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Clinton, County of and the Clinton County Sheriff's Department and CSEA Local 884 (Clinton County General Unit 6450-01)

Don Mesibov

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Clinton, County of and the Clinton County Sheriff's Department and CSEA Local 884 (Clinton County General Unit 6450-01)

Abstract

Report and Recommendations of the Fact Finder In the matter of The County of Clinton and the Clinton County Sheriff's Department and CSEA Local 884 (Clinton County General Unit 6450 - 01) PERB Case No. M2007-275. Fact Finder: Don Mesibov.

Keywords

New York State, PERB, fact finding

**State of New York
Public Employment Relations Board
80 Wolf Road
Albany, New York 12205**

Report and Recommendations of the Fact Finder
In the matter of

**The County of Clinton and the Clinton County Sheriff's Department
and
CSEA Local 884 (Clinton County General Unit 6450 - 01)**

PERB Case No. M2007-275

Fact Finder: Don Mesibov

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BARGAINING HISTORY

In December, 2007, the County of Clinton and the Clinton County Sheriff's Department and CSEA Local 884 (Clinton County General Unit 6450 - 01) began negotiations for a successor agreement to a five year contract due to expire December 31, 2007. The parties attempted to reach a settlement at five separate bargaining sessions, between December 2007 and February, 2008 and at three additional mediation sessions before engaging the services of a Fact Finder.

Briefs and rebuttal briefs were submitted to the Fact Finder in August, September, 2008 and a Fact-Finding Hearing was conducted on September 13, 2008.

OPENING OBSERVATIONS

The fact finder would be negligent if he did not acknowledge that the chief negotiators, Jacqueline Kelleher and Emy Pombrio, have been extremely well-prepared and settlement-oriented throughout this lengthy process which began December 13, 2007 and is continuing. Their attitudes enabled all of us to minimize emotions and focus on the legitimate issues confronting management, employees and the people of the community. Their submissions of written information on behalf of their respective parties were comprehensive, detailed, and well-articulated.

The fact finder also wants to acknowledge the professional behavior and concern for the needs of the taxpayers of Clinton County that was exemplified by each member of both bargaining teams. It is also clear to the Fact Finder that both parties, as represented by their bargaining teams, are concerned about providing the best possible service for taxpayers of the County at the lowest possible cost.

Here are the Fact Finder's recommendations:

ISSUES RAISED BY UNION

Article 8, Overtime

Employee Organization Position:

The employee organization position is that employer use of mandated overtime has steadily increased since 2003, prior to which it was used on a significantly less frequent basis. Further, the employee organization argues that the employer does not meet staffing requirements recommended by the NYS Commission of Corrections. The employee organization argues that it would be desirable to hire more staff and reduce mandated overtime to levels more comparable to before 2003.

FACT-FINDING REPORT (CONT.)

Employer Position:

The employer disputes the employee contention that mandated overtime has increased substantially above 2003 levels and points to the fact that statistics on the amount of mandated overtime were not tabulated for years prior to 2006. The employer also contends that there are alternative ways of reducing mandated overtime if this is an important issue for the employees. The employer further contends that staff size has been increased in adherence to recommendations by the NYS Commission of Corrections.

Fact Finder's Recommendation

While the employee position might be persuasive at another point in time, the current economic climate is such that many businesses, public and private, have been reducing staff and increasing the workload for those employees who are retained. Many businesses are forced to function with fewer people doing more work. Therefore, even if the employee organization's position would prevail under more normal conditions, the judgment of what is a reasonable staffing load relative to the amount of work changes in economic times such as these. In this instant situation, employees are not being asked to work longer for the same remuneration; they are entitled to overtime pay. The only issue is whether employees should be required to accept an overtime assignment.

The Fact Finder recommends that this provision of the contract remain the same.

Article 9, Salary and Length of Contract

Employee Organization Position:

The union proposes raises of 8 percent for each year of a four year agreement, as follows:

2008	8%
2009	8%
2010	8%
2011	8%

The union contends that employee salaries are anywhere between six and twelve percent behind similar employees in other places based on a variety of surveys and statistics used for comparison.

