

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:
**TOMPKINS COUNTY & SHERIFF OF TOMPKINS
COUNTY,**

PERB CASE NO.
M2004-335

-And-

**EMPLOYEES UNION OF TOMPKINS COUNTY
SHERIFFS DEPARTMENT**

Before: Dennis J. Campagna, Esq.

APPEARANCES

A. For the County:

Ransom P. Reynolds, Esq., Counsel
Paul S. Mayo, Labor Relations Consultant

B. For the Union

John K. Grant, Esq., Counsel
Anthony V. Solfaro, President, N.Y.S.U.P.A., Inc.

BACKGROUND

A. Tompkins County

Tompkins County, with its County Seat located in the City of Ithaca, is situated in the eastern region of the Southern Tier in upstate New York's Central Finger Lakes Region, approximately 50 miles southwest of the City of Syracuse and approximately 25 miles southwest of the City of Cortland. The City of Elmira is located approximately 35 miles southwest and the City of Binghamton 50 miles southeast. The land area of the County is 491 square miles. As of the most recent U.S. census taken in the year 2000, Tompkins County had a population of 66,164.

Tompkins County is bordered by Chemung County to the South, Steuben and Yates Counties to the West, Cortland and Onondaga Counties to the North and Chenango and Delaware Counties to the East.

The Tompkins County Sheriffs Department consists of three parts: Law Enforcement, also known as the Road Patrol, the Civil Division and Corrections. The Employees Union of Tompkins County Sheriffs Department, ("Union") consists of 41 bargaining unit members – 36 of whom are members of the Road Patrol and 5 of whom are non-law enforcement (Civil) personnel. These 5 Civil Employees occupy the positions of Keyboard Specialist, Sheriff Clerk/Secretary, Civil Account Clerk and Senior Account Clerk. Economic issues for members of the Road Patrol for a period beginning July 1, 2004 are currently part of an Interest Arbitration proceeding running concurrently with this Fact-Finding. Economic issues for the 5 civil personnel shall be addressed in this report. Also addressed in this Report are all non economic items, noted and described below, some of which apply only to the five Civil Employees, and others that apply to both unit members in the Road Patrol as well as the Department's Civil Division.

B. The Request for Fact-Finding

Tompkins County ("County") and the Employees Union of Tompkins County Sheriffs Department ("Union") are parties to a collective bargaining agreement with effective dates March 1, 2001 through February 28, 2004 ("Contract"). Negotiations for a successor Contract began on or about February 10, 2004. Subsequent to this initial meeting, the parties engaged in three additional bargaining sessions held on March 11, 2004, May 5, 2004 and June 7, 2004.

On February 18, 2005, Anthony Solfaro, President of the N.Y.S. Union of Police Associations, Inc. filed a declaration of impasse following a series of four bilateral negotiation sessions noted above. On August 30, 2005, following unsuccessful mediation attempts, Paul Mayo, Labor Relations Consultant for the County filed a request with the PERB that the impasse be moved to Fact-Finding. By letter dated October 19, 2005, the undersigned was appointed by the PERB as Fact Finder.

A hearing was held on February 10, 2006 in Tompkins County, at which time the parties presented financial and comparability data relating to the County's ability to pay in support of their respective positions over those issues at impasse. These submissions are discussed below. Following said hearing, the parties elected to summarize their respective position over the open/impasse issues with the submission of post-hearing briefs. Upon receipt of said briefs, the Fact-Finding proceedings were considered closed.

C. The Outstanding Issues

UNION'S PROPOSED ISSUES

1. **Duration** – 2 years/24 months (3/1/04 – 2/28/06) – (Applies to the 5 Civil Employees)
2. **Compensation:** An increase to the existing base wage schedules of 4.5% in each of the two years covered by this successor contract. The Union also proposes a Longevity schedule identical to that proposed for the Road Patrol Deputies. (Applies to the 5 Civil Employees)
3. **Health Insurance** – The Union proposes that the County provide to all employees and eligible dependent(s) the N.Y.S. Health Insurance Plan with Core Plus Psychiatric Enhancements (the "Empire Plan") to replace the current Blue Cross/Blue Shield and accompanying Self Insured health insurance plan. The Union also proposed that the County provide all available HMOs, and to increase the existing VEBA amounts for employees hired on or before May 31, 2003. (Applies to all unit members except that the VEBA proposal applies only to the Road Patrol Deputies)
4. **Health Coverage upon Retirement** – Effective March 1, 2004, an employee who retires shall be provided with individual and/or dependent health insurance coverage with the County contributing 50% of the individual premium cost, and an additional 35% of the difference between the individual and dependent (family) premium cost without returning any paid leave time. The Union also proposes additional contribution by the County based on a formula taking into account the employee's unused paid leave time at the time of retirement. (Applies to the 5 Civil Employees)

