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Gordon R. Mayo

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Columbia County Corrections Officer's Benevolent Association, Local 3928 of The New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO and The County of Columbia and Columbia County Sheriff

Abstract
In The Matter of the Fact Finding Between The Columbia County Corrections Officer's Benevolent Association, Local 3928 of The New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO and The County of Columbia and Columbia County Sheriff. PERB Case M2008-241. Gordon R. Mayo, Esq., Fact Finder.

Keywords
New York State, PERB, fact finding

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STATE OF NEW YORK – COUNTY OF COLUMBIA
NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of the Fact Finding Between

THE COLUMBIA COUNTY CORRECTIONS OFFICER'S BENEVOLENT ASSOCIATION, LOCAL 3928 OF THE NEW YORK STATE LAW ENFORCEMENT OFFICERS UNION, DISTRICT COUNCIL 82, AFSCME, AFL-CIO

PERB CASE M2008-241

-and-

THE COUNTY OF COLUMBIA AND COLUMBIA COUNTY SHERIFF

Appearances:

Gordon R. Mayo, Esq., Fact Finder

Matthew P. Ryan, Esq., Associate General Counsel, Council 82, Union Attorney

William M. Wallens, Esq., Roemer, Wallens & Mineaux, Attorney for County

On February 11, 2009, I was appointed as the fact finder in the above contractual dispute between the Columbia County Corrections Officer's Benevolent Association, Local 3928 of the New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO (hereinafter Union or Council 82) and the County of Columbia and Columbia County Sheriff (hereinafter County or Sheriff). The predecessor collective bargaining agreement (hereinafter CBA) expired on December 31, 2007, and the parties were unable to reach consensus on a successor agreement. Subsequently, the parties met with a mediator on three occasions, again with no successful conclusion being reached. The Union filed for fact finding on February 5, 2009, precipitating my

appointment. A fact finding hearing was held on May 27, 2009 in Hudson, New York, at which all parties were present and represented; briefs were received by me on or about August 16, 2009 (there were requests for extensions to file briefs, which I granted).

At the hearing, Sgt. Brian Gardner, the Union President for the past fifteen years, testified on behalf of the Union. The County's witnesses included Harold Sharp, Jr., Deputy County Treasurer, and Arthur Baer (hereinafter Baer) the Chairman of the County Board of Supervisors. In his position, Baer is the Chief Administrative Officer for the County, and has day-to-day oversight over County government. The Union listed eleven open matters to be discussed during the proceeding:

1. Compensation Union Proposal #1
2. Longevity – Union Proposal #2
3. Shift Differential – Union Proposal #3
4. Vacation – Union Proposal #4
5. Sick Leave – Union Proposal #5
6. Health Insurance and Pension – Union Proposal #6
7. Uniform and Meal Allowance – Union Proposal #7
8. Holiday Pay – Union Proposal #8
9. Mandatory Overtime Pay – Union Proposal #9
10. Work During State of Emergency – Union Proposal #11
11. Line-up Pay – Kitchen Staff – Union Proposal #12

The County's List of open issues numbered four, and included the following items:

1. Health Insurance

2. Sick Leave
3. Physical Examination
4. Compensation

Of the four, only health insurance and compensation were brought forward.

Obviously the issue most pressing is compensation. Not only is the Union seeking a salary increase, but also increases in longevity payments, shift differential, uniform and meal allowances, holiday pay, mandatory overtime pay, work during a state of emergency, and line-up pay for cook staff. Additionally, its proposals for vacation, sick leave and health insurance and pensions have fiscal implications.

As is typical in fact finding, the Union and County use entirely different comparable jurisdictions to support their respective positions. The Union has selected Albany, Dutchess, Greene, Rensselaer and Ulster Counties to support its proposals, while the County utilizes Fulton, Greene, Montgomery, Sullivan, Warren, Washington and Delaware. Council 82 claims that its comparables are based upon proximity; the County counters that it has utilized counties with similar populations and demographics. As a long-time resident of this area, who lives close to Columbia County, I see things differently --- Columbia County is a hybrid, with pockets of wealth resulting from an influx of downstate residents and their second homes, as well as pockets of poverty, both urban (parts of Hudson) and rural poor. It shares characteristics with both sample groups, but is not actually wedded to either camp. All that being said, the sad reality for all parties is the economic downturn that has affected the country, and the County of Columbia is not immune.

