



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Fact Finding Reports - NYS PERB

New York State Public Employment Relations
Board (PERB)

12-11-2017

Monroe County Water Authority and Monroe Water Authority Unit, Civil Service Employees Association

Stephen P. LaLonde

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/perbfact>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

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 catherwood-dig@cornell.edu.

Monroe County Water Authority and Monroe Water Authority Unit, Civil Service Employees Association

Abstract

In the matter of the fact-finding between the Monroe County Water Authority, employer, and the Monroe Water Authority Unit, Civil Service Employees Association, union. PERB case no. M2016-018. Before: Stephen P. LaLonde, fact finder.

Keywords

New York State, PERB, fact finding

PUBLIC EMPLOYMENT RELATIONS BOARD
FACT FINDING IN IMPASSE BARGAINING

IN THE MATTER OF FACT FINDING BETWEEN

MONROE COUNTY WATER AUTHORITY

**FACT FINDING
REPORT**

- AND -

**CIVIL SERVICE EMPLOYEES ASSOCIATION
(MONROE WATER AUTHORITY UNIT)**

**CASE NUMBER:
M2016-018**

Re: Fact Finding of Outstanding Bargaining Issues

BEFORE: Stephen P. LaLonde, Impartial Fact Finder

APPEARANCES:

For the Union: Jennifer Rhee, Labor Relations Specialist, CSEA/Advocate
Robert C. Ellis, Labor Relations Specialist, CSEA
Dave Pitoni, Unit President, CSEA
Michael Irving Unit Vice President, CSEA
Robert Palma, Unit 2nd Vice President, CSEA
John Hodgetts, Unit Negotiator
Ryan T. Billings, Unit Negotiator
Samuel Lana, Unit Negotiator
Jeffrey Cousins, Unit Negotiator
Bill DiNardi, Unit Negotiator

For the Authority: Robert C. Weissflach, Esq./Advocate
Nicholas A. Noce, MCWA Executive Director
Diane Hendrickson, MCWA HR Director

BACKGROUND

The Monroe County Water Authority ("Authority") and CSEA (Monroe Water Authority Unit) ("Union") met in negotiations for the purpose of determining a successor agreement to their 2008-2014 Collective Bargaining Agreement ("CBA"). Negotiations between the Parties began on September 8, 2014. The Parties met for sixteen (16) negotiation sessions from September 2014 through most of 2015. The Union declared Impasse at

the November 30, 2015 negotiation session and subsequently submitted a formal Declaration of Impasse to the New York State Public Employment Relations Board ("PERB") on December 17, 2015. The Authority opposed the Declaration of Impasse. In a joint conference call with Kevin Flanigan ("Flanigan"), Director of the Office of Conciliation at PERB, Flanigan directed the Parties to return to negotiations and present the Authority's economic proposals to the Union. This negotiation session took place on April 20, 2016 at which time the Authority's economic negotiations package was not presented to the Union and PERB was informed. At this point, the mediation stage of Impasse was instituted and PERB mediator, Greg Poland was assigned and met with the Parties. Mediations sessions were held on July 18, 2016, October 24, 2016 and January 9, 2017. A fourth mediation session was scheduled for January 23, 2017 but it was jointly determined that a fourth session would not be productive to resolution and the Authority moved to request Fact Finding on May 22, 2017. The undersigned Fact Finder was assigned to the matter on June 6, 2017.

An Initial Pre-Hearing Conference call ("IPHC") was held between the Parties and the Fact Finder on July 7, 2017 at which time procedural issues were discussed and determined. During the IPHC, the Parties agreed that they would submit joint and Party exhibits to the Fact Finder prior to the Fact-Finding hearing and would submit post-hearing briefs. The Parties' joint exhibits were received on September 15, 2017.

A Fact-Finding Hearing was held on September 21, 2017 at the Authority offices at 475 Norris Drive; Rochester, NY. The Hearing commenced at approximately 9 AM and concluded at approximately 12 noon. At the Fact-Finding Hearing, the Parties summarized and clarified their information and respective positions on the outstanding issues and presented additional information and argument in support thereof. Both Parties had full opportunity to present testimony and evidence in support of their respective positions on the outstanding issues at Impasse and to argue in opposition to the evidence and testimony presented by the other Party.

Post-hearing briefs were received from both Parties by October 31, 2017. An extension of time for submission of the Authority's post-hearing brief was granted as was an extension to the Fact Finder for the completion of the Fact-Finding Report.