The union also cites the cost of living which was 5% above a year ago based on the National Cities average at the time information was initially presented to the fact finder in August, 2008. The employee organization position is that raises should equal 8 percent on the salary schedule. While the union has proposed a four-year agreement, it has indicated it is not opposed to a lengthier contract provided it is comfortable with the terms and conditions of employment.

FACT-FINDING REPORT (CONT.)

Employer Position:

The employer argues that the employee organization uses “Trainee Wages” as the basis for comparison whereas a more realistic figure would be wages paid to first year employees which the employer says are 12.5% higher. The employer submits data regarding counties it feels are more comparable and which support a much lower raise than that requested by the employees. The employer proposes a five year agreement with salary raises, as follows:

2008	3%
2009	3.5%
2010	3%
2011	3.25%
2012	3.5%

Fact Finder’s Recommendation:

The current cost of living is 4.9% and will undoubtedly be reduced in the coming months, although how much lower it will go is a matter for conjecture. While the year over year figure was 5% when the parties submitted information to the Fact Finder, it rose to 5.5% the following month and then settled back to 4.9% in the most recent report for the period ending September, 2008.

The parties agree that a long-term agreement is in the best interests of all concerned.

It is clear to the Fact Finder that unit member salaries are not substantially out of alignment with comparable positions in comparable counties. To attempt the lengthy process of determining relevant comparisons for the purpose of adjusting salary raises up or down accordingly is not appropriate in the current economic climate. There are too many variables from one County to another to be able to say that any County’s situation is completely comparable to another.

What is relevant are two factors:

- 1.** The economic climate is bad and getting worse; this is not a time to look for catch-up raises (even assuming the employees’ rates of pay lags other counties); it is a time for prudent budgeting and modest raises.
- 2.** Despite economic hard times ahead for employers, it must be remembered that rising costs and other hardships of a sinking economy also have a severe impact on employees and therefore they should not be asked to bear an unreasonable brunt of a poor economy.

Taking all of the foregoing into account, and recognizing that the cost of living continues to hover around 5%, the Fact Finder recommends a 3% increase in wages each year of the agreement. This is lower than many prevailing settlements and is designed to afford the employer a certain amount of protection against fall-out from the recent stock market plunge and housing crisis. The Fact Finder also recommends that an additional one percent be used to make salary adjustments which the Fact Finder will not specify because the parties appear to be in agreement on where inequities exist that need to be adjusted. However, the inequities are to be corrected on the salary schedule before building in the recommended 3% raises. In the event the parties cannot agree on distribution of any part of this recommended settlement, the Fact Finder retains jurisdiction and will address these matters further if the need arises.

FACT-FINDING REPORT (CONT.)

In further consideration of the uncertain economic climate, the Fact Finder also recommends the following: Effective January 1, 2012, all members of the bargaining unit shall receive the percentage wage increase recommended by the Fact Finder except that if the cost of living is higher than 4% then employees shall receive an additional increase equal to the amount above 4% of the cost of living. The cost of living index shall be the consumer price index for the twelve (12) month period January 1, 2011- December 31, 2011. The index used shall be the All Cities Average – All Urban Consumer as reported by the United States Bureau of Labor Statistics.

Note: this is the same cost of living adjustment the parties had agreed to in the contract which expired December 31, 2007.

Article 9, Salaries for positions above Correction Officer in line of promotion (Employee Proposal # 21)

The Issue:

The parties, based on their submissions to the Fact Finder, are in agreement that there should be an increase in the differential for supervisory positions, and that said increases shall be permanently incorporated into salary schedules so that said differentials increase along with salary. Furthermore, the parties are nearly in agreement on how much should be added to the salaries of the Correction Corporal, Correction Sergeant, and the Correction Lieutenant, The only disagreement which requires a recommendation from the Fact Finder is (1) to what degree these increases should impact the remainder of the financial settlement, and (2) whether the amount of raise for the Correction Corporal shall be the same \$1,500 as proposed by the employees which would raise the amount to \$2,700, or whether it should be \$800 as proposed by the employer. If the employer's proposal were accepted, the raise for Corporal would be \$800 and the raises for Sergeant and Lieutenant would be \$1,500. If the employees' proposal were accepted, the raises for all three would be \$1,500.

