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Otsego County Unit 8100, Otsego County Local 839 and County of Otsego, New York and Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO

Sumner Shapiro

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Comments

In the Matter of the Fact-Finding Between: Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Otsego County Unit 8100, Otsego County Local 839 Union and County of Otsego, New York Employer. PERB Case No. M. 2007-035. Before: Sumner Shapiro, Fact-Finder.

State of New York
Public Employment Relations Board

In the Matter of the Fact-Finding Between:

Civil Service Employees Association, Inc., Local 1000,
AFSCME, AFL-CIO, Otsego County Unit 8100,
Otsego County Local 839

Union

and

County of Otsego, New York

Employer

PERB Case No. M. 2007-035

Before: Sumner Shapiro, Fact-Finder

I. Introduction

This document constitutes the Opinion and Recommendations in a fact-finding proceeding conducted pursuant to the provisions of New York State Civil Service Law, Section 209 (3) (b.) by Sumner Shapiro the duly designated Fact-Finder appointed by the Director of Conciliation of the New York State Public Employment Relations Board (PERB) on June 10, 2008. The parties to this impasse are the Civil Service Employees Association, Otsego County Local 839 which is hereinafter referred to variously as; the "Employees", the "Union", or the "CSEA" and the County of Otsego, New York, which is hereinafter referred to variously as, the "Employer", the "County", the "Administration", or "Otsego". The Union is one of three certified bargaining units representing in total 850 employees and it is by far the largest representing about 525 full-time employees and about 100 part-timers in a diversity of services and departments encompassing both white-collar and blue-collar occupations. The Union and County are parties to a Collective Bargaining Agreement (CBA) for the period of January 1, 2003 through December 31, 2006 the terms of which continue in effect as the parties have been unable to agree upon terms for a successor Agreement. They had reached a tentative agreement just prior to October, 2007 which the Union membership declined to ratify and negotiations again proceeded in early March, 2008. The undersigned Fact-Finder met with the parties on September 4, 2008 and determined first that they had not assembled their respective proofs and arguments in sufficient detail to proceed with a formal hearing¹. In that meeting the parties agreed to narrow the issue to two namely; (1) salaries

¹ CSEA was represented by Labor Relations Specialist Lynda Broadfoot and Local President John Imperato. Otsego County was represented by John Corcoran, Esq. (of Counsel. Hancock & Estabrook, L. L. P.). At one point the entire Union Committee in caucus requested clarification about the scope and procedure of Fact Finding and the undersigned acceded to the request and met with them. The names of those present were not recorded.

and (2) health insurance. It was further agreed that the parties would submit and exchange formal briefs and that the Fact-Finder would share with them his initial inclinations before proceeding with a review and refinement and the preparation of this formal document. The fact-finding briefs were received on or about February 1, 2009. The parties had been encouraged to continue negotiating pending issuance of the preliminary findings issued on March 5, 2009 at which time they were encouraged further to consider the weight of the preliminary findings and continue negotiations. The parties advised they were in continuing negotiations but on May 19, each advised the impasse persisted and that the undersigned should proceed to issue this document.

II. Salary Issue and the Parties Positions

A. Salaries

1. Summary of Parties' Salary Issue Positions

The last increase was implemented on January 1, 2006 and the tentative Agreement which the membership declined to ratify was for a five-year successor Agreement granting a \$300 bonus payment without increasing the salary schedule for the year 2007 to be followed by a 5% across-the-board wage increase for 2008 and an additional 3% across-the-board increases in each year 2009, 2010, and 2011. Each of these was to be effective on January 1 of its respective year. In resumption of negotiations following the rejection the Employer proposed across-the-board increases of 2%, 4%, 3%, 3%, and 3.5% effective January 1, 2007, January 1, 2008, January 1, 2009, January 1, 2010, and January 1, 2011 respectively. Otsego's present and "final" offer is for a retroactive uniform 3% across-the-board wage increase for each of the five years January 1, 2007 through January 1, 2011. CSEA is now proposing a three-year agreement with a retroactive across-the-board increase of 3% effective January 1, 2007 and two successive retroactive increases of 4% each effective January 1, 2008 and again on January 1, 2009.