OUTSTANDING ISSUES

The Parties brought the following issues to Fact Finding:

- Issue #1: Emergency Response
- Issue #2: Fatigue Guidelines
- Issue #3: Wages
- Issue #4: Shift Differential
- Issue #5: Promotion
- Issue #6: Out of Title Pay
- Issue #7: Longevity
- Issue #8: Health Insurance
- Issue #9: Bereavement
- Issue #10: Vacations
- Issue #11: Article 12.9 Provision on Reasonable Overtime (12/60 Rule)
- Issue #12: Sick Leave
- Issue #13: Leave of Absence Without Pay

Each of these issues will be addressed in turn with the relative positions of the Parties summarized and presented as each issue is identified.¹

ISSUE #1: EMERGENCY RESPONSE

Authority Position:

The Authority contends that the matter of emergency response is significant to the Authority in its responsibility to provide a 24/7 operation and its post-9/11 designation as "critical public infrastructure". The Authority asserts that the current emergency response system does not provide a response to emergencies that is timely. Currently, the Authority has to call-out a FFO (Facilities, Fleet and Operations) crew. However, the

¹ Given the number of outstanding issues brought to Fact-Finding and the substantial argument and documentation presented by the Parties on most of the issues, the relative positions and arguments of the Parties will be restricted to general and summative overviews.

current system allows employees to not answer their phone or respond to the call in any way. If they do answer, they can either accept or decline the assignment. The Authority is required to wait 5 minutes after an unanswered call before calling the next person on the list. If accepted, the employee has up to one hour to report to work and it may be up to two hours before the Authority can assemble and send out a crew. In negotiations, the Union proposed at a crew be assigned to a full shift on the weekends but that would not address the need during the week as well as incur an ongoing overtime expense for the weekend crew. There was almost agreement on a new system where a specific crew would be assigned emergency response for an entire week. Such an assignment would be on a rotational basis and those assigned would be required to respond when contacted. The Authority was willing to allow employees to trade their whole week or certain days of their week which gave employees more choice in the assignments. Further, the Authority would pay FFO crews double time instead of time and a half for emergency work considering the full week assignment requirement. The Authority stated that the sticking point in the discussions was the Union desire to have employees paid for travel time to get into work. The Authority indicated that double time from clock-in with a minimum of 3 hours of work in these situations and non-FFO crew employees being paid triple time for the first hour, would effectively pay employees for the travel time without complicating the timekeeping system.

Union Position:

The Union contends that prior to Fact-Finding, the discussion on this issue had centered around the concept of maintaining a percentage of accepted call ins and that the Authority was open to such a percentage discussion. However, ignoring this, safety of employees has been an overriding consideration. This has become even more so with the Authority decision to reduce the number of these crews from seven (7) to four (4) in addition to expanding its service territory to the five (5) surrounding counties which have only increased implications for safety issues.

The Union argues that the previous system worked until the Authority stopped enforcing the 20% mandatory response rate to emergency call in calls by not addressing employees

who violated this requirement. While there have been attempts to address this issue with the Authority, it remains unresolved.

ISSUE #2: FATIGUE GUIDELINES

Authority Position:

The Authority proposes that employees not be permitted to work more than 18 hours in a 24-hour period as a safety consideration. Further, they propose that employees who are called out for emergency response and work past 4 AM can continue to come in to work the next day at noon rather than 7:30 AM as in the past but instead of working the rest of the shift and getting paid for the full shift, the Authority wants the employee to work their full 8-hour shift once they come to work and eliminate any pay for the portion of their shift not worked.

Union Position:

The Union indicated that they did not want to address the fatigue guidelines issue until the matter of the emergency response issue was resolved to determine what impact that resolution would have on the guidelines. The Union indicated that currently if an employee comes in later, they would work the remainder of their shift and receive pay for the full shift.

ISSUE #3: WAGES

Authority Position:

The Authority points out that 62% of employees are at the top step in their salary schedule. Further, the average wage of unit employees is \$28.05 per hour which places Authority employees significantly above the wage rates of comparable water authorities in the region. Any type of significant wage increase is not warranted based on the favorable salary position employees already have. The Authority proposed a reduced wage scale only for new hires while adding three (3) new salary steps allowing those who are “stepped out” to obtain a 4% annual increase. Those employees who are not “stepped

out” will continue to advance through the step system and receive annual increases. The Authority argues that they have always taken the position that wage adjustments not be retroactive. Any delays in the negotiations are blamed on the Union.