5. **Article 10 – Holidays** – Eliminate the existing cap on the maximum accumulation of twenty-four holiday carryover. (Applies to both Road Patrol & Civil Employees)
6. **Article 11 – Vacation** – Eliminate the existing two year maximum accumulation of vacation carryover. (Applies to both Road Patrol & Civil Employees). In addition, the Union proposes that the employee, at his/her option may return all unused vacation time in order to ease his/her cost toward health insurance upon retirement.
7. **Article 15 – Personal Leave/Disability** – All unused personal leave be carried over from year-to-year without limitation. (Applies to both Road Patrol & Civil Employees)
8. **Bereavement Leave** – Employees shall receive four (4) consecutive work days with pay. Employees shall be entitled to one (1) additional day if interment occurs at a later time. (Applies to both Road Patrol & Civil Employees)

COUNTY'S PROPOSED ISSUES

1. **Duration** – 3/1/04 – 12/31/05 (21 Months)
2. **Compensation:** An increase to the existing base wage schedules of 0% effective March 1, 2004 and a 1% increase effective January 1, 2005.
3. **Health Insurance** – The County proposes that employee contribution toward health care premiums be established for all employees at 20%. The County also proposes the elimination of VEBA contributions. The County also proposes the creation of the following three-tier prescription-drug co-pay: \$5/\$15/\$25
4. **Health Coverage upon Retirement** – Status Quo (County Resolution No. 180 currently provides continued health care coverage for County retirees.)

5. **Article 10 – Holidays** – Eliminate Lincoln’s and Washington’s birthdays as paid holidays, and in their place add one President’s Day holiday and one floating holiday.

6. **Article 15 – Personal Leave/Disability** – The County proposes that employees not be paid for the first three days of an approved disability, thereby providing that such employees begin receiving payment on the fourth day of an approved disability provided a doctor was seen in the first three days and certified the disability. Employees would use their accrued paid leave time to cover the first three day period.

POSITIONS AND RECOMMENDATIONS¹

1. **Duration** – (Civil Employees)

The proposals set forth above aptly describe the parties’ position. The County’s proposed termination date is consistent with the end of its fiscal year.

RECOMMENDATION

It is in the parties’ best interest to agree upon a contract having a duration of greater than 2 years. This is so for under either proposal, the parties would immediately begin negotiations since this successor (2004-2006) agreement has already expired. Moreover, a contract of greater than 2 years would give the parties time to work on other issues jointly in preparation for their next round of negotiations. In this regard, topics such as health care are not items that should be left to a “last minute” dialogue since the issues facing Tompkins County are shared by Labor and Management alike and require time and thoughtful consideration. Accordingly, using health insurance as an example, it is in the parties’ mutual interest to have adequate time to work together in researching and exploring alternative ways of providing the best possible coverage in a cost effective manner. Accordingly, I recommend the following:

¹ Any proposal not specifically addressed herein shall be considered as DENIED.

A contract duration of forty-six (46) months, beginning March 1, 2004 and ending December 31, 2007.

2. Compensation – (Civil Employees)

The County's "official position" during this fact-finding reflected an offer of 0% and 1% for each of the two years of the successor agreement. However the County also suggested that for the purpose of determining wage increases, the five Civil Employees in this bargaining unit are best compared to the white collar employees employed by Tompkins County who are represented by the C.S.E.A. and who agreed upon terms for a four year contract that granted a salary increase of 4.25% for the fourth year covering January 1, 2004 and ending December 31, 2004.