2. County's Rationale

Otsego urges that it has made a good-faith effort to provide equitable and competitive compensations in keeping with its ability to pay and its obligation prudently to serve its taxpayers. It characterizes the Union proposal as "extravagant" and pleads that its implementation would jeopardize the general fund balance and down grade its bond rating. Otsego emphasizes our nation is in a state of economic turmoil wherein well-founded pessimism prevails. It stresses that certain fixed and mandated benefits are continuing and growing burdens and that healthcare costs among them continue to accelerate as do state retirement pension contributions and all of which are occurring simultaneously with declining sales tax revenue. The County urges any cost increases incurred in resolving the present impasse will compel a tax increase which will be particularly onerous to the taxpayers who are faced with layoffs, unemployment, and other financially stressful constraints. The Employer maintains it has traditionally provided employee compensation and benefits at substantially the average of its six

contiguous counties and that its proposals in the instant matter would at the very least preserve that tradition.

3. CSEA Rationale

CSEA pleads that members of its bargaining unit received their last contractual wage increase on January 1, 2006 the last year of an agreement which had become effective on January 1, 2003. In the first year of that CBA, 2003, no increase was forthcoming followed by a 5% increase the next year, 2004, and an additional 3% in January 2005 followed by 1% in July 2005 and 3% in 2006 which it calculates to be the equivalent of an 11 1/2% increase over four years. The implied insufficiency of those increases is, the Union urges, clearly apparent at the present time as Otsego County Employees are the lowest average paid among comparable counties. The Union supports its argument with the claim that a high turnover rate prevails in certain occupations and cites explicitly the dispatcher's' position for which a number of employees received intensive training before leaving for better compensated positions. It claims that of a sample of 21 employees trained at county expense 14 left for better paid positions seven of which were in the dispatcher classification. It urges that it would have been in the County's interest to have granted competitive compensation to retain these individuals and going forward, would enhance recruitment efforts. CSEA urges there is no justification for Otsego to be offering the lowest starting wages come on comparable counties. It recognizes the present state of economic malaise but cites a newspaper report that the County is projected to enjoy a slight increase in sales tax revenue over the previous year.²

III. Salary Issue Opinion

A factual assessment of salary proposals is based upon (1) ability to pay, (2) prevailing comparable practice and (3) an informed effort to forecast economic expectations for the future years in the term of the CBA. We concur in County Counsel's assertion that "ability" and "obligation" are independent parameters. Realistically, the focus is properly on the obverse, inability to pay and in the interest of balance we offer that "inability" and "reluctance" are also independent parameters. We have proceeded with a comparison among Otsego and its contiguous counties with our findings summarized in Fact Finding Table I. We have specifically considered nine characteristics commencing with total employment and concluding with the year 2007 County Real Property Tax and for each of these have calculated the ratio of Otsego's metric to that of the contiguous county. We have also ranked the ratios among counties horizontally. Thus in the matter of total employment we find Oneida County first among the samples with Otsego's total employment being only 22% of Oneida's. Otsego itself has the third-highest total employment among the compared counties. In the matter of the median value of owner occupied housing Otsego is the fourth highest while its 2007 County tax was the eighth highest; i.e., the lowest among the group. While ranking is an inherently blunt tool in that the gap between positions one and two may be multiples or fractions of the difference between positions two and three but is nonetheless helpful in identifying trends. Otsego's

² Source: Daily Star, 11 -- 15 -- 08

counsel has contended that his client falls nominally in the mid range among contiguous counties and the data appears to support that position particularly in the median value of Owner Occupied Housing in year 2000. We assume the relative positions have not changed dramatically in recent years and that Median Household Income ratios have not changed dramatically since 2004. Presumably the same assessment may be relied upon in viewing the year 2000 County Tax on a \$75,000 home though the home values themselves may have appreciated and some of that appreciation may have survived recent reductions in home values. Fact Finding Chart III is a graphic exposition of these data. Fact Finding Chart II graphically presents median household incomes in 2004 and shows that Otsego is generally comparable to its neighbors with the possible exception of Madison County. Average monthly individual earnings are charted on Fact Finding Chart 1 and indicate Otsego was among the higher compensated whereas Herkimer, Madison, and Montgomery lagged. It should be noted that this plotting accentuates differences because it does not have the zero line but it is consistent with the findings based on other parameters inferring that Otsego taxpayers have at their disposal resources comparing favorably with those of similarly situated residence in other immediate region counties.

