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Peter A. Korn

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Town of Eastchester and Eastchester White & Blue Collar Unit, CSEA Local 1000. AFSCME, AFL-CIO, Westchester County Local 860

Abstract
In the matter of the fact-finding between the Town of Eastchester, employer, and the Eastchester White & Blue Collar Unit, CSEA Local 1000. AFSCME, AFL-CIO, Westchester County Local 860, union. PERB case no. M2011-041. Before: Peter A. Korn, fact finder.

Keywords
New York State, PERB, fact finding

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STATE OF NEW YORK
Public Employment Relations Board
Case No. M2011-041
June 5, 2012

----------X
In the Matter of

TOWN OF EASTCHESTER,
Westchester County

and

CIVIL SERVICE EMPLOYEES ASSN. , AFSCME
Westchester County Local 860
(Eastchester White & Blue Collar Unit))
----------X

FINDINGS OF FACT
and

RECOMMENDATIONS
FOR RESOLUTION

Peter A. Korn
Fact Finder

APPEARANCES

For Town of Eastchester

Vincent Toomey, Esq, Labor Counsel.
Michael Iavacone
Dawn T. Donovan, Comptroller

For CSEA (White & Blue Collar Unit)

Alisa D. Cagle, Labor Relations Specialist
Bill Haas, Unit President
Christine Kellaher, Unit Vice-President
Mike Falotico, Member

INTRODUCTION

This is the Fact Finder's report in the matter of the impasse between the Town of Eastchester ("Town") and the Civil Service Employees Association, Westchester Local 860, Eastchester White & Blue Collar Unit ("CSEA" or "Union"), which are seeking to negotiate renewal terms and conditions of employment for a collective bargaining agreement ("CBA") that expired on December 31, 2010 and continued in effect. The report provides findings of fact and recommendations for resolution of the parties' impasse.

Eastchester White & Blue Collar Unit presently consists of 112 employees in a number of full-time clerical, technical, professional, office support, laborer, equipment operational and supervisory positions in both blue and white collar titles. Generally excluded are department heads and deputies, police officers and confidential, part-time and temporary employees.

The parties entered into negotiations for a successor agreement in September 2010 and exchanged contract demands. The parties met for further negotiation sessions on eight occasions, the last being April 4, 2011, exchanging proposals that were either resolved or withdrawn by the parties. Unable to reach mutual agreement on a final, complete package, the Town filed a Declaration of Impasse on April 22, 2011. A mediator was appointed, but the parties were unable to resolve their differences. Following the conclusion of mediation, the New York State Public Employment Relations Board ("PERB") appointed the undersigned as Fact Finder on January 10, 2012.

The parties sought to postpone the fact-finding hearing in the hope that they might still resolve their differences. A fact-finding hearing was finally held on April 9, 2012 in the Eastchester Town Hall. The parties submitted two volumes of factual material and other data, explained their positions, questioned each other, and the Fact Finder sought

clarification of certain issues. All material submitted has been carefully examined and these findings and recommendations follow.

BACKGROUND

Some opening comments about the negotiating relationship and history of the parties are helpful to understanding their positions. We are discussing the renewal of a CBA that expired 1-1/2 years ago. Despite at least nine negotiating sessions and a mediation effort, the parties were not able to come to agreement.

The proposed 2012 Town budget called for contracting out the operation of the Lake Isle Country Club facility and the layoff of ten employees. An effort by the Union to avoid the layoffs resulted in a vote by the members on possible settlement providing give-backs and freezing or reducing certain pay and benefits. The membership defeated the proposed settlement offer by the Union and the layoffs took place in March 2012. Several Lake Isle labor and non-competitive class workers having more seniority than those in other divisions of Town government were laid off and, in effect, seemingly stranded because they had no bumping rights into other departments, and the Union claims that departmental lines are not clear. The Union places a high priority on recall for those laid off who have greater seniority than some who remain on the payroll.

The Town is confronted with difficult financial circumstances. Fund balances and assessed values have decreased precipitously over time and the State has placed a real property tax cap on Eastchester, as well as all other towns and villages. The adopted Town budget tax levy stayed under the tax cap limit. After quite a number of attractive annual pay adjustments – even admitted by Union representatives – the Town seeks a multiple-year wage freeze and a larger health insurance contribution. At the same time, it seeks to maintain the layoff and recall provisions. With no movement on layoff/recall by the Town, the Union does not move on wages and health insurance.