With respect to the ability to pay, in suggesting that the same increase agreed upon between the CSEA and Tompkins County be afforded to the five Civil Employees in this bargaining unit, it is clear that the County has the ability to fund a 4.25% increase at least for 2004. Given that a 1% increase, if extended to all members of the entire bargaining unit would cost the County approximately \$25,000, and assuming for the sake of discussion only that all 41 members of this bargaining unit earned the same amount, a 1% increase afforded to the five Civil Employees would cost the County approximately \$3000, an increase it acknowledged it can afford. In addition, it is worth noting that it is the County's stated policy to maintain an unreserved fund balance of 5% for the purpose of funding unanticipated events, such as "pay raises" among other things. (See testimony of David Squires, the County's finance director at Transcript at page 111). In this same general regard, the County's adopted budget for fiscal years 2005 and 2006 included a contingent fund of \$1,230,000 for each year. Accordingly, while neither party to this proceeding could predict what the future would bring Tompkins County, the record evidence supports the conclusion that if prior performance is used as a guide to future performance, it is more likely than not that the County will maintain a respectful fiscally sound position at least through fiscal year 2007. Accordingly, while this Fact Finder is mindful of the burden imposed on County residents by increased tax rates, the Recommendation herein will be well within the County's ability to afford, and should not result in a further tax increase for the County.

Therefore, following a careful review of the record evidence before me, I make the following

RECOMMENDATION

While it cannot be denied that all five Civil Employees at stake are dedicated and hard working, the fact remains that they are not Road Patrol Deputies. In this latter regard, the Legislature of the State of New York has seen fit to treat Road Patrol Deputies as Police given the dangerous and peculiar nature of their jobs, and has afforded them interest arbitration to settle impasse disputes over economic issues. Accordingly, while the five Civil Employees may share the same bargaining unit with the Road Patrol Deputies, I find for the purpose of recommendations regarding economics associated with a new contract that the Civil Employees are more closely aligned with the White Collar Unit represented by the C.S.E.A. However, beyond the one year (2004) covered by the C.S.E.A. Agreement, employees must be afforded wage increases that permit them to keep up with the cost of living. As of the time this Recommendation the CPI stands at around 3.5%. Accordingly, with the foregoing in mind, I recommend wage increases as follows:

<u>CONTRACT YEAR</u>	<u>TERM</u>	<u>INCREASE</u>
1	March 1, 2004 -February 28, 2005	4.25%
2	March 1, 2005 -February 28, 2006	3.5%
3	March 1, 2006 – December 31, 2006	3.5%
4	January 1, 2007 – December 31, 2007	4.5%

With respect to the Union’s proposal for the extension of the Deputies’ Longevity Schedule to the five Civil Employees, it is important to note that the white collar members of the bargaining unit represented by the C.S.E.A. are afforded Longevity increments upon the completion of 10-14 years of service, 15-19 years of service, 20-24 years of service and for 25 or more years of service of \$400, \$450, \$500 and \$550 respectively for fiscal year 2004. Accordingly, using the format and procedure used for Longevity payments afforded to Road Patrol Deputies, I recommend the following Longevity schedule be extended to the five Civil Employees, who share similar titles as well as the same retirement plan as their C.S.E.A. counterparts:

Years of Service	Effective 3/1/04	Effective 3/1/05	Effective 3/1/06	Effective 1/1/07
10-14	\$425	\$450	\$470	\$490
15-19	\$625	\$650	\$670	\$690
20-24	\$800	\$820	\$840	\$860
25 or more	\$1000	\$1020	\$1040	\$1060

3. Health Insurance – (Civil Employees)

The Union proposes the replacement of the current Blue Cross/Blue Shield self funded plan with the New York State Health Insurance Plan with Core Plus Psychiatric Enhancements, also known as the Empire Plan (as well as the addition of available HMOs), and also proposes that the plan be fully funded by the County. In support of its proposed change, the Union notes that entry into the Empire Plan will insure a long-term stability to premium rates that the current County plan cannot guarantee. Moreover, the Union notes that the Empire Plan is fully portable thereby allowing employees (as well as retirees) the broadest and best access to coverage regardless of geographical location. The County proposes that the current plan remain status quo with one change – that the drug co-pay be changed from its current two-tier system to the following three-tier system: \$5/\$15/\$30. The County also proposes that all employees contribute 20% toward the cost of their health insurance coverage. Currently, those employees hired before June 1, 2003 pay 15% of their premium costs, and those employees hired on or after June 1, 2003 pay 20% of their premium costs. The County maintains that its proposal is cost effective, permitting it to offer excellent benefits while saving some money in the process.