We conclude these data indicate Otsego is well behind lower end Delaware and Herkimer Counties in the Real Property Tax category and that adoption of CSEA's proposal for 2007 would have equated to a tax increase of about \$18 as opposed to the County's which would have added \$12 per annum on a \$75,000 home. Recognizing some probable increases since year 2000 the calculated increases would probably become \$15-\$25 per annum. We do agree with the County assertion that implementing even its own proposal will entail a tax increase if it is to avoid invading the General Fund balance but that is unsurprising as tax revenues constitute the substantial body of the Employer's revenue. The data persuades that Otsego's taxpayers may reasonably be expected to absorb some modest increases without becoming disproportionately burdened relative to similarly situated residents in contiguous comparable counties. (See also FF Charts IV & V)

We turn next to wage comparability and focus specifically on Fact Finding Table II which is a wage comparability study. The scope of the inquiry is the years 2006, 2007 and 2008 respectively. These are now historical years for which we have established data about which we need not speculate. In the "Position" column we have listed the occupations cited by the parties with their respective 2006 hourly equivalent compensation levels (column A). Some of these have been adjusted as noted in the footnotes in the next column we have adjusted these to 2008 applying the County's proposed increases for 2007 and 2008 (column B.). We next applied the same procedure employing the CSEA proposals (column C.). For all other counties we have converted the annual salary shown in the CBA's in evidence to hourly equivalents based upon the work hours shown in each CBA. For each County we have listed the 2008 compensation level for each position (where available) and calculated the ratio of Otsego's compensation to that of the comparison County expressed as a percent. To clarify we review the calculations for Chenango County Account Clerk where in column D. we list the 2008 salary at \$11.17 per hour for which position Otsego paid \$11.41 per hour in 2006 (column A.). Hence, the Otsego 2006 rate was 102% of the Chenango 2008 rate for that position (column E.). The Otsego rate for that position in 2008 after applying the

County's proposed adjustment would be \$12.10 per hour (column B) and this would be 108% of the Chenango 2008 rate (column F.). Repeating this procedure adjusting the Otsego 2008 rate which would obtain after applying the CSEA proposed adjustment (column C.) is \$12.22 per hour which is 109% of the Chenango 2008 rate (column G.) for that position. This analytical procedure was applied wherever data was available for each of the contiguous counties. Focusing again on the Otsego/Chenango comparison (columns D., E., F., G.) we calculated the column arithmetic means and found that Otsego's 2006 compensation levels were 104% of Chenango's 2008 levels (column E.). The calculations further indicated the application of the Employer's proposal would increase this ratio to 111% (column F.) while applying CSEA's proposal would increase this to 112% (column G.). While Otsego compares favorably with Chenango the balance shifts when we focus on Delaware County where the three percentages are 89, 94, and 95% respectively.

We have further calculated the averages for all contiguous counties for each position with the results being summarized in columns FF, GG and HH respectively with the grand means being 93%, 98%, and 100%. That is to say that the Otsego 2006 salaries for the cited positions averaged 93% of the comparable 2008 contiguous counties salaries (column FF) and that the application of the Employer's proposal would raise Otsego to 98% (column GG) while adoption of the CSEA proposal would bring Otsego to the 100% level (column HH).

The parties differed in their selections of representative positions for comparisons and Fact Finding Table III unsurprisingly indicates the Union selections place the employees typically around fifth among the eight contiguous counties while the County's which were also less variable, placed Otsego typically in the fourth position. There is support for the inference that each party proposed reliance upon samples which best supported their positions but, in general, one does not find an overriding imbalance. Scanning Table II column E. we find the resulting distribution of each of the parties' selections appear to be more or less normally distributed. The difference between the parties is relatively small and as we are constrained consistently to rely upon the data in evidence we consequently recommend adoption of the CSEA proposal for 2007 and 2008; i.e., 3% across the board for 2007 and 4% for 2008.

Proceeding forward from 2008 entails forecasting for a period of unprecedented unpredictability. CSEA is proposing a 4% increase for 2009 as well as making it the terminal year of the CBA. Otsego County has proposed a 3% increase followed by another 3% for 2010 and a 3.5% adjustment in 2011 with the successor agreement to commence in 2012. In the hiatus between the submission of that proposal and the subsequent authorization to prepare the present document, the County has taken the position that it will now agree only to a 3% increase for each of the five years. In response we offer the following comments. First we think it inappropriate to entertain new proposals after having in effect closed the record particularly when it appears that the proponent has arbitrarily altered his posture. Secondly, the new proposal differs by less than 1/2% from the County's earlier fact-finding proposal (Fact Finding Table I). It is in fact equivalent to modifying the initial proposal by reducing the 2011 increase from

