
NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-finding between

THE COUNTY OF CLINTON & THE CLINTON COUNTY SHERIFF,

Employer

And

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, LOCAL 884,
CLINTON COUNTY SHERIFF'S UNIT 6450-01,

Union

PERB Case M-2006-174

FACT FINDER' S REPORT & RECOMMENDATIONS

Before: Gordon R. Mayo, Esq., Fact Finder

For the County: Anthony P. Di Rocco, Employer Consultant and Labor Relations Specialist

For the Union: Emy L. Pombrio, Esq., Labor Relations Specialist

The County of Clinton and the Clinton County Sheriff (hereinafter Employer or Sheriff) and the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Local 884, Clinton County Sheriff's Unit 6450-01 (hereinafter CSEA) are parties to a Collective Bargaining Agreement (hereinafter CBA) for the period January 1, 2003 – December 31, 2007. On September 27, 2006, CSEA filed a declaration of impasse with the New York State Public Employment Relations Board (hereinafter PERB) regarding impact negotiations occasioned by a multi-million dollar expansion project that more than doubled the capacity of the Clinton County Jail (hereinafter Jail), with said construction at least partially designed to house federal prisoners provided by the United States Marshals Service (hereinafter USMS) and the United States Immigration and Naturalization Service (hereinafter INS). PERB appointed a staff mediator on October 20, 2006, and he conducted a conference on December 20, 2006. CSEA made a proposal at that session which was rejected by the Employer, with no counterproposal being offered. Subsequently, CSEA requested that a Fact Finder be appointed, and I was duly designated by letter from PERB dated January 25, 2007. On March 30, 2007, I conducted a hearing at the Clinton County Office Building, Plattsburgh, New York;

both parties were present, and I took both testimonial and documentary evidence from each party. Although queried, neither party chose to file a brief, and my report will be based upon evidence gathered at the hearing.

The issue as framed by CSEA in its December 21, 2006 letter requesting fact-finding is as follows: “[t]o address the impact of the Employers contractual commitments with the United States Marshall Service and the Immigration and Naturalization Service.” During 2002, the Employer and USMS entered into a Cooperative Agreement Program to increase the capacity of the existing jail from 92 beds to 226 beds, with the primary purpose being the creation of 45 guaranteed bedspaces for utilization by USMS and INS. The additional spaces would be of the modern “pod” design, which enables prisoners to be more easily observed and supervised by a fewer number of corrections officers (hereinafter COs). At that juncture, the existing facility was relatively new (13 years old) and in good shape, but was constructed in the traditional linear configuration, which requires more COs to guard prisoners. The total estimated cost of the addition was \$15,860,000, with USMS funding \$5,247,810 of the project. In addition to the four pods being constructed, the project included the expansion of the support service area (kitchen, visitation, booking, medical, laundry and recreation) to accommodate the larger inmate population.

At some point in late 2005 or early 2006, the project was completed and the Jail started accepting new prisoners. While past jail population demographics consisted of mainly local prisoners serving sentences for lesser offenses, the 45 beds reserved for USMS and INS prisoners were a veritable smorgasbord – drug dealers, smugglers, career criminals, as well as illegal aliens from countries around the world (Clinton County has as its northern border Canada). Many spoke little or no English, and it was frequently difficult to communicate with a new prisoner in the intake process. The intake process itself exploded, inasmuch as the processing requirements for 226 inmates took much longer than previously, when many of the prisoners were repeat petty criminals who had been through the process on several occasions. Intake almost became a sort of revolving door, in that USMS and INS officers would bring in new prisoners in bunches, and then remove those already incarcerated in the same manner; the federal prisoners were generally not incarcerated at the Jail for the length of time the local prisoners were. Because the federal courts that dealt with these USMS and INS prisoners required that they be free from communicable diseases, more medical intakes were performed, including vaccination for tuberculosis and other diseases. Unlike the former basically homogeneous jail population, who were fed “normal” American-style meals, many of the federal prisoners were from foreign countries that were totally unaccustomed to our typical menus, and they required special dietary specialties. Moreover, there were a considerable number of these prisoners who could not eat certain foods for religious reasons, and they required “specials” as well. Because each of these special meals had to be individually delivered to the inmate in question, more time was spent at mealtime by the COs. As a corollary, more inmates meant more health care issues, and an increased workload by staff in the distribution of prescription medication and other drugs.

Inasmuch as federal prisoners had to be transported to the U. S. District Court for the Northern District of New York in Albany for further proceedings on their individual cases, there was an additional demand for transport services to be provided by the COs. At least two trips per week were dedicated to USMS and INS prisoners, where in the past such trips had been sporadic in nature. There was also an increased demand for medical transports to local health facilities for the federal prisoners, in order that they be vaccinated and found free from illness for their court appearances. However, the van in which these prisoners were transported was provided free to the Employer by the USMS.