The Union seeks a four year agreement, with 7% increases each year for 2008 – 2011. They claim that they are grossly underpaid in comparison to the County's deputy sheriffs (who have a separate union), and 7% increase over four years will help bridge the gap. Also proposed is a $3,000.00 increase in base salary before any percentage raise is applied. The corrections corporal (no such title exists in the deputy sheriff's hierarchy) shall be paid 10% less than a sergeant, and the head cooks 10% more than a cook. Finally, the Union proposal seeks to have officers be paid 10% less than top pay for the first year of service and reach top pay after one year.

In its proposal, the County has offered a three year package, with a 2.25% raise in 2008, 2.25% in 2009, and 2% in 2010. It cites the downturn in the economy for its conservative offer, and has pointed to both national and local economic indicators to support its position. Every 1% increase in salary for this unit would cost the County approximately $22,000 in 2008, with that 1% figure to be slightly higher in 2009 – 2010. It rejects the demand for a $3,000 payment on base, which would skew the resultant cost of raises even higher. Notwithstanding its position on raises, it does acknowledge that other bargaining units within the County, including the 630 member UPSEU, have recently received raises in excess of its offer to the Union, to wit: 3.25% in 2008, 3.25% in 2009, and 3% in 2010.

I realize that these are parlous financial times, and the taxpayers' interests should always be part of the equation when negotiating CBAs (or issuing fact finding reports). Nonetheless, an examination of the County's fund balance shows reserves that are in excess of $15 million. This unit is so small in numbers (approximately 35) that $22,000 will cover 1% in a salary increase in the first year, while a 3.25%

increase would only cost the County $71,500. Obviously, additional 3.25% increases in the following two years would be somewhat more expensive, but still well short of $100,000 per year. When one considers the difficulty and danger associated with corrections work, and the always present danger of injury or even death, these numbers are not unreasonable, even in a down economy. I therefore recommend that each member of the Union receive a 3.25% salary increase retroactive to January 1, 2008 for each employee on the payroll as of that date for the year 2008, a 3.25% salary increase for 2009, and a 3.25% salary increase for 2010. I would recommend that the Union withdraw its demand for a $3,000 payment to be made to base. I would also recommend that the proposals for increased compensation for corporals and head cooks be withdrawn. I cannot find any justification (or any comparable CBAs) for an officer to reach top pay after only one year of service. I would recommend that proposal be withdrawn as well.

Union Proposal #2 would seek to increase and extend the range of longevity payments made to its members. Currently, an employee receives the following payments: $610 for years 2 -4, $1,050 for years 5 -9, $1,500 for years 10-14, and $3,500 for years 15-19. The Union seeks to increase these payments to $1,000, $2,000, $3,000 and $6,000 respectively, and add another step of $7,500 at 25 years. Additionally the Union would seek an additional longevity payment based on years of service that would be computed by officers receiving payment based upon a percentage of their base salary and lump sum longevity payment. This additional payment would range from 3% for 0 – 5 officers to 10% for officers in the 15 -25 year range. The County has responded that the current schedule is already lucrative,

especially in the early years of employment, and there is no justification for the increase. I have studied comparables, and the Union is definitely not underpaid in this area. However, there seems to be no real longevity incentive for the long-term employee who has achieved 25 years of service. I would propose that the schedule stay as currently configured, with the exception being a $4,000 longevity step added at year 25 of service. I would recommend that all other proposals regarding longevity be withdrawn.