3.5 to 3.01% and that does not, in this writer's judgment, incentivize acceptance of a five-year agreement. We do recommend adoption of a five-year agreement as we have passed the midpoint of calendar 2009 and the parties will be returning to the bargaining table in two years. Following the protracted ongoing negotiations a period of stability would seem desirable. We will therefore recommend salary increases as follows:

<u>Effective Date</u>	<u>Percentage</u>
January 1, 2007	3%
January 1, 2008	4%
January 1, 2009	3%
January 1, 2010	3%
January 1, 2011	3.5%

III. Health Insurance Issue and Parties' Positions

1. Background

Immediately prior to late 2004 bargaining unit employees were provided an option of four different plans three of which were HMOs and one of which was a self-insured indemnity program. The indemnity option was self-insured with the administration thereof being outsourced to an organization doing business under the RMSCO name. This company being solely an administrator generates a premium equivalent which is employed to determine employee contributions. Historically, employees hired prior to January 1, 1983 received Employer fully paid individual and family coverage. Employees hired subsequent to the 1983 date contributed a portion of the premium for both individual and family coverage on a declining percentage scale commencing at 50% for the first year of employment and declining to 20% in the fourth and every succeeding year. The County relates that the multiplan offering created an adverse selection opportunity which resulted in older employees most of whom were exempt from contributing and a large number of retirees to select the RMSCO plan. Younger employees more frequently opted for the HMO coverage which was less costly. Indemnity plan cost burdens were compounded by the inherently higher frequency of claims by the more senior cohort escalating the rise of indemnity plan premium equivalents. The parties confronted this problem in the latter part of 2004 agreeing to and implementing a single RMSCO plan replacing the prior four plan option. A further modification adopted at that time was to require pre-1983 employees to contribute at a 3% level with post-1983 cohort becoming obligated uniformly to contribute 20% of the RMSCO monthly premium equivalent. The County offered an undisputed history of premium equivalents since the adoption of the plan in 2004 as follows:

<u>Year</u>	<u>Monthly Premium Equivalents</u>	
	<u>Individual</u>	<u>Family</u>
2004	\$275.46	\$ 711.55
2005	\$275.46	\$ 711.55
2006	\$358.10	\$ 925.02
2007	\$429.72	\$1110.02
2008	\$516.52	\$1334.24
2009	\$557.84	\$1440.98

Otsego in its tentative agreement which the Employees declined to ratify in October 2007, proposed to decrease certain benefits in a cost-containment effort. Specifically it sought to change the doctor's office co-payment by five dollars bringing it to \$20 per visit effective January 1, 2008. It further proposed changing the prescription drug copayment also effective January 2008 from \$5/\$10/\$20 to \$7/\$15/\$30 and effective January 1 2010-\$10/\$20/\$40. It also proposed instituting a contribution for 90 days supply mail-order copayments which had theretofore been charge free, of \$7/\$15/\$30 effective January 1, 2008 further increasing to \$10/\$20/\$40 effective January 1, 2010. The three classes in every case are generic, branded, and non-formulary respectively.

The Employer has since modified its position wherein it would retain RMSCO coverage but would offer three benefits schedules. The first would be the existing plan which would be preserved as Plan #1 but in addition offering two additional plans, a "medium option" and "low option" at the current rates tabulated below:

<u>Plan</u>	<u>Monthly Premium Equivalents</u>	
	<u>Individual</u>	<u>Family</u>
Existing Plan	\$583.15	\$1506.36
Medium Option	\$529.95	\$1368.93
Low Option	\$474.16	\$1224.83

2. County Rationale

The County offers that the 2009 healthcare premium equivalents have reached nominally \$6700 for single coverage and \$17,300 for dependent coverage which rates, it believes, are extremely high and have inflated the Otsego annual healthcare costs to approximately \$10 million. Since the CSEA members constitute about 90% of all Otsego employees it argues that any meaningful containment of costs will be beyond realization without effectively containing expenditures under the contract renewal with which we are here concerned. Otsego's view is that it is inefficient and impractical to expect health insurance to defray the full cost of every incurred medical expense but rather should be designed to protect against personal financial ruin in coping with catastrophic events. It proposes that the "medium" and "low" options are consistent application of that philosophy while the option of retaining the existing "full coverage" plan serves the needs of those seeking more substantial protection and are agreeable to paying more.