Employee Organization Position:

The raises shall be as follows:

- Correction Corporal:** \$2,700 over CO base rate
- Correction Sergeant:** \$4,000 over CO base rate
- Correction Lieutenant:** \$5,500 over CO base rate

The raises shall be incorporated into the salary schedule. This shall be in addition to a raise of 8 percent.

FACT-FINDING REPORT (CONT.)

Employer Position:

The raises shall be as follows:

- Correction Corporal:** \$2,000 over CO base rate
- Correction Sergeant:** \$4,000 over CO base rate
- Correction Lieutenant:** \$5,500 over CO base rate

The raises shall be incorporated into the salary schedule. The employer’s offer is in addition to the raises proposed by the employer, as follows:

- 2008 3%**
- 2009 3.5%**
- 2010 3%**
- 2011 3.25%**
- 2012 3.5%**

FACT FINDER’S RECOMMENDATION

Before issuing a recommendation, let’s take a close-up look at the positions which each side presented to the Fact Finder:

	<u>EMPLOYER</u>	<u>EMPLOYEES</u>
2008	3%	8%
2009	3.5%	8%
2010	3%	8%
2011	3.25%	8%
2012	3.5%	
Correction Corporal:	\$2,000	\$2,700
Correction Sergeant:	\$4,000	\$4,000
Correction Lieutenant:	\$5,500	\$5,500

The estimated cost to the County of accepting the employees’ proposal for “Promotional Differentials” is approximately one-half of one percent (depending on how one calculates the County payroll and from what date). Therefore, the County proposal, entering Fact-Finding, could be calculated, in terms of cost, as follows:

- 2008 3% plus one-half percent for promotional differentials = 3.5%**
- 2009 3.5% plus one-half percent for promotional differentials = 4%**
- 2010 3% plus one-half percent for promotional differentials = 3.5%**
- 2011 3.25% plus one-half percent for promotional differentials = 3.75%**
- 2012 3.5% plus one-half percent for promotional differentials = 4%**

FACT-FINDING REPORT (CONT.)

If the Fact Finder were to recommend exactly what the union is requesting with regard to promotional differentials, along with the recommendations already issued with regard to salaries (see pages 5 and 6), cost to the County would be less than three-fourths of a percent, per year, above what the County has already offered and was prepared to spend prior to the Fact-Finding process.

In other words, the parties entered Fact-Finding approximately four percent apart in terms of the financial implications of their respective offers. This Fact Finder in no way believes that a third party should weigh a recommendation based on the parties' initial positions and how far each moves from that initial position. If a Fact Finder were influenced by the amount of movement of each party, employee organizations would be encouraged to ask for huge increases in the hopes of settling for a high amount and it would encourage employers to propose reductions in pay or a wage freeze in hopes of getting a Fact Finder to propose a very moderate raise.

The Fact Finder, in this situation, believes that the employer's offer was in a realistic range and that the employees' proposal (8%) was unrealistically high. It is for this reason that the Fact Finder's recommendation, including all expense related items, is much closer to the employer's position than to the employee's. However, it is not the Fact Finder's opinion that the proposal by the employer was so precisely fair that a minor upward adjustment should not be contemplated.

In plain English, the following recommendation will result in the employer spending very little more than the employer had already offered and the employees will be settling for substantially less than they had been proposing:

The Fact Finder recommends that there be no change in promotional differentials for the 2007-2008 contract year.

The Fact Finder recommends that the following positions receive an amount of \$1,000 each added to their annual salaries – but not built into the salary schedule - for the 2008-2009 contract year:

**Correction Corporal
Correction Sergeant
Correction Lieutenant**

The Fact Finder recommends that the union's proposal be accepted and implemented as part of the salary schedule effective with the 2009-2010 contract year in the dollar amounts proposed by the employees.

FACT-FINDING REPORT (CONT.)

Article 9, Longevity (Employee Proposal # 22)

Employee Organization Position:

This is an employee proposal intended to further address what the employees consider to be survey data indicating that unit salaries are below comparable salaries in other counties.