The Parties submitted the following four items for the fact-finding process:

ITEM
Wage Increase
Employee Health Insurance Contribution
Layoff and Recall
Grievance Procedure*

- This last item was added at the hearing by the Union without Town objection.

The inability to find agreement on these outstanding issues is straining the bargaining relationship and is shown in the inability, over the past 1-1/2 years, to negotiate a successor agreement. Each party must show some flexibility and realism or the contract is unlikely to be settled within the context of an acceptable package. The solution may be for both parties to identify, in the context of comparability, what is equitable for unit members, the Town and its taxpayers.

COMPARABILITY

The fact-finding process depends heavily on comparing the equities in each party's argument with the terms and conditions of employment contained in bargaining agreements within the Town and in similar units in comparable towns/villages in the general geographic area. Neither party challenged the data sets submitted by the opposing party, as they related to comparability.

The parties were in general agreement that Southern Westchester municipal data bases contained a reasonable set of comparables, since the labor pool is drawn generally from this geographic area. After review, the proper pool for comparability is determined to be those Southern Westchester municipalities of similar population size and economic strength that share common demographic traits.

ISSUES AND POSITIONS OF PARTIES

Some twenty-five (25) exhibits supported the issues that the parties presented for resolution. Some were valuable and others less so. The Fact Finder hopes that the parties consider each recommendation on its merits, as well as the totality of the package. This is an opportunity to look forward and consider the merits and equities of a proposed resolution, which is in their mutual interest.

Term of Agreement

The collective bargaining agreement (CBA) expired on December 31, 2010. Both parties have submitted proposals for a term of three years and, accordingly, the Fact Finder makes his recommendations for a three-year term.

Wage Increase

The Union demand and the Town offer for a wage increase are for a three-year CBA, as follows:

	Union	Town
Effective January 1, 2011	-0-	-0-
Effective January 1, 2012	-0-	-0-
Effective January 1, 2013	+1%	-0-

The Union admits that previous pay increases by the Town have been generous and that the members have been treated fairly. It indicates that it is prepared to seek a minimal wage adjustment, if it can secure an improved layoff/recall provision that would save the jobs of laid-off Lake Isle employees with seniority and enable their speedy recall. For this reason, it seeks only a one-percent (1%) wage adjustment in the third year of the agreement.

The Town proposes no increase for the entire three-year contract. It provided evidence (Exh. C) that between 2000-2010, Town wage increases exceeded the CPI by 6%. When a year 2000 salary of $45,029 (Group G, Step 4 selected by the town) was trended forward, the actual 2010 salary ($63,025) exceeded the CPI-adjusted rate ($59,435) by $3,590. The Town also notes that 16 of 19 management positions have had no wage increase since 2008 (Exh. D) and the Supervisor's 2012 budget message indicates that no funding has been placed in the budget for the CSEA bargaining unit. It avers that there is no need for a general wage adjustment for the bargaining unit during the new three-year contract period.

Recommendation - Wages: It is recommended that the Union proposal for a wage adjustment in 2013 be applied to the new contract, as follows:

Time Period	Wage Adjustment
Effective January 1, 2011	No increase in the salary schedule
Effective January 1, 2012	No increase in the salary schedule
Effective January 1, 2013	Increase 2013 salary schedule by 1%

Rationale: The parties are quite close in their proposals. While it may be true that most management salaries have not been changed during the previous CSEA contract, this is not a fair comparison because the decision does not come from a collective bargaining process, but is management-imposed. The Town argument that unit members have been treated fairly because the 2010 salary schedule exceeds that which would have come solely from a CPI adjustment bears some weight.

Accepting the Town argument and forecasting the impact of an estimated 2½% annual CPI adjustment during the new contract period, a not unreasonable percentage, the CPI-adjusted rate would rise from $59,435 in 2010 to $64,004 in 2013. By the third year of this new contract, this CPI-adjusted wage rate ($64,004) would be $980 more than an unchanged contract wage rate of $63,025 (Group G, Step 4). A 1% increase in the 2013 CSEA salary schedule would set the 2013 rate at $63,655, still $349 less than the CPI-adjusted rate.

Employee Health Insurance Contribution

The existing CBA provides that employees contribute 12½% of the cost of their health insurance benefit for the first 15 years of employment. Of the 112 unit members, 33 now contribute to Individual plans and 40 contribute to Family plans. This means that 39 employees have over 15 years of service and either decline health insurance or do not contribute.

