Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Fact Finding Reports - NYS PERB

New York State Public Employment Relations Board (PERB)

3-15-2011

Herkimer, County of and Herkimer Highway Department Unit, United Public Service Employees Union

Robert Flynt

Follow this and additional works at: http://digitalcommons.ilr.cornell.edu/perbfact

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Fact Finding Reports - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact jdd10@cornell.edu.

Herkimer, County of and Herkimer Highway Department Unit, United Public Service Employees Union

Abstract
In the matter of the fact-finding between the County of Herkimer, employer, and the UPSEU (Herkimer Highway Department), union. PERB case no. M2009-305. Before: Robert Flynt, fact finder.

Keywords
New York State, PERB, fact finding

This article is available at DigitalCommons@ILR: http://digitalcommons.ilr.cornell.edu/perbfact/67

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO. M2009-305
FINDINGS AND RECOMMENDATIONS

IN THE MATTER OF IMPASSE BETWEEN

THE COUNTY OF HERKIMER

AND

UPSEU (HERKIMER HIGHWAY DEPARTMENT)

For the County :	Mr. James J. Franchi, Esq. Mr. James Wallace, County Administrator
For the UPSEU	Mr. Gary M. Hickey, Executive Vice-President Mr. Robert Stephens, Labor Relations Representative

ROBERT FLYNT
FACT FINDER
NYS PUBLIC EMPLOYMENT RELATIONS BOARD
March 15, 2011

BACKGROUND

There are approximately 32 full-time and 49 part-time employees in the County's Highway Department. The parties in this dispute are negotiating for a successor agreement to the contract which expired December 31, 2008.

The parties engaged in negotiations with attempts to reach a "rollover" or "extension" of the contract with a limited number of items, and continued with two formal negotiating sessions. The parties also attempted to suspend negotiations in the hope that the economic climate would improve. At the commencement of negotiations the County of Herkimer did not seek reductions in any of the benefits provided in the Collective Bargaining Agreement on behalf of the union members. Nor did the County seek to reduce the work force either by layoff or by attrition. Impasse was filed on February 3, 2010, and a mediator was appointed. Following three formal mediation sessions and independent discussions by the parties, the undersigned was appointed fact finder on September 20, 2010.

A formal hearing was held on January 21, 2011, and written briefs were provided by both parties. It was apparent that the parties have an amicable working relationship, and the County representatives acknowledged the employees of the Highway Department provide the necessary work in an exemplary manner. The mutual respect exhibited by both parties was commendable considering the duration of the negotiating process and the difficult economic atmosphere in which they are trying to reach a settlement.

It should also be noted that in an effort to reach agreement prior to the start of the hearing, the UPSEU withdrew three (3) of its proposals.

The recommendations contained in this report are presented to both parties to resolve each of the six (6) remaining issues presented to the fact finder. These recommendations are offered in their entirety as a means of settling this dispute. They are not intended to be selected individually by either party.

1. **Compensation**

UPSEU proposed increasing the entire salary schedule by 5% each year for years 2009 through 2012. In addition, employees who operate the aerial truck would be paid an additional 10% of their hourly rate as compensation for the responsibility and hazardous working conditions associated with the position.

UPSEU seeks to bring the wage structure in line with surrounding municipalities. The proposal calls for the increases to be applied to the entire salary schedule rather than applying the increase to the first step of the salary schedule and then increasing each higher step by the same amount of dollars which is the method used in the current contract. This method results in senior employees receiving a percentage increase which is less than that realized by employees with less seniority.

UPSEU also indicated that County Highway Department employees are underpaid when compared with the surrounding counties of St. Lawrence, Lewis, Fulton, Montgomery, and the Village of Herkimer.

UPSEU pointed out that in 2009, Herkimer County CSEA employees received a three percent (3%) increase. In 2011, administrative non-bargaining unit personnel received a two percent (2%) increase, while the County rejected a salary increase for Highway Department employees.

It was also pointed out that in 2009, the Herkimer County Sheriffs unit received a $1,000 stipend for full-time employees and a $500 stipend for part-time employees. In both 2010 and 2011, that unit received a $2,000 raise from base salary. That unit consists of 36 full-time and 32 part-time employees making it comparable in size to the Highway Department.