Union Position:

Union asserts that the Authority did not offer a wage proposal until July 18, 2016, some 18 months after the start of negotiations and only had them available for the three mediation sessions late in the process. The Union’s most recent proposal on wages was in October 2016 and proposed 4% and 3% in alternating years from 2015 through 2020. The Union objects to the Authority’s wage component that only wanted to provide raises for those at the top step of the salary schedule who had “topped out” and to leave everyone else in a frozen salary schedule. The Union further objects to the Authority’s proposal for a differentiated wage schedule for anyone hired after CBA ratification which would put new hires at a lower starting wage and have them “top out” at a lower step level. This is an unacceptable division of the unit.

ISSUE #4: SHIFT DIFFERENTIAL

Authority Position:

The Authority notes that Section 12.9 of the CBA states that operators in the water treat plants work three different shifts (A, B & C). Most other employees work an A shift (7:30 AM to 3:30 PM). Section 12.11 of the CBA relates to the payment of a shift differential for B and C shifts although not specifically referencing the water treatment plant operators. The Union request to specify that B and C shifts apply to the water treatment plant operators is not opposed by the Authority. The Authority rejects the Union proposal calling for increases in the differential rates of payment because the shift differential places these employees above those of comparable regional authorities. They also reject any consideration of retroactive pay of any kind.

Union Position:

The Union indicates that they had a proposal on this issue from the start of negotiations and later revised that proposal in October 2016 for \$0.40/hr. increase for the B Shift and a \$0.75/hr. increase for the C Shift.

ISSUE #5: PROMOTION**Authority Position:**

The Authority contends that the current language in the CBA regarding promotions has language that allows for double digit wage increases in some promotions which is too high compared to the cap on management wage promotion increases. The Authority proposes that an employee promoted would move to the salary step on the new salary schedule that is closest to a 4% wage increase.

Union Position:

The Union wants *status quo ante* on this issue. The Union indicates that employees would prefer to move to the same step they were in in their old title when they are promoted to a new title. The Authority proposal would actually lead to some employees losing one or two steps when they are promoted.

ISSUE #6: OUT OF TITLE PAY (“OOT”)**Authority Position:**

The Authority asserts that the OOT concept applies only to competitive classifications as it has done in the past and that the Authority seeks to maintain the requirement that a person must work a full day OOT before receiving OOT pay for subsequent OOT work. The Authority notes that it would allow OOT pay for all emergency work and would provide for a higher rate of pay of at least \$0.75 per hour. This would allow for higher rates of pay than currently found in the CBA and addresses the Union’s concern.

Union Position:

The Union proposal calls for an employee to be paid OOT pay after working a cumulative eight (8) hours in the higher title during the calendar year and receive OOT pay for all subsequent hours worked out of title during that calendar year. The Union says that the current system which requires a person to have worked a full day (8 hours) in the out of title position before then getting OOT pay for subsequent hours out of title, is open to abuse where an employee can be assigned OOT for less than 8 hours during the day and then assigned to another position within their title, thus never qualifying for OOT pay but continuing to be assigned to out of title for less than full days.

ISSUE #7: LONGEVITY**Authority Position:**

The Authority notes that while part of an overall package, the Union has accepted its proposal on this issue.

Union Position:

The Union has accepted the Authority's proposal on this issue.

ISSUE #8: HEALTH INSURANCE**Authority Position:**

The Authority contends that health insurance costs continue to escalate and current premium costs put the Authority in danger of having to pay the "Cadillac Tax" given the level of these premiums. The Authority states that the Finger Lakes Municipal Health Insurance Trust ("Trust") with the Core and High Deductible plans would mean lower premiums than the current program which would be beneficial to both the Authority and the Union. However, the decision to move to the Trust program must be done before June 30, 2018 or incur a substantial penalty for late entry. The Authority proposal to increase the funding to the medical reimbursement account is more reasonable and justified as compared to the Union's proposal and should be adopted. The Authority

proposes that all current employees contribute toward the health insurance premium cost and notes that 71% of the employees already contribute 10%. The Authority proposes that all current employees contribute 15% toward the premium agencies. costs and that new hires contribute 20%. This is not only reasonable but is closer to comparability with similar agencies. On the matter of the health insurance buyout, the Authority states that the Union has agreed to this part of the overall issue. The Authority proposes that medical insurance be discontinued when an employee reaches Medicare eligibility for all new hires but this would not apply to current employees and notes that the Union has not made a response on this element as they also have not done on the Authority's proposal to have new hires pay the same percentage toward dental insurance as they do with health insurance