The Employer emphasizes it is a self-insurer and as such pays the cost of health care claims incurred by employees, their covered dependents, and retirees. It asserts that in recent years the premium equivalents should have been higher had it not elected to absorb increases rather than pass them through to the employees in deference to sparing the latter from additional personal burdens. However, Otsego pleads it cannot be expected to continue maintaining a posh plan wherein it would continue to subsidize a part of the individual's contribution. The Employer further proposes that the high cost arises from

the richness of the program and claim frequency rather than inefficient administration. It maintains RMSCO's administrative charges are reasonable offering that this conclusion has been supported by at least one health insurance broker identified as "Brown and Brown" who advised that self-funding was still Otsego's best option. This conclusion is based on the inference that Otsego would still in the end pay all claims through an insurer who would likely impose invisible but higher administrative expenses built into its premium structure.

The County disputes a Union claim that it has refused to make CSEA part of the effort to contain costs and that it had refused to provide Union specialists with certain data. It maintains the Union, agreed for the County to retain a health insurance broker to obtain quotes from other providers rather than have CSEA conduct a separate study. It does acknowledge raising a conflict of interest concern about the potential involvement of the CSEA Strategic Benefit Trust contending it might impair Union objectivity if the Trust were to bid on the business. The County also denies it obstinately refused to enter an agreement with a Canadian company to replace the current prescription drug program administered by RMSCO which the Union predicted would save millions of dollars per annum. While acknowledging that a small number of municipalities have done so, Otsego states it is reluctant to do so being constrained to rely upon a legal opinion questioning the legality of such an arrangement? Moreover it is disinclined to expose itself to the vicissitudes of currency exchange rates.

The County acknowledges an obligation to supply information necessary and relevant to the bargaining process and maintains it has invited the Union to submit an information request to initiate the procedure to which the Union has not responded. However Otsego's counsel questions whether time would permit assembling and assessing competitive quotes in resolving the current impasse. He suggests the parties might commence the process with a view to utilizing the findings in the next reopening

3. Union Rationale

CSEA in common with the Employer views this aspect of the impasse against the long historical background. It recounts that 26 years ago its members enjoyed employer provided fully paid health insurance at which time employees became obligated to pay 3% of the premium cost for either individual or family coverage. Moreover, employees hired after January 1, 1983 became obligated to contribute 20% of the premium cost for individual or family coverage with part-time members electing coverage assuming 50% of individual or family premiums. That arrangement survives and CSEA contends the Employees "made a huge concession" when they agreed significantly to increase their contributions. It further asserts agreement to accept the County's self-insurer status and its selection of RMSCO as the Administrator was forthcoming on the strength of assurances that health insurance costs going forward would be effectively contained. CSEA emphasizes it accepted this assurance and in good faith promoted it to its constituents who in turn responded positively by ratifying a new Agreement. The Union at the present juncture complains that RMSCO has not effectively contained costs which have "risen dramatically". It depicts its membership as feeling betrayed and contends it has

attempted to mollify with responsible efforts to cope with the rising cost challenge but found the Employer to be uncooperative and disinterested. Specifically it has proposed to implement "case/disease management" which involves educating members on the most economical way to utilize the program, implementing audit services, changing the prescription drug program, and possibly engaging a different administrator. It asserts Otsego characterized these approaches as "gimmicks" and expressed disinterest. CSEA maintains these approaches have generated "tremendous savings" in other jurisdictions and charges Otsego's refusal to explore cost-saving measures evinces a preference for shifting the rising cost burdens to CSEA members.

CSEA further criticizes the Employer's posture noting that County Board Members, the Sheriff's bargaining unit, the Correction Offices bargaining unit, and the Management Confidential Employees until recently paid no contributions and even now pay little or nothing -- -- County Board and Management confidential contribute 5% -- -- the Deputy Sheriff's staff pays \$200 per year for individuals than \$400 for families -- -- in the Correction Officers make no contributions. CSEA asserts it is unacceptable for the County to levy the highest contribution rates on its members who allegedly received the lowest base salaries in the County and one of the lowest in the entire state. It argues that if Otsego were truly committed to cost containment it would be levying equivalent contribution rates on all participants and it further argues that any catastrophic illness costs which would adversely affect the experience rating will in the end be borne by all participants and disproportionately by CSEA members.