EMPLOYEE SHARE OF HEALTH INSURANCE COSTS - 2012

Plan Type	Plan Cost	Employee Share	Employee %
SINGLE	$ 8,553	$1,069	12.5%
FAMILY	18,753	2,344	12.5%

The Town seeks to have all unit members contribute 25% of the cost of their plan premium during their entire period of employment. This would mean that those employees with more than 15 years of service would again contribute and for the remainder of their employment. The town cites Exhibit B, a tentative CSEA proposal dated December 11, 2011, which provided for employees with 1-15 years of service to contribute at the rate of 20%, employees with 16-20 years of service to contribute 18% and employees with 21 or more years of service to contribute 15%. Other items of savings were also included. The Union responds that this was a one-year proposal intended to provide budget savings to restore all laid off members. Regardless, the proposal was rejected members in a vote.

The Town notes that the new police CBA provides that all newly appointed officers will contribute 20% of the cost of their health insurance premium for their entire career. Supporting its argument for a greater contribution, the Town offered Exhibit “T” showing health insurance contributions paid by clerical and blue collar workers in several lower Westchester municipalities and by the New York State CSEA bargaining unit. This revealed the following:

Health Insurance Contribution Rates in Other Jurisdictions – New Employees

Jurisdiction	Contribution Rate	Time Limit	Conditions
Eastchester (present)	12.5%	15 years	
Eastchester (proposed)	25 %	Unlimited	
Harrison	25%	15 years	
Rye City (Clerical/DPW)	25%	Unlimited	n.t.e 4% of salary
Larchmont	20%	Unlimited	
New Rochelle	18%	Unlimited	
Scarsdale	7%	Unlimited	
New York State (CSEA)	12%/27%		Gr. 9 or below*
" " " "	16%/31%		Gr. 10 or above*

* Dividing point about $40,000.

For more senior employees, the contribution rates are: New Rochelle, 18%; Larchmont, 10% I/20% F, for the first 5 or 10 years of employment; Rye City, 20%, not to exceed 4% of base salary; Scarsdale, 5%. The contribution rate for Eastchester School District support staff is 3.25% during 2011-2012, according to a submitted Union exhibit.

For its part, the Union responds that it will agree to a contribution rate of 18% for the duration of employment for all new employees. There is no change proposed in contribution rate for existing employees.

Recommendation – Health Insurance Contribution Rate: Effective January 1, 2013, all unit members who were employed on the date of ratification shall contribute at the rate of 15% for their first 15 years of employment. All members employed after the date of ratification shall contribute 18% of their applicable premium for health insurance coverage for the duration of their employment. These deductions should be taken through a §125 Plan

Rationale: These recommendations are made following an analysis of the Town exhibits of comparables and an examination of contribution burdens based on different salary levels. Existing Members: The increase in contribution rate from 12½ % to 15% for existing members is justified by the data submitted. In other communities, these employees contribute at 18% and 5%, 10%/20% for a service period of between 5 and 10 years or an amount limited to 4% of base pay. The State rates are informative, but not really comparable to the Eastchester work force. A 2½% increase in premium

contribution, retaining the15 years of service limit, would allow a more adequate contribution, yet one which remains in the range of comparables. Individual employee cost for a Family Plan would increase by $500-600/year and about $255 for an Individual Plan in the third year of the contract. New Employees: New employees will contribute 18% of premium for their entire service career. This is an increase of 5½% from the present 12½% contribution rate. Using the 2012 family premium rate ($18,753), a new employee would pay $3,376, an additional $1,030/year over the present 12½% contribution.

The Town-submitted data of other communities shows that new employees are contributing 25% for a limited employment period or capped at a percentage of salary or 20%, 18% and 7% for an unlimited time period. It is true that new Eastchester police officers will be contributing 20% of premium, but the salary level for police officers, $49,000 - $93,000 (see 2012 Budget), is substantially higher than the average wage ($40,000-60,000) in the CSEA unit. The 18% contribution rate is reasonable, considering the pay levels of this bargaining unit and the comparables. In fact, a new Eastchester worker would make a premium contribution of about 6.75% of a $50,000 salary, compared to a Rye City employee capped at 4% of base pay.

Grievance Procedure

The Grievance Procedure, Article IX of the CBA, is set forth by reference to a Town ordinance adopted in September 1963. The Union seeks to have the grievance procedure ordinance incorporated in an appendix to the CBA. The Town indicated it did not have a problem with the proposal.

Recommendation -- Grievance Procedure: The grievance procedure referred to in Article IX should be incorporated as an appendix to the bargaining agreement.

Rationale: Both parties support the proposal and such an appendix will make it more easily available to the members and Town management staff.