Union Proposal #3 seeks to increase shift differential pay on the A-Line (11-7) from its current $.75 per hour to $1.40 per hour, and the C-Line (3-11) differential from $.70 per hour to $1.25 per hour. It also seeks an additional $1.00 per hour for all weekend work, in addition to the already-mentioned shift differentials. There appear to be no comparable jurisdictions which pay a weekend differential, and in these economic times, I can find no justification for this increase; this part of the differential proposal should be withdrawn. However, the County's other 24/7 facility, the Pine Haven Nursing Home, has UPSEU members who work similar shifts. In their most recent agreement, they received an additional $.10 per hour increase in shift differential. I would propose that the Union employees here receive a similar $.10 per hour increase, from $.75 to $.85 per hour on A-Line, and from $.70 to $.80 per hour on C-Line.

Union Proposal #4 seeks to increase the number of vacation days by one for employees with 1 – 10 years of service, and two days for the 15 year (and beyond) members. Currently, a one year employee receives 10 days, which increases gradually to 24 days for the 15 year employee. It also seeks the ability to have its

members use vacation in one day blocks, rather than one week blocks as is now required. A review of comparable jurisdictions shows that the current schedule is consistent with other counties, and I see no reason to disturb it; consequently, this proposal should be withdrawn. As to the utilization of vacation in one day blocks, I recommend that this issue be studied further by a joint Union-County committee to see if it would be feasible, particularly for a limited number of vacation days per year.

Union Proposal #5 seeks a sick leave incentive, enhanced retiree health insurance, and an additional sick leave day per year (from 4 to 5). All these proposals are costly, and are opposed by the County for that reason. In this economic climate, I cannot in good faith consider these enrichments, and I recommend that Union Proposal #5 be withdrawn in its entirety.

Union Proposal #6 seeks to amend the current health insurance contributions from the currently County-paid 100% individual, 75% dependent coverage to a 90%/85% split. There appears to be no real justification for the change, other than certain comparable counties may (or may not) have similar plans. This proposal should be withdrawn. The Union also seeks to increase the yearly payment to members who have a spouse already receiving health insurance (including County employees) and therefore decline coverage. The proposal is to increase the non-County spouse payment to $2,000 from $1,200, and the County spouse payment to $1,200 from $900. In light of the ever escalating costs of health insurance, it would make economic sense to pay as little health insurance dollars as possible. I would therefore recommend that the non-County spouse benefit be increased to $1,500, while the County spouse benefit rise to $1,100. There is no Union demand for an actual change

in the health insurance currently being offered, but it has objections to the County's health insurance proposal. That proposal calls for a continuation of MVP HMO as its base plan, with the same alternatives now offered in the current CBA. The current $5/20/40 drug plan would continue, as would the County reimbursement for the inpatient hospital deductible. The co-pay for physician's visits would increase from $20 to $25, but this would reduce the actual cost of the insurance offered. The County has also offered the following modification to the health insurance provision to provide as follows:

> If any of the health insurance carriers changes co-pays and or the prescription drug card and increases co-pays or diminishes benefits, the County shall provide such plan or prescription drug card.

This language is similar to that accepted by UPSEU, the County's largest union, to combat a situation where the carrier makes unilateral changes in plans. Insofar as the County proposal mirrors that already in place for the vast majority of County employees, I recommend that it be implemented.

Union Proposal #7 seeks an increase in the uniform allowance from $900 per year to $1,100, with CERT team members receiving $1,200 per year. The benefit as currently received in higher that all comparable jurisdictions, and there seems no real justification for an increase. It should be withdrawn. Part 2 of the proposal seeks an increase in the current meal allowance from $6 to $ 18 per meal, and includes training days. Although an expansion of this allowance to training days does not appear justified, an increase in the allowance amount is. I propose that the meal allowance be increased to $8.00 per meal, with no retroactivity.

Union Proposal #8 seeks to add seven holidays to the holiday pay provision in the current agreement – Lincoln's Birthday, Washington's Birthday, Memorial Day, Labor Day, Veteran's Day, Columbus Day and Election Day. The County opposes the expansion, citing the cost involved. A review of other jurisdictions indicates that at least some of these holidays are traditionally included, particularly the national holidays of Memorial Day, Labor Day and Veteran's Day. I would propose that these three holidays be added to the holiday pay list, with no retroactivity.