The Union brands the County's three-tiered proposal as unrealistic and unacceptable. It charges the "high" option would raise the existing cost for those opting to continue with the other two being unacceptable because "there was only a 1/2% increase in the compensation." It also said it's membership has directed them to consider proposals significantly increasing the benefit level and that the to new proposed two alternate options though having lower premium costs entail substantially higher out-of-pocket expenses. The Union is further disturbed by what it perceives to be an Employer effort to circumvent the negotiating team and go directly to the membership. It contends its members can "barely afford" the present plan and cannot entertain accepting a higher cost for retaining that option. Moreover, the Employees contend acceptance of the "medium" or "low" plan would cause their out-of-pocket costs to skyrocket. It urges the best solution would be to find different methods to achieve cost savings and to avoid cost shifting.

The Union further charges it is been hampered by an Otsego's refusal to provide it with certain information and that it has not informed CSEA that it was examining other possible health insurance plans. Moreover, it denies absolutely that CSEA ever acknowledged a conflict of interest if they were to include the Union's Strategic Benefit Trust along with other providers in a Union sponsored review. The Union charges Otsego has never truly seriously considered other health insurance options and that it has consistently hampered comparative cost studies while attempting to shift rising cost burdens to the Employees. CSEA vehemently insists the only equitable present time resolution is to continue the existing program at the existing absolute dollar contribution

levels and to proceed with improved management and education efforts to reduce and contain costs.

V. Opinion and Recommendations on Health Insurance Issue

Healthcare economics is the topic of the day both in the halls of Congress and in the press. Appendix I hereto is a copy of an article on the subject appearing in the June 27 issue of *The Economist* which may prove helpful to the parties. The subtitle concisely summarizes the prevailing situation stating "America's healthcare is the costliest in the world, yet quality is patchy and millions are uninsured. Incentives for both patients and suppliers need urgent treatment". Clearly Otsego's experience is hardly unique and we urge the Union to re-examine its view that the Employer or RMSCO has reneged on promised results. We think it a reasonable inference that the County is no less devoted to cost-containment than is the Union. The proverbial bottom line is that Otsego is burdened with 80% of the benefit's cost of nominally \$10 million per annum and it is illogical to presume that is not a sufficient stimulus to vigilant oversight. But this is not to dismiss the virtue of competitive bidding. While it is true, as the Broker consulted by the Employer stated, that the County will in the end bear the providers' charges (less co-pays) plus the insurance carriers administrative charges and profits it is not at all certain that a particular insurance carrier through more aggressive oversight and internal efficiencies will be unable to provide equivalent care and earn a profit at a price below that accruing under the self-insured option. That can only be ascertained by probing the market.

CSEA's chagrin about other County groups benefiting from the RMSCO plan while contributing less toward the premium equivalent is understandable but these disparities arise among different and independently negotiated CBA's and employment contracts and do not constitute an appropriate standard for treating with the issue at hand. Comparable practice is the standard promulgated by New York Civil Service Law and we have identified those comparables in our discussion of the wage issue earlier herein. Also relevant is the Union concern that the inclusion of diverse groups within the same policy may burden its members who are the majority subscribers with added costs attributable to adverse experience with non-CSEA bargaining unit members. It is indisputable that the costs incurred on behalf of all subscribers will affect the experience rating and be reflected in future premium equivalents. Insurance is of course, a device for spreading risks and or operates on the premise that the relatively modest premiums of many will be sufficient to defray the much larger costs incurred by the relatively few plus the administrative costs which include maintaining reserves and in many cases, generating a profit. Of course, health insurance is distinguishable from fire insurance for example, in that it is certainly more likely that a health-insurance subscriber will not only have a claim but repeat claims as well. But in either case premium levels are determined on the probabilities of payouts which are in turn refined from time to time to reflect actual experience. Probabilities are expectations and statistics are realizations which are employed to refine probability calculations. Statistics become more reliable with increasing numbers of observations and we may in general achieve higher confidence levels with larger groups and from that point of view of the inclusion of the smaller groups is likely to be beneficial. Moreover, based on the evidence before us there is no

reason to presume that the included smaller groups constitute a higher risk pool than do the CSEA members. In any event the CSEA group being a substantial majority, will likely exert greater influence on the premium level than will the smaller groups but the smaller groups standing alone would likely incur higher per capita administrative costs and diminished leverage in negotiating with providers. However it is not inconceivable that the CSEA group standing alone could incur higher administrative per capita charges than it does in the amalgamation. One can not immediately rule out the possibility that the amalgamated coverage benefits all involved.