Union Position:

The Union asserts that they did not receive the Authority proposal on health insurance until the July 2016 mediation sessions. The Union suggested looking into other health insurance options and the Authority found the option identified as the Finger Lakes Municipal Health Insurance Trust ("Trust"). CSEA indicated their agreement to move to this plan as it was comparable to the existing plan offered by the Authority. The Union also agreed to offer the high deductible plan option to employees and agreed to the Authority proposal to increase the health insurance buy-out amounts. The Union argues that the problem on this issue was the amount of contribution that employees were to make toward the cost of the premiums. The latest proposal from the Authority proposed that all current employees contribute 15% and new hires contribute 20% of premium costs. The Union asserts that it wants to maintain current contribution levels of 0% and 10% depending on hire date. It further does not want to create another split in the membership by approving 20% contribution for new hires. The Union contends that its analysis of moving to the Trust plan while maintaining current contribution rates would have saved the Authority in excess of \$600,000

ISSUE #9: BEREAVEMENT

Authority Position:

The Authority agrees that the Parties should move step-parents from the 3-day to the 5-day category. However, the Authority proposes that the 5 and 3-day categories be reduced to 3 and 2 respectively to match the leave given to management employees.

Union Position:

The Union contends that the only change required in this provision is to include “step-parent” into the definition of parent for the 5-day bereavement category and does not want to agree to the Authority’s proposal to reduce the 5 and 3-day bereavement categories to only allowing 3 and 2-days respectively.

ISSUE #10: VACATIONS

Authority Position:

The Authority indicates that the Parties had tentatively agreed to delete Section 24.5 of the CBA in order to allow the use of vacation time in ½ day increments. The Authority proposed that maximum accrual of vacation days be reduced from the current 25 to 20 for new hires. Again, the Authority argues that this would mirror what new management employees would accrue and would not have an impact for at least 18 years. The Authority also proposed a change in the payout of unused vacation time when an employee leaves Authority employment. They propose that an employee leaving at any time during the year would receive any unused days in their vacation bank and would receive a *pro rata* portion of their vacation days earned through their date of separation from the Authority and not tied to their anniversary date.

Union Position:

The Union rejects the Authority proposal as it applies to creating different vacation accruals and caps for new hires compared to current employees. The current accrual system is fair and justified considering that an employee has put in 26 years of service to

obtain 25 days of vacation. The Union indicates that the Parties have agreed on the amount of notice required for vacation requests. The part of the proposal dealing with the amount of notice required to receive a payout for vacation time at the end of employment has had little discussion during the negotiations process.

ISSUE #11: ARTICLE 12.9 PROVISION ON REASONABLE OVERTIME (12/60 RULE)

Authority Position:

The Authority notes that the CBA allows employees to refuse work beyond 12 continuous hours in a day or 60 total hours in a week (with 2 hours advance notice for each). The Authority contends that the problem is with the 60-hour element in that employees have invoked the 60-hour rule in an effort to avoid work or emergency call-out on a Friday but then want to be able to work Saturday and/or Sunday which are dates carrying overtime. The Authority believes that the CBA language is clear on this point and it is that an employee can invoke the 60-hour rule in a work week but once that choice has been made, the employee cannot then request to work beyond 60 hours (i.e., Saturday and/or Sunday) for that work week². The Authority proposes that this clear language meaning be reinforced in the CBA.

Union Position:

Union notes that the issue of restricting employees from further work once in a week once they invoke the 60-hour limit was not in the Authority's original proposal of September 2014 but was added in their July 2016 package proposal. The Union rejects this proposal stating that it is not unreasonable for an employee to hit the 60-hour work limit after 4 days of work and want the next day to rest up. After that rest day, the employee should be able to opt for Saturday or Sunday work. The Authority proposal would restrict them from utilizing their own employees rather than resort to contractors. Allowing the employee to take a rest day after 60 hours and then cover a Saturday or Sunday work

² The work week for the Authority runs from Monday through Sunday.

day will eliminate the fatigue and safety elements of continuous work and provide the Authority with employees able to cover any need for weekend work.