Employer Position:

The employer contends that the current longevity already builds in sufficient raises to the salary schedule.

Fact Finder's Recommendation:

The Fact Finder recommends no change in the current agreement except as already recommended and for the reasons cited in the previous recommendation. In light of the current unprecedented economic situation, the Fact Finder feels that the raise of three percent plus one percent for adjustments on the schedule is adequate and fair.

The Fact Finder recommends that no changes be made to the longevity provision of the contract.

Article 13, Vacation

Employee Organization Position:

The employees propose the addition of a new benefit level of 5 weeks paid vacation at start of 25 years; they would also add new benefit levels as cited in the employee proposal.

The major argument put forth by the employee organization is that the unique nature of the work required of unit members justifies additional vacation time.

Employer Position:

With regard to the employee request for additional vacation benefits, the employer maintains that except for the request for additional leave after 25 years, other proposals are an increase from the employees' initial request and inappropriate for presentation later on in bargaining. However, notwithstanding that objection, the employer feels that the total package of benefits available to employees is generous in comparison with other counties and that there is no basis for consideration of an increase.

Fact Finder's Recommendation:

Once again the condition of the economy must be considered. There has been a severe deterioration in economic conditions even since the parties' most recent bargaining session. Under more ordinary circumstances it might be reasonable to consider some kind of increase in leave benefits. However, these are not ordinary circumstances and, as such, in consideration of the wage and salary package recommended by the Fact Finder, additional benefits which would increase employer costs are not to be considered except in the most compelling circumstances.

The Fact Finder recommends that there be no change in vacation leave.

FACT-FINDING REPORT (CONT.)

Article 14, Sick Leave

Employee Organization Position:

Modify Article 14, Section 7. The employee unit contends this is for purposes of clarification.

Employer Position:

The employer contends this language is unnecessary and has not caused a problem in the past.

Fact Finder's Recommendation:

If the problem is one of whether language is clear enough, the worst that will happen by leaving the language unchanged is that a situation will arise and a grievance will be needed to determine whose interpretation is correct. However, since no evidence was submitted of any past situations in which there were differences of opinion on how to interpret this language, there is no reason to believe that a potential dispute over this language is likely. In view of the number of issues the parties have debated for nearly a year, and the difficulty of reaching a settlement, this is not the kind of issue that should prolong bargaining. This is the kind of issue that should be raised and discussed during a year when bargaining is smooth and not especially difficult.

The Fact Finder recommends that there be no change in sick leave provision language.

Article 43, Uniforms

Employee Organization Position:

The County provides uniforms for employees and a uniform allowance paid twice a year (\$300 each time, "grossed up" to take into account taxes on the reimbursement) to cover the cost of uniform maintenance. Employees contend that the allowance is not sufficient to cover the costs of maintenance and they cite actual fees charged by dry cleaners.

Employer Position:

The employer offers to increase the allowance to \$800 – two payments of \$400 – provided the payments are made as regular income.

Fact Finder's Recommendation:

Employees' uniform allowance shall be increased to \$1,000 annually, paid twice a year (\$500 each time) and treated as all other income.

FACT-FINDING REPORT (CONT.)

Article 19, Insurance and Retirement – Health Insurance buyout modification

Employee Organization Position:

Increase buyout amount from \$1,000 to \$2,000.

The employee organization points out that the larger the buyout, the more likely unit members will choose to waive insurance coverage in favor of taking the buyout.

Employer Position:

The employer points out that it feels the current rate is high enough to accomplish its purpose and that offering an additional \$1,000 is not necessary and therefore would be an unnecessary expense.

Fact Finder's Recommendation:

The employees may well be correct that additional savings could be realized by offering a higher buyout incentive. However, while it would be nice to increase the benefit for an employee choosing a buyout, it is the employer who will lose economically if its assessment is incorrect and there would, in fact, be additional savings that would result from a higher buyout. At some point if the employer becomes convinced that there would be increased savings due to a higher buyout rate, it will be motivated to make the change. Until then, since it is the employer with much to gain or lose, the employer should be allowed to make the decision. The employee always has the option of not accepting the buyout if it is insufficient, in the opinion of the employee.