Ordinarily, an employer commits to providing certain benefits and the union's scope is essentially limited to monitoring conformity. However in the matter of health insurance in Otsego and frequently elsewhere, the individual employee beneficiaries share in the payment of premiums and in so doing become co-purchasers of the insurance and hence, through their collective bargaining agent, are reasonably entitled to ensure they are prudent purchasers. Conceivably, a quotation from the CSEA provider could create at least the perception of a conflict of interest if it did not precisely match other offerings content-wise but was favored for adoption by the Employees. We offer further comment about this later herein. However, there are other independent sources and we support the Union effort to include them in a market study. But, it is not the Union's onus independently to design, redesign, or restructure the health-insurance plan. This should be a cooperative enterprise and it can only succeed if the partners recognize each other's legitimate concerns. The Union views the option of permitting individuals to order drugs from Canada and receive reimbursement from the County as an obviously reasonable cost-containment option and the County's reluctance to consider it as evidence of disinclination sincerely to pursue cost-cutting options in deference to increasing employee contributions. There is some inconsistency in the exhibits relating to whether the County could pay on behalf of the employees or would be limited to reimbursing individuals. But beyond that, there is reason to question the legality of the practice. We note for example in Union Exhibit 9 a copy of a letter from attorneys Fenton and Fenton sent to the president of the Canadian facilitator at his request wherein the attorney at some length provides a legal opinion that the facilitator does not violate American federal drug regulations by virtue of certain restrictive practices. But later inexplicably concludes that "Recent developments in the U. S. Senate, and the Department of Homeland Security and FDA to allow Prescription Drugs to enter without interruption further indicate the fallacy of the FDA position." The position to which he apparently takes exception is not spelled out in the communication. This writer serving as a Fact Finder for a State of New York agency is especially reluctant to bless a procedure of questionable legality which he would be disinclined to do in any case and we do not subscribe to the Union conclusion that Otsego is ipso facto dismissive of cost saving options.

Health-insurance coverage is actually tax-exempt wages. The parties implicitly recognize this to be the case in Article V, Section 2, paragraph F. wherein they agreed to pay any full-time employee a specified stipend per annum during which time the individual voluntarily forgoes coverage to which he or she is entitled. Viewed in this light the chore is to determine how that tax-exempt wage compares with or contrasts to prevailing comparable practice. The applicable technique is essentially that relied upon in

comparing wages possibly complicated somewhat by the added challenge of recognizing differences in coverage features. However, even in making wage comparisons one can not be certain of an exact fit as the same job title in different jurisdictions may not consist of identical job duties. The County maintains its program is in almost all cases and all respects superior to that enjoyed by similarly employed personnel in contiguous counties and at contribution rates which also compare favorably. They have not however provided persuasive quantitative documentation and while we have been provided with an extremely extensive submission of lengthy exhibits, we have been unable independently to extract such data. Health insurance policy descriptions are inherently complex and it is not unlikely that even specialists will be unable to determine precise comparable values. Some of these values are subjective depending upon the utilities of specific features to the beholders. It is a given that no single affordable policy can provide complete coverage for every contingency and there is always a conflict between the allocation of treatment resources between more frequent less serious occurrences and very costly catastrophic events. We do not subscribe to the County's view that the focus should be "-- -- to guard against the risk of personal financial ruin attendant to catastrophic healthcare needs." We find the argument that resources should not be dissipated on trivial medical episodes which impose only modest charges on individuals to carry weight but insurance should kick-in much before verging on catastrophe. But there is another side to that argument persuasively illustrated in considering flu immunization where the experience has been that people are less likely to take the precaution even if only a modest personal cost is incurred. Yet, failure to do so sometimes results in what would have been avoidable illness which is costly to health-insurance plans and society as a whole. Moreover, co-pay provisions do relieve the insurer of at least a portion of the costs incurred in treating more minor routine afflictions and, in fairness, one must further recognize that serendipitous discoveries often arise during routine treatments affording early and less costly care to the physical benefit of the person and the financial benefit of the insurance carrier.