RECOMMENDATION

Over recent years, few items have experienced such dramatic increases as the rise in costs associated with health care. In 1960 the United States spent approximately 5.2% of the Gross Domestic Product (“GDP”) on health care, and by 2004, that percentage rose to 16%. Health Care premium increases have risen substantially faster than the Cost of Living, peaking in 2002 with an average national increase of 13.7%. For the years 2004-2005, premiums rose nationally by approximately

8.8%. Currently, the average cost of a family plan is approximately \$10,000, and the current cost of the County's family plan is approximately \$11,000.

Given the foregoing summary, putting aside the proposal for available HMO coverage, the Union's proposal would increase the annual cost of providing single coverage from its current cost of \$5868 to \$6574, an increase of about 12%. While no one denies the outstanding benefits afforded by the Empire Plan, the Union has not demonstrated that the current plan offered by the County has in some fashion fallen short of providing quality health care coverage and benefits to its members. Accordingly, there is simply no justification for changing to a more expensive plan at this time. Accordingly, I recommend that the current plan remain status quo, and deny the Union's request for available HMO coverage.

On the other hand, the County's proposal to change to a three-tiered drug plan is in keeping with the current trend in health coverage throughout New York State, and will provide the County with some cost savings. Accordingly, I RECOMMEND this change. However, I cannot recommend that all employees pay 20%. In this regard, I find that the County's proposal is out of line with other contracts, and could quickly erase any salary increase agreed upon in these negotiations. Nor can I recommend the Union's proposal that the County pay 100% of the premium cost, for this too is out of line with other contracts. In lieu of the County's and the Union's proposal, I find an across the board contribution of 15% by all employees opting for health coverage under the County's plan to be advantageous to morale due to the elimination of a two-tiered system, and more in line with the norm. Accordingly, I recommend as follows:

- That the current self-funded health plan administered by Blue Cross/Blue Shield remain status quo;
- That the current payment/percentage scheme be changed to 15% for all employees opting for health insurance coverage, and
- That the Prescription-Drug Co-pay be changed to \$5/\$15/\$30 at the next available opportunity following ratification.

4. Health Insurance Upon Retirement – (Civil Employees)

On or about September 9, 1963, the Tompkins County Legislature passed Resolution No. 180 that removed the County, and therefore its employees, from coverage under the Empire Plan. As a quid-pro-quo for employee consent in this regard, Resolution 180 assured that the Empire Plan's "50/35" coverage² would extend to retirees throughout the change to a new self-insured plan and beyond. And so it has been the County's policy to extend health insurance coverage to all of its retirees on a "50/35" basis since 1964. While the County has not expressed an immediate desire to remove itself from this obligation, it has made clear that given the escalating nature of health care costs, it reserves this right for the future. The Union has taken a strong position against the County's position, and proposes that Resolution 180 be added to the terms of its Contract.

The Union's concern draws its essence from a 1998 N.Y.S. Court of Appeals decision in ***Aeneas McDonald PBA, Inc., vs. Geneva***, 92 N.Y.2d 326, 680 N.Y.S.2d 887 (1998). In ***Aeneas***, the Court held that notwithstanding the fact that municipalities like Tompkins County have provided certain health insurance benefits to retirees, they are not prohibited from reducing said benefits without first negotiating any such change(s) with the bargaining unit. Therefore, the parties are well aware that notwithstanding the good intentions behind Resolution 180, Tompkins County could unilaterally withdraw all such benefits since there is no continuing obligation to continue to provide the benefits that resulted from Resolution 180. Had the collective bargaining agreement between Tompkins County and the Employees' Union of The Tompkins County Sheriff's Department contained a provision that provided health insurance coverage for retirees, *Aeneas* would have no consequence since retirees, as third party beneficiaries of this CBA would be afforded protection. Accordingly, it is understandable that the Union's response to *Aeneas* was to propose that Resolution 180 be made part of its CBA.