Layoffs

Existing Article XI notes that "…the success of good government depends upon efficient operations…" and the necessity for layoffs and reductions in staff is in the sole discretion of the Town Board. If labor or non-competitive class employees are laid off, such layoffs are "…in inverse order of seniority by job classification within each department." Employees who are assigned to a new position "…shall be required to perform the necessary duties satisfactorily." The Town is obligated to maintain a preferred list of laid off employees by classification and job title for a period of nine months, after which the employee's name is dropped from the preferred list and the seniority provisions are no longer applicable.

With an outside service contract being instituted in early 2012 for Lake Isle Country Club and the layoff of ten (10) employees, the layoff procedure became a major item of concern for the Union. While Article XI calls for layoffs by job classification "…within each department", the Parties agreed that the identification of "department" was not clear. Without clarity on departmental organization, there appears to be some disagreement on who should have been laid off and how they should be recalled. Some laid off employees in the Lake Isles budget were involuntarily transferred from other areas of Town government where they had seniority and would not have lost their positions through a reduction in force; i.e. "job abolishment".

The Union seeks to amend Article XI by changing the layoff procedure for labor and non-competitive class to inverse order of seniority by job classification within a "Town-wide" layoff unit. In the event of a layoff, all part-time, probationary and seasonal workers would be laid off before any permanent full-time employees; sixty (60) days written notice would be given to the Union and "potentially affected employees"; then permanent employees could be laid off by title in inverse order of seniority. A clear seniority start date would be established ("the first day of permanent employment and all time employed by the Town thereafter") and one opportunity to bump to a lower level, previously held title, if seniority permitted. The Town would attempt to absorb laid off

employees into available vacant positions for which they are qualified and for which they must satisfactorily perform their duties.

The Town agreed that department organizational lines were not particularly clear, that it was sympathetic to absorbing laid off employees into available vacant positions for which they were qualified and seeking some resolution for those who were laid off as a result of a mandatory transfer outside a department where they had seniority.

Recommendation – Layoffs:

The non-competitive and labor class layoff unit should be Town-wide, not departmental, with no requirement to lay off part-time, probationary and seasonal employees before permanent full-time workers are laid off.

The Town should provide the Union with a minimum of 30 days written notification of pending layoffs.

Layoffs are to be by title in inverse order of continuous seniority with the Town with separate preferred lists for full-time employees and for part-time and seasonal employees.

Seasonal/part-time seniority shall accrue from the first date of employment as seasonal/part-time employee; full-time seniority shall accrue from the first date of employment as a full-time employee. Seniority shall accrue during military service and if an employee is re-instated within a year of resignation.

Seasonal/part-time seniority shall be used only for recall to seasonal/part-time positions and full-time seniority shall be used only for recall to full-time positions. Seniority as seasonal/part-time shall not be used to require layoff or bumping of full-time workers. Each preferred list is to be distinct.

The Town will use its best efforts to absorb laid off employees into available vacant labor and non-competitive positions, where they are qualified to fill those positions.

Bumping rights allowed for the same or similar title of an employee with lower seniority. No bumping rights to positions in a lower, previously held title. Employees who are assigned to a new position shall be required to satisfactorily perform the necessary duties.

Recall to part-time and temporary positions shall be made from the “part-time and temporary preferred list” and recall to full-time positions shall be made from the “full-time preferred list” in order of seniority. Recall may be made when there is a vacant

position with the same or similar duties as those formerly held by persons on the preferred lists.

The Town shall maintain preferred lists of all employees who are laid off in accordance with Article XI by classification and job title for a period of twelve (12) months after which the employee's name shall be dropped from the preferred list and the seniority provisions shall no longer be applicable. Notwithstanding, any employees on existing preferred lists resulting from layoffs following the elimination of Town services at Lake Isles Country Club shall remain for a period of twenty-four (24) months from the date of layoff.

Rationale: As Article 11.0 notes, "…the success of good government depends upon efficient operations…" and "layoffs, reduction or increases in staff shall be in the sole discretion of the Town Board". Good government also depends on fair play with both taxpayers and employees. The Town played "fair" with the taxpayers when it did not levy almost $57,000 available under the tax cap. Having a meaningful layoff/recall provision that allows long-serving employees the opportunity to return to service would also be considered "fair play". The proposed "Layoff" changes would provide balance between government efficiency and enhancing the ability of laid off employees to return to Town service.