The County's last formal proposal of September 2010 called for the following increases: 2009 - 3%; 2010 - 0%; 2011 - 2%; 2012 - 0%; 2013 - 2%. Since September 2010, other offers have been discussed. However, due to further downturns in the economy and diminished legislative support, the last proposal from the County called for the following increases: 2009- 0%; 2010- 0%; 2011- 2%; 2012- 2%.

The County is anticipating a reduction in state aid and increased costs for its contribution to the State Pension Plan as well as increased costs for the health insurance plans provided to its employees. The State has also mandated construction of a new correctional facility for the County of Herkimer.

Discussion and Recommendation

UPSEU had sought a 5% increase to the entire salary schedule for each of the four (4) years of the proposed contract. This was an effort to bring the salaries of Highway Department employees in line with surrounding municipalities. Proposed salary increases were also justified by increases given to CSEA employees and the County Sheriffs as outlined above.

With the economic climate that exists within the State, this unfortunately is not the time for union members to be requesting salary increases intended to help them "catch up" to the wages of surrounding municipalities. That is not to say however, that union members should not expect reasonable remuneration for work which the County acknowledges is exemplary.

In making a recommendation for settlement, the downward fiscal pressures on Herkimer County must be given careful consideration. In this bargaining climate many public employers have reduced prior proposals - a move which in more normal times might be characterized as "regressive bargaining." For example, prior to fact-finding, the County reduced the proposed duration from five years to four years and took 3% over the contract duration off the table. Reducing the duration does not seem to be a primary concern of the County. Rather, the County has consistently proposed a wage freeze for two years whether staggered or successive. UPSEU has shown flexibility in considering the distribution of increases, including cents per hour which creates a similar result as a flat dollar distribution by indexing from the base salary rates.

The biggest difficulty in this fact-finding is discerning the optimal combination of the relevant factors that both parties will be able to endorse. Those factors include: (1) duration, (2) total salary increases over the period, (3) the County's cash flow concerns for justification for freezing wages in any given year(s), and (4) consideration for "retroactivity" of some portion of the settlement for unit members in light of the raises of most other county employees over the past two years.

Therefore, I am recommending the parties agree to a five (5) year contract with the following increases applied in accordance with the method being used in the current contract: 2009- 0%; 2010- 1.5% retroactive to 1/1/2010; 2011-0% effective 1/1/2011 and 1.0% effective 7/1/2011; 2012- 1.5% effective 1/1/2012; 2013-2.5% effective 1/1/2013.

This recommendation provides the County with a wage freeze in 2009, and again for the first half of 2011. It also allows the County the opportunity to budget for the larger wage increase in 2013. This recommendation does not require a wage freeze for union members for a full two years, while providing a larger salary increase in 2013 in what will hopefully be better economic conditions. The five year agreement also protects the union members from health insurance concessions for an additional year beyond the original discussion of a four (4) year agreement.

The UPSEU proposal to pay aerial truck operators an additional 10% of their hourly rate is excessive in today's economy. However, because of the responsibilities and hazardous working conditions associated with this position, it is recommended aerial truck operators receive an additional 5% of their hourly rate only during the hours they operate the aerial truck.

2. Vacation

UPSEU proposed eliminating the current two tier structure and the restoration of equality to the vacation benefit. The rationale is that rewarding senior employees with additional benefit time is an accepted practice of many employers, and there is no added cost to the County as employees using a vacation leave day are not replaced. The current contract caps an employee's vacation benefit at four (4) weeks after ten (10) years of service for employees hired after December 31, 1985. Employees hired prior to December 31, 1985, are provided five (5) weeks vacation after fifteen (15) years of service and six (6) weeks vacation after twenty (20) years of service.

Discussion/Recommendation

It should be noted that the Herkimer County CSEA employees receive five (5) weeks vacation after twenty (20) years of service. It is recommended that language imposing a cap on vacation time for employees hired after December 31, 1985, be removed, and that these employees be provided with five(5) weeks vacation after twenty (20) years of service.