The County asserts that Resolution 180 should not be added to the CBA because continuation of the current retiree health insurance obligation will place an onerous financial burden on the County. In support of this assertion, David Squires, the County's Finance Director, opined that incorporating

² Under the Empire Plan, the County was required to contribute 50% of the individual's premium cost and an additional 35% of the difference between the individual and dependent (family) premium cost.

retiree health benefits in the contract is a benefit that cannot reasonably be sustained by the County, primarily due to the escalating nature of the cost associated with providing health insurance. In this regard, the County estimates, based on an annual increase of 8% that the present value of its share of the health insurance burden is \$99,551.

RECOMMENDATION

The Union seeks to continue a prevailing benefit, one they have continuously enjoyed since 1964. Aside from the codification, the Union's demand does not increase their benefit's expectation level since they are seeking no more than what currently exists under Resolution 180. In terms of costs and the financial ability of the public employer to pay, the codification of Resolution 180 into the existing CBA has no immediate financial impact. Indeed, so long as County Resolution 180 remains on the books, there can be no additional cost since the precise benefit levels are being transferred from County Resolution 180 to the CBA. Moreover, the County's concern about the future will be no different than its understanding pre Aeneas – that any changes to this benefit must be negotiated. This Recommendation, if adopted by the parties, places this important benefit within the context of a protected CBA. While the record evidence reflects that at present the County has no intention of altering Resolution 180, the fact remains that they can, and should they do so, unit members who seek to retire with this benefit will be unprotected unless the Resolution is made part of the CBA. Accordingly, I recommend that the following be added to the terms of the CBA:

Commencing March 1, 2004 and upon retirement, the County shall contribute 50% of the individual premium and an additional 35% of the difference between the individual and dependent (family) premium cost, without the return of any paid leave time.

5 Article 10 – Holidays – (Road Patrol & Civil Employees)

The Union has proposed a change in the current language designed to remove the existing cap on maximum accumulation, currently set at 24 days, proposing in its stead that "all unused holidays shall be carried over from year to year without limitation." This proposal if adopted would permit

employees, upon retirement, to essentially cash in all unused time and apply monies generated toward their obligated contribution to retiree health insurance.

The County proposes the elimination of both Lincoln's and Washington's birthdays as established holidays, and replacing these two days with President's Day and an additional floating holiday.

RECOMMENDATION

In addressing the County's proposed change, it is noteworthy that such change, if adopted, would put the County in line with the greater number of municipalities in New York State who provide President's Day as a paid holiday. Moreover, it is also noteworthy that under the County's proposal, the number of paid holidays afforded to unit members would remain unchanged. Accordingly, the County's proposed change is RECOMMENDED.

With respect to the Union's proposed change, respectfully, there is insufficient data in the record to demonstrate how, to what extent, and over what period of time this proposal, if granted, would benefit Unit members. While this Fact Finder can understand the general concept of trading time for money and later applying said monies toward health care premiums, more data and study is required before I can make it a recommendation. Accordingly, it is RECOMMENDED that the Union's proposal be denied at this time and that the substance of said proposal become the subject of further study and future negotiations by the parties.

6 Article 11 – Vacation -(Road Patrol & Civil Employees)

The Union proposes that any unused vacation be carried over from year-to-year without limitation, thereby removing the current cap that permits accumulation of up to two-years. This proposal if adopted would permit employees, upon retirement, to essentially cash in all unused vacation time and apply monies generated toward their obligated contribution to retiree health insurance. The Union also proposes that vacation pay be paid to an employee upon his/her separation no later than the first full pay period following such separation, and in event of the employee's death, to his/her beneficiary or estate as the case may be.

With respect to the carry over of unused vacation without limitation, I am RECOMMENDING AGAINST this proposal. Vacation is designed as paid time away from ones job to allow for a period of rest and relaxation, and to permit time with one's family or significant other. The use of vacation time is required for the betterment of an employee's physical and mental health. This is particularly important given the day-to-day stress associated with the job of a police officer. Without more, it is apparent that adoption of the Union's proposal would create an incentive for employees to forego their vacation and trade said earned time for cash to be used upon their retirement.

With respect to the second portion of the Union's proposal, I RECOMMEND that it be adopted. Vacation is an earned benefit, one earned on a days-per-month basis. Accordingly, it is only fair that an employee receive the monetary benefit of accrued vacation at the time of separation, or that his/her estate receive such monetary benefit in the event of his/her death. However, I would recommend that such payment be made within 30 days following separation.