The Fact Finder recommends there be no change in the amount of the buyout.

Article 19, Insurance and Retirement – buyout prorated to date of separation

Employee Organization Position:

The employee organization proposes that employees be able to retire during the year and receive a pro-rated amount of their buyout instead of having to complete the year of service.

Employer Position:

The employer argues that it doesn't want to encourage employees to leave before the end of a year.

Fact Finder's Recommendation:

For the same reasons cited in the previous recommendation, **the Fact Finder recommends no change.** It is the employer who has much to gain or lose due to the ramifications of this kind of contract provision.

FACT-FINDING REPORT (CONT.)

Proposal 60, Discipline and Discharge

Employee Organization Position:

The degree of litigation between the parties indicates that the kinds of problems that exist and proliferate in employer-employee relations could spill over into a Section 75 proceeding and, therefore, arbitration should be available to an employee facing discipline or dismissal charges. Specifically, the employee organization proposes that arbitration be an option for employees with five or more years of service.

Employer Position:

The employer argues that the union has not cited a single example of prejudice in a Section 75 proceeding and that there is no basis for anticipating a problem should such a situation arise. The employer further argues that to create an option through the grievance procedure would jeopardize the right of an employee to decide whether to pursue due process since the union controls the grievance procedure.

Fact Finder's Recommendation:

The employee organization has not cited a single case of employee abuse in a Section 75 proceeding. There is currently a Section 75 procedure underway, which may lead to a formal hearing and subsequent hearing officer's decision; however, as of right now there has been no evidence offered that there has ever been such a proceeding under any previous contract. The Fact Finder recommends that no change be made at this time. However, contract language should be added that would automatically include the option of arbitration for an employee with seven years or more of service in the event there is a Section 75 proceeding in which the County issues a harsher penalty than that recommended by the hearing officer. However, in this event, the new contract language would not affect the one case that is currently pending and would be effective only for future Section 75 Proceedings. Also, should such language be added, it would include a provision that entitles the unit member to utilize his/her Section 75 rights should the Union not be willing to proceed to arbitration, if that is the employee's first option.

In summary, the Fact Finder recommends:

- No change at the present.
- Should the County bring disciplinary or dismissal charges against an employee, subsequent January 1, 2009 and should there be a Section 75 proceeding based on a situation that occurs subsequent to January 1, 2009, and should a hearing officer issue recommendations, and should the County impose a harsher penalty than the penalty recommended by the Hearing Officer, then the following shall occur:
 1. the situation in which the County administers a harsher penalty than that recommended by the hearing officer will not be affected by this contract language.
 2. a new provision shall be added to the contract to take effect immediately, at that time, with regard to any subsequent Section 75 proceedings.
 3. this new provision shall allow employees to pursue due process through the grievance procedure where it will be subject to arbitration.

FACT-FINDING REPORT (CONT.)

4. should this new provision take effect, and should an employee elect to file a grievance rather than pursue rights under a Section 75 proceeding, and should the union refuse to allow the unit member to go to arbitration in this type of situation, the employee may still have the option of electing to pursue remedies through a Section 75 proceeding.

Proposal 70, Work Schedule proposal to follow

Employee Organization Position:

No proposal has been forthcoming.

Employer Position:

Employees should accept employer proposal #2 as a solution to their concern.

Fact Finder's Recommendation:

This proposal should be dropped along with employer's proposals #2 and # 3.

PHO agreement proposal to follow

Employee Organization Position:

The employees have not yet put forth a proposal.

Fact Finder recommendation:

The Fact Finder recommends that this proposal be dropped and the parties add the right for a two day liquidation plan. The parties understand what this means and are able to carry this out.

Retroactivity

Employee Organization Position:

The unit seeks retroactive application of all proposals in these negotiations to January 1, 2008 for the term of the successor agreement.

Employer Position:

The employer has not taken a position on this issue.

FACT-FINDING REPORT (CONT.)