3. Rain Suits, Coverall Service and Work Shoes

UPSEU proposed increasing the work shoe allowance by $20 each year, and increasing the tool/equipment allowance by $50 each year due to the rising cost of these items. It is further proposed that part-time employees who work 50% of the year be reimbursed at half the amount reimbursed for full-time employees. The current contract does not provide a work shoe allowance, but allows employees to purchase work shoes through a blanket order to one local store, and to then pay for those shoes through a payroll deduction plan of five dollars ($5.00) per pay period. In the current contract, the County provides the following tool/equipment allowance: $150.00 effective 1/1/2006; $170.00 effective 1/1/2007; and $190.00 effective 1/1/2008 for full time employees and $75.00 for part time employees included in the bargaining unit each year of the contract.

Discussion/Recommendation

Employees currently pay the entire cost of their work shoes through payroll deduction, so in effect UPSEU is seeking to establish a shoe allowance rather than increase an existing one. It is a common practice for employers to provide an

allowance for the purchase of work shoes. Therefore, it is recommended that employees be provided the following shoe allowance: $20.00 effective 1/1/2011; $20.00 effective 1/1/2012; and $20.00 effective 1/1/2013. It is recommended that part-time employees receive half the amount provided full time employees.
The contract currently provides for $190 effective January 1, 2008, for full time employees and $75 for part-time employees each year of the contract for the purchase of tools/equipment. It is recommended the amount be increased to $220 effective January 1, 2009; $250 effective January 1, 2010; $280 effective January 1, 2011; $310 effective January 1, 2012; and $340 effective January 1, 2013 for full-time employees and $85 for part-time employees each year of the contract.

4. Cell Phone Reimbursement

UPSEU proposed cell phone reimbursements for full-time employees, including paid cell phones for forepersons.

Highway Department employees currently use their personal cell phones for communication with the office and between crews. Both parties recognize the need to address this issue.

Discussion/Recommendation

Both parties recognize the need to address this issue as employees are currently using their personal cell phones to conduct County business. It is recommended that the County provide a cell phone for forepersons and each crew or each truck.

5. Personal Leave

UPSEU proposed an increase to four (4) days.

UPSEU pointed out that Lewis County and Montgomery County employees receive five (5) days and the Village of Herkimer employees receive six (6) days of personal leave per year.

Discussion/Recommendation

The current contract provides three (3) days of personal leave. The UPSEU proposal is for fewer personal days than provided employees in Lewis County, Montgomery County, and the Village of Herkimer. Therefore the proposal of UPSEU to increase personal leave from three (3) days to four (4) days is recommended. It is recommended this change take effect 1/1/2011.

6. Health Insurance

UPSEU withdrew its proposals to enhance health insurance benefits with the exception of adding the following proposal:

When an employee or retired employee with ten (10) or more years of service dies, coverage for his spouse and dependents who were covered at the time of the employee's death, shall continue for the biweekly pay periods for which contributions were made and for two additional biweekly pay periods at no cost to the spouse or dependents.

Discussion/Recommendation

This benefit is consistent with what is provided to Herkimer County CSEA employees and is a reasonable benefit to provide to the family of an employee who has served the County for ten (10) years. Therefore, the UPSEU proposal to add this provision is recommended.

7. Longevity

UPSEU proposed adding a new 21 year longevity step at an additional $750 level, and adding a new 26 year longevity step at an additional $750 level.

The County contends that the current salary structure provides $5,575 above the employee base salary exclusive of raises over a fifteen (15) year period.

Discussion/Recommendation

There is a difference of opinion regarding the calculation of longevity pay. I would encourage the parties to clarify contract language as to how longevity money is being calculated and applied so an accurate comparison to local municipalities can be made. Other recommended monetary increases benefit a wide range of employees whereas the longevity proposal benefits a significantly smaller number of employees. Therefore, the UPSEU proposal is not recommended.

CONCLUSION

The undersigned recognizes the mutual respect both parties displayed for the needs of the other side, as well as the challenges being faced in trying to reach an agreement during these difficult economic conditions. It is hoped that the recommendations set forth assist the parties in reaching a fair closure to the negotiations and that both parties continue to foster their positive and professional relationship.

DATED: March 15, 2011

Robert E. Flynt

ROBERT FLYNT, FACT FINDER