7. Article 15 – Personal Leave and Disability – (Road Patrol & Civil Employees)

The thrust of the Union's proposal, if adopted, would permit all unused personal leave time be carried over from year to year without limitation, thus deleting the current provision that does not permit the accumulation of personal leave time from year-to-year. The County seeks an amendment to the current language that would permit it not to pay employees for the first three days of an approved disability, even where a Doctor's certification has been provided. As part of a suggested "package", the County expressed its willingness to agree to the Union's proposal to the extent of increasing the number of personal days by one, thereby raising the total possible annual number to six, and by permitting the accumulation of unused personal leave time for a maximum of two (2) years.

RECOMMENDATION

In addressing the County's proposed change first, the record evidence simply does not support the drastic change here sought by the County. Moreover, even by the County's own admission, there

has been little dialogue between the parties on any topic before me, much less one that denies employees of paid leave time during periods of legitimate illness or disability. Accordingly, I cannot recommend the change sought by the County.

As to the changes sought by the Union, it is not uncommon for unused personal leave time to accumulate as unused sick leave (disability) time. Those employers who agreed to this concept have done so for two reasons: first, to provide an incentive for employees not to squander and/or misuse personal leave time, and second, to permit the increase of an employee's sick leave accumulation to cover them during periods of illness or disability. In addition, there is an added incentive of cashing in unused sick leave time at the time of retirement and using the proceeds to offset health insurance payments. Accordingly, while I RECOMMEND that the current language dealing with the granting and accumulation of personal leave time remain status quo, I also RECOMMEND that all unused personal leave time be permitted to accumulate as unused sick (disability) leave time.

8. Bereavement Leave – (Road Patrol & Civil Employees)

The Union proposes that the current number of bereavement leave days be increased by one, bringing the total available days to four. In addition, the Union seeks one additional day for interment.

There is absolutely no evidence or data in the record to support the need for this proposal, or to demonstrate that the current allotment of time is insufficient. Accordingly, I respectfully recommend against this proposal and refer the matter back to the parties for further negotiation.

9. Voluntary Employee Benefits Account (VEBA) – (Civil Employees)

Under the current CBA, the County contributes \$375 per year into a IRS qualified Trust Fund for all employees hired before June 1, 2003. Those employees hired on or after June 1, 2003 are not eligible to participate in this Trust Fund, and accordingly, the County is not obligated to contribute monies on their behalf. The County seeks the elimination of this VEBA fund. The Union, on the

other hand, seeks an increase in the County's rate of contribution, from its current \$375 to \$500 effective March 1, 2004.

RECOMMENDATION

The current VEBA plan, as approved by the IRS, permits contributions only by the County, and permits qualified participants of the plan to use these monies for the reimbursement of out of pocket medical expenses incurred on behalf of the individual and/or his/her family. Qualified participants are those employed by the County prior to June 1, 2003. The Plan also permits "inactive participants", defined as individuals no longer working for the County, including retirees, to draw upon the full value of their accumulated benefits. Inactive participants are not permitted to receive annual contributions to the Plan by the County.

It would appear to this Fact Finder that the VEBA provides a near perfect way for current employees as future retirees to accumulate savings as a hedge against current as well as future expenditures associated with health insurance. Accordingly, to the extent permitted by law, the VEBA Trust should be amended so as to permit participation and contributions by all employees. Contributions could be in the form of cash, on a pre-tax basis, compensatory leave time, and ultimately, all other and unused accumulated leave time, cashed in at the time of retirement.

Given the foregoing current and potential use, I would also RECOMMEND that the current level of contribution on the County's behalf remain at \$375 and that the Trust be amended so as to be open to all employees who opt for health coverage under the County's plan regardless of hire date, and further amended to provide for voluntary contributions by all Plan participants.

CONCLUSION

This Fact-Finding Report was designed to assist the parties in their current impasse. It is not, nor should it be seen as a substitute for good-faith collective negotiations. While it is this Fact Finder's hope that the parties will adopt his findings, it is also hoped that the discussion herein will provide a platform for future negotiations.

Respectfully submitted this ____ day of July, 2006.

Dennis J. Campagna, Esq.
Fact Finder