ISSUE #12: SICK LEAVE

Authority Position:

The Authority wants to reduce the maximum amount of accrued sick days from 140 for which an employee can receive a payout on death or retirement to a maximum of 80 but only for new hires, stating that this would be in keeping with what new management employees are limited to for payout. The Authority seeks to limit its financial exposure to large payouts. Also, the Authority proposes that instead of a lump-sum payout to an employee who used no sick leave during the year, that the employee receive one additional floating holiday. The Authority posited that lump-sum payouts of this type are illegal for hourly employees but did not provide any substantiation for such a claim at the Fact-Finding hearing.

Union Position:

The Union states that their proposal on this issue was to add a section for up to 10 days of sick leave to be used for family member illness and attendance incentives for those who use zero or only one sick day in a calendar year. The Union states that a lump sum payment is preferable to awarding a floating holiday as it would provide more incentive to an employee rather than a floating holiday/vacation day that could only be used with management approval. Further, the Union rejects the Authority argument raised at the Fact-Finding hearing that a lump sum payment is illegal to pay to an hourly employee without having to consider the overtime implications. The Union notes that the Authority provided no legal authority to support their claim that a lump sum payment would be illegal. The Union quoted FLSA Section 207(e)(1) which defined “regular rate” as pay not including “sums paid...as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency”. The Union further notes that the CBA already contains lump sum payments in its Longevity section of Article 14.4 and other such lump sum payments are common in labor-management agreements without

challenge. The Union does not agree with the Authority proposal to restrict the accrual of sick leave time for individuals out on workers' compensation, disability or other extended leave.

ISSUE #13: LEAVE OF ABSENCE WITHOUT PAY

Authority Position:

The Authority proposes an addition to Article 21 of the CBA indicating that employees would be disciplined for taking off work without pay except in situations allowed by the CBA or by applicable law. The Authority concern is that employees are exhausting sick and vacation leave and then taking unpaid days off for whatever reason. This causes a disruption to operations and the ability to count on individuals to be at work. Employees should be expected to show up for work or be subject to discipline when they do not.

Union Position:

Union states that this proposal by the Authority has had little discussion during the negotiations. The Union does not feel the need to explicitly agree that the Authority has the power to discipline employees who abuse this provision because the Authority already has such authority to do so.

DISCUSSION & RECOMMENDATIONS

Each of the issues presented above will be discussed in turn and the Fact Finder's Recommendation(s) will follow that discussion. The recommendations are based on the documentation presented by the Parties, joint and several, the rationales presented at the Fact-Finding hearing and review of the relative positions presented.

ISSUE #1: EMERGENCY RESPONSE

Emergency response is an important component in providing services to the public. Timely response to emergencies is also important to address emergencies as soon as possible in order to mitigate the extent of damage and costs of repair that would ensue from response delays. The Fact-Finder has carefully reviewed this issue and the Parties' respective positions in making the following recommendation.

RECOMMENDATION:

1. It is recommended that the Parties adopt the Authority's emergency response proposal as it is outlined in the Authority's post-hearing brief on pages 5 and 6 (Points 1-9) with the following modifications:
 - a. Under Point #1, the posting of assignments to be done six (6) months in advance.
 - b. Under Point #4, eliminate the last sentence and any reference to utilization of outside contractors but substitute as a last resort, the right of the Authority to "force in" sufficient numbers and titles of employees in order to fill the emergency crew rosters that are needed should the process procedures not result in a full complement of employees on the emergency response crews and that failure to report in in a "force in" would be subject to discipline.

ISSUE #2: FATIGUE GUIDELINES

Matters of fatigue and safety are significant issues that are important to address between the Parties. The major issue of emergency response has dominated much of the discussion between the Parties and any ultimate agreement between them on emergency response will have significant impact on the discussion of fatigue guidelines.

RECOMMENDATION:

1. It is recommended that the Parties agree that fatigue guidelines be: a) either addressed as a component of the emergency response broad

discussion or, b) be a topic for mutual discussion in a labor-management group after the matter of emergency response has been resolved.

ISSUE #3: WAGES

Wages are always a key issue in contract negotiations and are subject to significant discussions between the Parties. It is clear that the Authority will not support retroactivity and that retroactivity would be a deal breaker as far as they are concerned. The Authority blames the Union for delays that have extended the negotiations thus leading to the position on non-retroactivity. However, it should be noted that the Authority refused to put its wage package on the table until more than 18 months after the start of the negotiations. While the Authority is firm on the point of retroactivity, the Union is equally firm in its opposition to a differentiated wage scale for new hires. Given the protracted negotiations, the duration for any successor agreement is impacted and must be addressed as well.

