cap for the SWA is mitigated by the two units’ salary differences. Since the current average base salary of a SWA worker is about 59% of the base pay for police officers, the absolute cost of the raises per capita is much higher for the police. Even with the same retroactive increases as the police added into SWA base pay, the cost of each SWA employee’s raise would be much lower. Because of their differences in salary, job responsibilities and the potential availability of interest arbitration to the police, I am not suggesting that the SWA contract has to mirror the police contract precisely or vice versa. Rather, with appropriate variations, the overarching structure of the provisions on wage increases and health insurance should be similar.

Based on the parties’ proposals, the best and most likely outcome on wage increases would be to adopt the Union’s proposal on retroactive wage increases, with one change: there would be no retroactive increase for 2013, but the increase for 2014 would be 3.5% (instead of the Union proposal of 2%). This adjustment is intended to take into account the impact of full Medicare Part B reimbursement continuing for SWA retirees. If the Town would prefer to

account for these raises prospectively over the remainder of this fiscal year, it could do so, but it would have to calculate the appropriate raises to have the same cumulative effect as if they were retroactive. Prospective raises should be 2.5% in 2021 and in each of all the following years, as the Town proposed.

4. Recommendations: The wage increases should be:

Year	Amount
2014 (retro)	3.5%
2015 (retro)	2.0%
2016 (retro)	1.5%
2017 (retro)	1.5%
2018 (retro)	3.0%
2019 (retro)	3.0%
2020 (retro)	3.0%
2021	2.5%
2022	2.5%
2023	2.5%
2024	2.5%

V. STIPEND FOR WAIVER OF HEALTH INSURANCE

For those unit members who waive the Town health insurance, both the Town and the Union have proposed that the Town provide a stipend of 20% of the health insurance premium. The current stipend for employees waiving health insurance is \$400 single/\$900 family, which is equivalent to less than one month of the 2020 premium cost (\$846 single/\$2,338 family). Jt. Ex. 1, § 11.08. The parties agree on a fair and equitable sharing of health insurance cost savings that is consistent with the stipend provided to the HEATT unit members and non-unionized

employees. Emp. Ex. 5, § 11.05; Union brief, p. 76.

Recommendation: Revise Section 11.08 of the contract to require the Town to pay a stipend of 20% of the premium cost to employees waiving access to the Town health insurance plan.

VI. CONTRACT TERM

Both parties had proposed a six-year contract term, with the Union's 2018 proposal running through 2024 and the Town's 2020 proposal running through 2026.

Recommendation: The contract should have a term of six years, expiring on December 31 of the sixth year after the ratification of the CBA.

VII. RECOMMENDATIONS FOR NO CHANGES

As I outlined at the beginning of this Report and Recommendations, I am presuming that the terms of the expired contract should remain unchanged unless the parties are both seeking changes on certain terms, or there is a reason to change the contract due to, for example, a change in conditions, a significant concession by one party, or a clearly prevailing custom or practice that should be adopted for this bargaining unit. I have listed below the proposals for which I am not recommending any changes because only one party has proposed the change and the other party completely opposes it, the parties have not engaged in depth on the issue, or there is otherwise no indication that the parties would have come to any agreement on the proposed change.

Recommendation for no changes on the following issues:

1. Medical provider notes. The current CBA does not require a doctor's note for extended absences.. The Town has proposed requiring medical documentation for any

absence of three or more days in a row in order to curb potential sick leave abuse. Town brief, pp. 3-4. The Union does not want any changes to be made.

The Town's proposal is not unreasonable and is consistent with many other private and public sector collective bargaining agreements. Nonetheless, I do not recommend that the parties make this change for the reasons provided above and because there was no indication that there was a problem with sick leave abuse.

2. Longevity. The Union proposed what it termed a "modest increase in longevity payments" of 20% that it sought to apply retroactively to 2013. There is no record of the Town making a counteroffer on this issue and its wage proposals do not deal with longevity at all. I do not recommend any change to longevity for the reasons provided above.

3. Sick leave incentive. The Union proposed a change to the sick leave incentive from a credit of four hours per month to six hours per month for any employee "who works his regular work schedule during any month." Union brief, p. 80. Because there is no record of a Town counteroffer or any other engagement on this issue, I recommend that there be no change to the sick leave incentive.

VII. CONCLUSION

My recommendations are based on the financial data and other information the parties provided and the parties' arguments for their proposals. The parties' comprehensive research and presentations as well as their answers to my questions were impressive and helpful. As guided by the principles outlined in Section I of this Report, my findings reflect as close an approximation as possible to agreements the parties theoretically would or should have reached on the issues of health insurance and wage increases. I took into account the Town's ability to

pay, each party's priorities and the treatment of other Town employees. I hope that the Town and the Union can agree to adopt my recommendations or use them as a basis for achieving an alternative agreement.



July 26, 2021
Amherst, New York

Lise Gelernter, Fact Finder