Eastchester town is small enough to be considered an employment unit for layoff/recall purposes. With 112 employees, the Town-wide unit would provide a workable layoff/recall group, rather than many small, poorly defined departments that can leave people stranded after years of employment. Town management will continue to determine workforce size and the positions to be eliminated or created; separate preferred lists for full-time and part-time/seasonal insure that seniority rights don't provide for one group to take the positions of the other. Employees may remain on a preferred list for up to 12 months after layoff, which provides an opportunity for recall with seniority after the next budget is adopted. However, recognizing the existing layoff situation resulting from the close of the Lake Isle Country Club and the seeming surprise resulting from its impact under Article XI, existing laid off Lake Isle workers will be able to remain on a preferred list for a period of two (2) years. This is to be a one-time opportunity only.

SUMMARY OF RECOMMENDATIONS
(Underlining indicates Recommended Changes)

The following summarize the Fact Finder recommendations for resolution of the impasse between the Town of Eastchester and the Eastchester CSEA White & Blue Collar Unit.:

Recommendation – Term of Agreement: The renewal agreement should be for the three year period from January 1, 2011 through December 30, 2013.

Recommendation - Wages: It is recommended that the Union proposal for a wage adjustment in 2013 be applied to the new contract, as follows:

Time Period	Wage Adjustment
Effective January 1, 2011	No increase in the salary schedule
Effective January 1, 2012	No increase in the salary schedule
Effective January 1, 2013	Increase 2013 salary schedule by 1%

Recommendation – Health Insurance Contribution Rate: Effective January 1, 2013, all unit members who were employed on the date of ratification shall contribute at the rate of 15% for their first 15 years of employment. All members employed after the date of ratification shall contribute 18% of their applicable premium for health insurance coverage for the duration of their employment. These deductions should be taken through a §125 Plan

Recommendation – Layoffs:

The non-competitive and labor class layoff unit should be town-wide, not departmental, with no requirement to lay off part-time, probationary and seasonal employees before permanent full-time workers are laid off.

The Town should provide the Union with a minimum of 30 days written notification of pending layoffs.

Layoffs are to be by title in inverse order of continuous seniority with the Town with separate preferred lists for full-time employees and for part-time and seasonal employees.

Seasonal/part-time seniority shall accrue from the first date of employment as seasonal/part-time employee; full-time seniority shall accrue from the first date of employment as a full-time employee. Seniority shall accrue during military service and if an employee is re-instated within a year of resignation.

Seasonal/part-time seniority shall be used only for recall to seasonal/part-time positions and full-time seniority shall be used only for recall to full-time positions. Seniority as seasonal/part-time shall not be used to require layoff or bumping of full-time workers. Each preferred list is to be distinct.

The Town will use its best efforts to absorb laid off employees into available vacant labor and non-competitive positions, where they are qualified to fill those positions.

Bumping rights allowed for the same or similar title of an employee with lower seniority. No bumping rights to positions in a lower, previously held title. Employees who are assigned to a new position shall be required to satisfactorily perform the necessary duties.

Recall to part-time and temporary positions shall be made from the "part-time and temporary preferred list" and recall to full-time positions shall be made from the "full-time preferred list" in order of seniority. Recall may be made when there is a vacant position with the same or similar duties as those formerly held by persons on the preferred lists.

The Town shall maintain preferred lists of all employees who are laid off in accordance with Article XI by classification and job title for a period of twelve (12) months after which the employee's name shall be dropped from the preferred list and the seniority provisions shall no longer be applicable. Notwithstanding, any employees on existing preferred lists resulting from layoffs following the elimination of town services at Lake Isle Country Club shall remain for a period of twenty-four (24) months from the date of layoff.

CONCLUDING STATEMENT

These negotiations are taking place in circumstances quite different from those of three or four years ago, or even of two years ago. Anyone who has watched or read the media, especially those in public service, recognize this as a difficult period of change in government finance, community economics and support for public services. Good jobs are important to people and their families and the employer, Town of Eastchester, has some obligation to those who have given loyal service through the years.

The Parties may not see these recommendations as a perfect resolution to this impasse. However, they do represent a reasonable solution to resolving these negotiations and a trade-off between employee pay and benefits and employer affordability. Were an effort

made to select a favorable item rejecting others, this dispute will fester. The Parties are encouraged to adopt them as written and as soon as practicable.

_____
Peter A. Korn, Fact Finder

June 5, 2012

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

I, Peter A. Korn, do hereby affirm that I am the individual described herein and who executed this instrument, which is my Findings of Fact and Recommendations for Resolution.

_____
Peter A. Korn, Fact Finder