As a consequence of the impact of these changes upon the workload faced by COs on an everyday basis, CSEA has requested that each CO be given an additional \$2,000.00 per year as

hazardous duty pay. Additionally, CSEA proposes that each CO shall receive free health insurance as a consequence of working in a more dangerous environmental situation than previously, where the inmate population was generally indigenous. Currently, the percentage of each CO's contribution is set on a sliding scale pegged to years of service, with a newer employee paying 20% (0 - 10 years service) and veteran employees (hired prior to January 1, 1980) paying nothing. However, testimony indicated that there are no COs within the jail with more than 13 years' service, and 50% of all COs were hired after January 1, 2005, leaving them in the 20% contribution category for a considerable period of time to come.

The Clinton County Sheriff, David Favro (hereinafter Favro), testified at some length regarding the operation of the "new" jail, as opposed to the previous linear design. It was Favro's predecessor in office, Sheriff John H. Lawliss, who entered into the jail expansion contract with USMS and INS, but it was Favro's responsibility to ensure that the new facility operate efficiently. In anticipation of the opening of the pods, each CO was given a 40 hour course in direct supervision, inasmuch as one CO generally supervised one pod, which might have as many as 48 inmates housed therein. Whereas there had previously been 58 COs supervising approximately 90 inmates, the new jail requires 84 full-time (FTE) COs to guard approximately 226 inmates, with an additional 8 FTE COs comprised of part-time and temporary employees to aid in staffing. According to Favro, the staffing in place does not violate NYS Commission on Correction (hereinafter Commission) standards, which sets the staffing requirements for all county jails and lock-ups across the state. Additionally, the Jail now has 4 full-time registered nurses (hereinafter RNs), where there had previously been one. Favro acknowledged that this increase in staffing was occasioned primarily because of the influx of federal prisoners and "boarders" to wit, prisoners from other county jails that were full and needed space for their excess. This practice of boarding out prisoners is not uncommon, especially in upstate New York, where certain counties have jails that are constantly over capacity, and other counties have excess space. Generally, such a situation can prove to be a revenue provider for counties, who must have a certain specified level of staff on duty anyway to meet Commission standards.

Favro was candid in acknowledging that the intake process was much busier in the new jail, primarily as a result of the USMS and INS prisoners that were housed as a result of the federal-county contract. However, the original per diem rate the Jail charged for securing these prisoners has also increased (\$75.84 to \$86.00), as has the hourly rate charged for federal prisoner transport (\$15.86 to \$26.00). The additional transport duties have created a situation where the prisoner transports may be undertaken on an overtime basis.

The Employer provided a copy of the Civil Service job description for Corrections Officer at the hearing, which closely mirrors similar descriptions utilized by most counties throughout the state. The "typical work activities" listed are standard, and there was no testimony from CSEA that its unit members were forced to perform tasks not within the job title; CSEA's primary claim is the volume (and potential danger) resulting from the USMS and INS incarcerations has substantially impacted the day-to-day workload of its COs.

The parties are in the final year of a five year agreement which was negotiated knowing that a major change in jail operations was forthcoming, but without any real insight as to what ramifications those changes would create. Moreover, the existing bargaining unit, which originally consisted of the Employer's road patrol and criminal division in addition to corrections, was fragmented into two units in 2005. The current CO bargaining unit consists of many newly hired employees, with very few senior COs on staff, compressing the CBA's salary schedule on the lower side; for example, a CO with less than five years service earns \$14.79 per hour. That same CO pays 20% of his health insurance premium until he has been employed for 10 years, when the contribution is reduced to 15%. It is not my intent to re-negotiate this CBA in its final year; the parties have that ability going forward into the next agreement. However, it is my finding that there has been a substantial impact in CO working conditions as a result of the agreement between the Employer and the USMS and INS,

with a resulting increase in the number of federal prisoners, and the special needs that such prisoners create. The very fact that more serious offenders are included in that group, as opposed to the typical local prisoner, make the job different, busier, and perhaps more dangerous.

There have been no representations made by the Employer regarding ability to pay; it is simply their position that there is no impact, because the typical CO is not performing any tasks outside the job description. A cursory examination of the reimbursement rates being paid by its federal partner (as well as other counties for their boarders) does not convince me that the Jail is being operated at a deficit, especially when a CO is earning less than \$15.00 per hour and he is being billed out for transport duty of federal prisoners at \$26.00 per hour. Although CSEA has asked for free health insurance for all its members, I chose not to interfere with that benefit, which is better left for the collective bargaining process. However, I do find that CSEA has made a compelling case for an impact adjustment based upon workload. It is my recommendation that each full-time CO be given a \$1,000.00 stipend for calendar year 2007, with said stipend not to be applied to base salary. Said stipend shall be paid in weekly installments to each CO on the payroll, and shall terminate on December 31, 2007.

Dated: April 24, 2007

Gordon R. Mayo, Fact Finder

STATE OF NEW YORK)
COUNTY OF RENSSELAER)

I, GORDON R. MAYO, do hereby affirm that I am the individual described herein, and I executed this Report and Recommendation.

Gordon R. Mayo, Fact Finder