Union Proposal #9 seeks to add a new benefit: double pay for forced mandatory overtime. It also seeks to allow officers to use compensatory time off in circumstances where the use of the time would cause overtime, in accordance with the federal FLSA. There appears to be no comparable jurisdiction that pays double time for forced overtime, and in a 24/7 facility, this benefit could prove extremely expensive in these harsh economic times. That part of the proposal should be withdrawn. As to the compensatory time issue, further study by a labor-management committee might be helpful.

Union Proposal #11 seeks 8 hours compensatory time for an employee who is working when a state of emergency is declared. No other jurisdiction provides this benefit, and no real justification is provided for it. This proposal should be withdrawn.

Union Proposal #12 seeks to pay kitchen staff line-up pay should the staff be required to stand line-up and shall be entitled to overtime for standing line-up. No comparable jurisdictions pay this benefit, as kitchen staff does not traditionally stand for line-up. This proposal should be withdrawn.

Union Proposal #10 has been settled by the parties, and Union Proposals # 13, 14 and 15 were not submitted to fact finding.

RECOMMENDATIONS

After having reviewed the submissions and proposals by both parties, I hereby make the following recommendations:

1. Wages shall be increased 3.25% for 2008, 3.25% for 2009 and 3.25% for 2010. All other wage and compensation increases in Union Proposal #1 should be withdrawn.
2. Union Proposal #2 seeking increased longevity payments should be withdrawn, with the exception of a 25 year longevity payment in the amount of $4,000, which I recommend.
3. Union Proposal #3, calling for an increased shift differential for A-Line and C-Line shifts, is amended by increasing the shift differential for each shift $.10 per hour; all other proposed enhancements in this proposal should be withdrawn.
4. Union Proposal #4, calling for additional vacation days, should be withdrawn. The subject of utilizing vacation days in one day increments should be referred to labor/management for further discussion.
5. Union Proposal #5 should be withdrawn in its entirety.
6. Union Proposal #6, calling for a change in employer contribution levels for health insurance, should be withdrawn. However, I recommend changing the premium paid to employees with spouses carrying health insurance, rather the

employee him/herself, to $1,100.00 per year for County-employed spouses and $1,500.00 per year for non-County employed spouses. There is no Union demand for a change in the actual health insurance plan offered. I accept the County's health insurance proposal, which basically mirrors that recently accepted by UPSEU, the County's largest union. It provides for the MVP HMO 25 as its base plan, with a $25 co-pay, as well as the alternative plans already in place: Blue Shield HMO 25, Empire HMO 25, GHI 25 and MVP POS 25. The inpatient hospital deductible will continue to be reimbursed by the County, and the $5/20/40 drug plan shall continue. The County's amendment to the health insurance provision is similarly accepted. It states: If any of the health insurance carriers changes co-pays and/or the prescription drug card and increases co-pays or diminishes benefits, the County shall provide such successor plan or prescription drug card.

7. Union Proposal #7, calling for an increase in the yearly uniform allowance, should be withdrawn. However, I support and recommend an increase in the meal allowance from $6 to $8, but only for the presently specified transport functions, not training days. There shall be no retroactivity for this enhanced benefit.
8. As pertains to Union Proposal #8, I recommend that Memorial Day, Labor Day and Veteran's Day, all national holidays, be added to the holiday pay list currently in effect, but with no retroactivity.

9. Union Proposal #9, calling for double time to be paid for forced overtime, should be with drawn. Labor/management should examine further the compensatory time issue also included in this proposal.
10. Union Proposal #11, seeking 8 hours compensatory time when a state of emergency is declared during working hours, should be withdrawn.
11. Union Proposal #12, calling for line-up pay for cook staff, should be withdrawn.
12. Union Proposal #10 has been settled, and Union Proposals #13, #14 and #15 were not submitted to fact finding.

The above report addresses all issues presented to me during the fact finding process, and my recommendations for the manner in which the instant impasse may be resolved.

Dated: October 6, 2009

GORDON R. MAYO, Fact Finder

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss.

I, GORDON R. MAYO, an attorney licensed to practice in New York State, do hereby affirm on my oath as Fact Finder that I am the individual described herein and who executed the subject Fact Finding Report on October 6, 2009.

GORDON R. MAYO