RECOMMENDATION:

1. It is recommended that the Parties agree to maintain the current salary structure and step system with no new steps added.
2. It is recommended that the Parties do not agree to a differentiated wage scale system for new hires.
3. It is recommended that the Parties agree to the duration of a successor agreement to cover 2015 – 2022.
4. It is recommended that the Parties agree to the following wage increase adjustments:

2015	0%
2016	0%
2017	0%
2018	4%
2019	4%
2020	3%

2021	3%
2022	3%

ISSUE #4: SHIFT DIFFERENTIAL

Shift differential would benefit from clarification regarding whom it is referencing.

RECOMMENDATION:

1. It is recommended that the Parties agree to the inclusion of language in the appropriate CBA sections to clarify that B and C shifts and shift differentials apply only to Water Treatment Plant Operators working on the B and C shifts.
2. It is recommended that the current shift differentials remain unchanged in the successor agreement.

ISSUE #5: PROMOTION

The Authority seeks to limit wage increases for employees being promoted to the step closest to 4% wage increase to bring such promotions more in line with the cap of 7.5% placed on management promotions. This is an interesting use of the “piggyback” negotiations approach except that in this case the Authority seeks to limit the Union employee promotion to 4% while allowing the management employee 7.5%. When the piggyback approach is attempted in labor-management negotiations, it is overwhelmingly rejected by the other party to the negotiations (usually management) under the “apples and oranges rationale”. Here the Authority employs it with a twist; the twist being that it will not be a true piggyback but more like a “pigletback”. Considering that the existing language already places restrictions on an employee advancing in pay two or more salary grades, and that the Union has proposed that an employee move to the same salary grade step from which they came, the prudent and realistic approach would be to leave as is.

RECOMMENDATION:

1. It is recommended that the Parties retain the promotion provision as it is currently written.

ISSUE #6: OUT OF TITLE PAY

The concerns expressed over this issue deal with potential abuse of assigning people to out of title positions for less than a full day that someone could be assigned over and over to out of title work and never receive OOT pay because they had not been assigned to out of title for a full 8-hour day. The cumulative proposal by the Union would somewhat complicate the recordkeeping to be able to easily determine when a person crossed the 8-hour threshold. There is a much easier way to deal with this issue and concern and that is to consider the initial out of title assignment (8 hours or less) as meeting the threshold and that subsequent out of title assignments would be at OOT pay. The matter of 4 or less hours difference from an 8-hour day is *de minimus* to the Authority unless the Union's concern is valid.

RECOMMENDATION:

1. It is recommended that the Parties adopt the following relative to out of title pay: If a person is assigned to out of title work for 8 hours or less in a day, then that person will receive OOT pay for any hours worked out of title subsequent to that initial assignment. It is further recommended that the label "Title" be used in place of "Classification" for purposes of clarity.

ISSUE #7: LONGEVITY

RECOMMENDATION:

1. The Parties have indicated acceptance of the Authority's proposal on this issue and it is recommended that the Parties effectuate that joint acceptance.

ISSUE #8: HEALTH INSURANCE

The issue of health insurance premium contributions is an increasingly difficult issue for both Parties to address and it does not get better as time goes on. While there is a valid concern of the Union about dividing the membership over differentiated benefits and obligations, the matter of health insurance has already been differentiated by hire date (0% and 10% distinctions). The continuing rising costs of health insurance, coupled with the confusion over health care at the federal level, the resultant uncertainty created in the insurance markets across the board, and the pressure to have employees contribute to the costs of health insurance, argues for something to be done in the area of new hires. It is not unreasonable, on this issue, to consider an increased contribution rate for new hires brought in after ratification of the successor agreement.

RECOMMENDATION:

1. It is recommended that the Parties accept the Trust insurance program as presented with the 2 plan options (co-pay and high deductible) and that they move expeditiously to implement that program.
2. It is recommended that the Parties continue health insurance contribution percentages at the same level for current employees.
3. It is recommended that the Parties agree that new hires employed after the ratification of the successor agreement will contribute 20% of the premium costs in the Trust plans and the same percentage toward the premiums in the dental program.
4. It is recommended that the Parties accept the Authority's proposal for increasing the amounts for funding in the medical reimbursement accounts.
5. It is recommended that the Parties agree to the Authority's proposed increase to the health insurance buyout provision.
6. It is recommended that the Parties accept the Authority's proposal that new hires will have medical insurance discontinued once they reach the age of Medicare eligibility.