Fact Finder's Recommendation

The Taylor Law prohibits employees from taking concerted action that could disrupt the mission of the employer. The spirit of intent of the Taylor Law is that the parties should continue bargaining beyond the expiration of a contract if that is necessary to reach an agreement on a successor contract.

If an employee organization believed that for every day beyond the expiration of a contract that it continued to conduct business as usual, it would risk retroactivity of a settlement, it would be encouraged to take harsh, disruptive actions in order to bring about a contractual settlement and limit the amount of time that existed without a contract.

In other words, it is the assurance of retroactivity that encourages an environment of labor-management peace while bargaining continues. To deny retroactivity in one bargaining situation would only lead to a more hostile bargaining climate during negotiations for a successor agreement and this is counter to the spirit of intent of the Taylor Law.

The Fact Finder recommends that the agreement shall be retroactive to January 1, 2008, except with regard to Proposal 21 (see page 8).

ISSUES RAISED BY EMPLOYER

Salary and length of contract

Employer Position:

Five year agreement with salary raises as follows:

2008	3%
2009	3.5%
2010	3%
2011	3.25%
2012	3.5%

Employee Organization Position:

8% salary raise each year of a four year agreement.

Fact Finder's Recommendation

3%, per year plus a 1% adjustment to address salary inequities each year; a five year agreement.

For rationale and the Fact Finder's recommendations, see this same issue discussed under employee proposals.

Adjusting the number of paid holidays, providing compensation for same, and developing agreement for use and payment for holidays.

Employer Position:

The County proposes to reduce the number of paid holidays from twelve to ten, and increase the base salary of officers by three times the employee's per diem rate added into base salary.

Employee Organization Position:

The employee organization views this proposal as a roll-back and feels that in the current climate it is already difficult to attract and retain quality employees and that acceptance of this proposal would make the situation even more difficult.

Fact Finder's Recommendation:

See previous recommendations with regard to dropping this proposal. Also, in light of the Fact Finder's recommendation on salary and length of contract which are very close to the offers made by the employer, the Fact Finder feels that any further erosion of employee benefits is not warranted.

FACT-FINDING REPORT (CONT.)

Agreement regarding schedule, including designation of up to 15% of correction officer positions as rotating or floating.

Employer Position:

Add a 4th shift assignment, and change notification provisions for such a shift.

Employee Organization Position:

Employees clearly view this proposal in a negative light and feel that without the incentive of increased compensation, unit members will not volunteer. Employees also view this as disrupting the stability of the current schedule.

Fact Finder's Recommendation:

Just as the Fact Finder has recommended against certain employee proposals and cited the shaky economy as a cause, the Fact Finder feels that this proposal, if implemented, would increase hard feelings between labor and management at a time when it is going to be critical that the parties be able to work together harmoniously.

The Fact Finder recommends that this proposal not be included in the successor agreement.

Also, see previous recommendations with regard to dropping this proposal.

Eliminating use of vacation for first year officers

Employer Position:

Delete the right of first-year employees to earn and use vacation time during their first year of employment.

Employee Organization Position:

There is no basis for eliminating this benefit for first year employees. There is already difficulty finding good candidates for open positions and rolling back this benefit will exacerbate the problem.

Fact Finder's Recommendation:

First year officers can accrue vacation time, but cannot use it during first year. This will enable the employer sufficient time to evaluate a new employee and to benefit from the stability of having that employee at work with few disruptions in his/her schedule, except for sick days. However, the benefit will remain the same and can be utilized after completion of a year of service as per the contract.

FACT-FINDING REPORT (CONT.)

Overtime assignments in title only

Employer Position:

Seniority shall apply within categories and call-ups shall be in order of seniority within categories, not across categories. This is necessary to ensure qualified people will volunteer or be called up when needed.

Employee Organization Position:

This will limit the number of people available for a call-up and could become a managerial nightmare.

Fact Finder's Recommendation:

Since the employee concern is that this may become a nightmare for the employer, the Fact Finder recommends that the proposal be implemented as far as allowing the employer to call up people from within the appropriate category as long as seniority is honored as in the past. If this does result in a nightmare it will be the employer who has difficulty sleeping so the employee unit should accede to this proposal.