In making a recommendation we urge the parties to set aside their combative rhetoric and deferred to their joint obligation which is to provide the Employee's with health-care insurance of comparable quality to that provided in the contiguous counties at a cost to the individual CSEA members not exceeding those prevailing in the comparable jurisdictions. In our judgment adoption of the County's multi-plan proposal is likely to give rise to continuing controversy. The price difference is real but not overwhelming and those who subscribe to the "low" coverage plan are likely to consider they have been victimized should they have an unreimbursed claim which would have been covered by the standard in place policy. They are unlikely to be mollified by a reminder that they elected the lesser coverage. We judge the evident current antagonism growing out of the disparate pricing for equivalent coverage to foreshadow responses to disparate coverage. But we offer this merely as an opinion as opposed to a factual finding.

The Employer, we detect, is understandably reluctant to sever the CSEA coverage out of the RMSCO plan as that would most likely increase the per capita cost of providing continuing coverage to the other units. However, we have elsewhere herein supported the County positions that CSEA represents an independent bargaining unit for which wages, hours, and working conditions are negotiated unlinked from other employee groups and it

cannot have it two ways when a separate insurance policy may be appropriate. Moreover, we are disinclined to subscribe to the Employer's assertion that time will not permit a consideration of alternate coverage. It seems very likely that insurance vendors will promptly respond to a request for proposals (RFP) where something approaching a \$10 million annual premium may be forthcoming. We do however agree the County has a valid concern about the possibility of receiving a "low ball" bid designed to attract a client whose premium will later be increased to a profitable level. Marketing staff is frequently more hopeful and less cautious than the insurance company's actuarial and financial departments. But that is a matter which can and should be addressed among the parties and any alternate provider under consideration. None of this is to suggest that RMSCO is not in fact a continuing best option or that a particularly high utilization rate does not prevail. But the Union as a co-purchaser is entitled to confirmation if that is the fact. Obtaining this appraisal necessarily requires a release of accrued experience data and it is our understanding that Otsego has or will provide that information promptly upon receipt of a written request from the CSEA representative. If the resultant market study supports Otsego's confidence in RMSCO we recommend continued subscription to the existing plan with the proviso that the parties will address any rate increase by jointly engaging in efforts to curtail excessive or unnecessary utilization and upon realizing the fruits of that effort, pledge to rescind or reduce the premium equivalent increase accordingly. In a free market economy the value of any service or commodity is the price it can command in the market place. The parties need to determine more definitively current comparable prices and benefits equitably to resolve the impasse over this issue. Exchanging rhetorical fusillades is not promising – nor is proclaiming that Otsego workers are toiling at the lowest wage levels relative to similarly employed workers in contiguous counties. That, as we observed in compensation analysis (Fact Finding Table III), supra, is simply not the case.

VI. Recommendations

The recommendations offered in the body of this document, supra, are summarized below.

1. We recommend the adoption of a five calendar year Agreement retroactive to January 1, 2007 and expiring on December 31, 2011.
2. We recommend retroactive and future salary increases tabulated below:

<u>Effective Date</u>	<u>Percentage</u>
January 1, 2007	3%
January 1, 2008	4%
January 1, 2009	3%
January 1, 2010	3%
January 1, 2011	3.5%

3. We recommend the prompt release of experience data and issuance of an RFP to at least several health insurance vendors jointly selected by the parties. If the parties are unable to concur on designations each should independently


select two. The selected vendors should be provided with an outline of the in place provisions and be instructed to match them as closely as possible. The quotations generated in this manner should provide a basis for assessing performance of the in place self-insured program. The parties should immediately determine the wage equivalent of the health care benefits enjoyed by comparably employed staff in contiguous counties and available consistent purchase options. In any consideration of retaining the existing plan the parties should focus upon establishing cooperative procedures for achieving cost reductions including a provision for periodic reassessment and rescinding wholly or partially any increase in contributions.

Slingerlands, New York
July 9, 2009

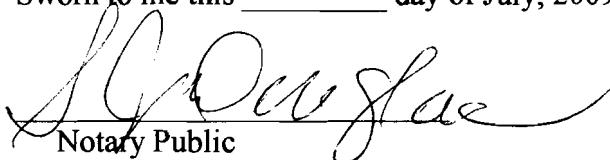
For the State of New York
Public Employment Relations Board

State of New York)
)
County of Albany)

Respectfully,


Sumner Shapiro
Fact Finder

Sworn to me this 9th day of July, 2009


Notary Public

SUSAN J. DOUGLAS
Notary Public, State of New York
No. 01DO4897876
Qualified in Washington County
Commission Expires June 8, 2011