ISSUE #9: BEREAVEMENT

The issue here involves the Authority's proposal to reduce bereavement leave from 5 to 3 and from 3 to 2 days within this provision to make it more in conformity with what management is allowed. Other than the "piggyback" element of the proposal, there was no demonstrable evidence presented to compel such a change.

RECOMMENDATION:

1. It is recommended that the Parties leave the bereavement provision as currently found in the CBA with the exception of adding "step-parent" to the 5-day category.

ISSUE #10: VACATIONS

The issue of vacation time boils down to two components. The first is the Authority proposal to reduce the accrual of vacation days from 25 to 20 for new hires. The second is the Authority proposal to change the payout process for unused vacation time. Given the lack of substantive discussion and analysis relative to the proposed payout change, it is an issue requiring more study of its operation and impact.

RECOMMENDATION:

1. It is recommended that the Parties keep the accrual of vacation days to the current CBA amount of 25 and not reduce it.
2. It is recommended that the payout process for unused vacation days at the point of an employee's separation from the Authority be kept as it is currently administered in the CBA due to the lack of substantive discussion on this aspect of the issue.

ISSUE #11: ARTICLE 12.9 PROVISION ON REASONABLE OVERTIME (12/60 RULE)

The issue of the 60-hour rule has been one of application of the rule. Given the clear and unambiguous language of the CBA, when an employee gives notice that they will not work more than 60 hours during a given work week, then that is exactly what it means – they have chosen to limit their maximum work hours to 60 for that given week. The Authority’s concern here has merit.

RECOMMENDATION:

1. It is recommended that the Parties agree that the invocation of the 60-hour rule be made with the explicit understanding that once invoked, the employee does not work for the rest of that work week.

ISSUE #12: SICK LEAVE

The issue of sick leave is another piggyback issue for the Authority in seeking to reduce accrual amounts for new hires by 43%. The Authority claim of lump-sum payments being illegal for hourly employees was not substantiated and the Union’s argument on this point was more compelling.

RECOMMENDATION:

1. It is recommended that the Parties agree that sick leave accrual limits remain at current CBA levels and that there be no differentiation made for new hires.
2. It is recommended that any sick leave incentive program to encourage employees not to utilize sick leave be one where an employee who used no sick leave during the calendar year should receive one floating holiday as an incentive. While it is understood that such a floating holiday request must be made in advance to management and that management may deny the request, such denial cannot be arbitrary or capricious and must be based on good cause. If denied, the employee’s floating holiday shall be

banked for use on another date. Continued denial of such requests is unacceptable.

ISSUE #13: LEAVE OF ABSENCE WITHOUT PAY

Based on a review of the respective proposals and rationales thereto, the following recommendation is made.

RECOMMENDATION:

1. It is recommended that the Parties agree that employees must use accrued time (sick or vacation) before applying for a leave without pay.
2. It is recommended that the Parties agree that the Authority may deny requests for leave without pay exclusive of leave without pay authorized by the CBA or by applicable law.
3. The Authority may discipline employees who abuse the leave of absence without pay provisions.

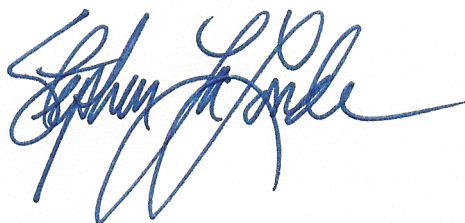
* * *

In conclusion, it must be noted that both Parties have engaged in various degrees of gamesmanship in this negotiations that have prevented discussion and meaningful, timely work on resolution of issues; have delayed or prevented meaningful discussion of issues resulting in a large number of issues being brought to Fact-Finding with little discussion of them other than the presentation of bare opening proposals; and have unreasonably delayed presentation and discussion of seminal issues that have unnecessarily spun out and delayed the process. All of this has had the result that neither Party nor the public has been well-served by such approaches. It is incumbent upon the Parties going forward to take a more serious and productive approach to the matter of negotiations.

* * *

AFFIRMATION

I affirm on my oath that I am the individual described herein and that the foregoing is my Fact-Finding Report and Recommendations in the above captioned matter.



Stephen P. LaLonde
Impartial Fact Finder

Dated: December 11, 2017