

**NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of the Fact Finding Between

TOWN OF TONAWANDA, Employer

- and -

TOWN OF TONAWANDA SALARIED  
WORKERS' ASSOCIATION, Union

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**FINDINGS OF FACT AND  
RECOMMENDATIONS**

**Case No. M2016-137**

**BEFORE:** Lise Gelernter, Fact Finder

**APPEARANCES:**

**For the Employer:**

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**For the Union:**

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**I. INTRODUCTION**

**A. The parties.** The Town of Tonawanda (Town) is a suburb just north of Buffalo, New York, with a population of 73,567 as of the 2010 census. Town brief, p. 21. The Town employs approximately 147 people in a bargaining unit represented by the Town of Tonawanda Salaried Workers' Association (TOTSWA or Union) who work in several departments in the Town and who hold a variety of titles including Clerk, Accountant, Labor Crew Chief, Housing Inspector, Wastewater Treatment Plant Operator, Dog Control Officer, Junior Forester, Maintenance Crew Chief and many more. Union brief, p. 6; Jt. Ex. 1, CBA, Art. VII. There are two other bargaining units in the Town: 1) the Town of Tonawanda Police Club; and 2) the Hourly Employees Association, which is the largest bargaining unit in the Town. Town brief, pp. 46-47. There are

also 42 Town employees who are eligible for health insurance but who are not in any bargaining unit, many of whom hold managerial or confidential titles. Union Ex. 44; Town Response to Fact Finder's Questions (Town Response), p. 7.

The base wage for a member of the TOTSWA bargaining unit at the top step ranges from \$34,000 to \$76,000, with most salaries falling between \$35,000 and \$60,000, with an average of \$50,000. Union brief, p. 7; Jt. Ex. 1, Art. VII. The base wage for a four-year, top step member of the Police Club unit as of January 1, 2018 will be \$77,722.00. Union Response to Fact Finder's Questions (Union Response), p. 3.

**B. The negotiation, mediation and fact finding processes.** The collective bargaining agreement (CBA or contract) between the Town and the Union expired on December 31, 2011. Jt. Ex. 1, § 1.02. The parties met many times to negotiate a new contract without success at arriving at a final agreement and the Union filed a Declaration of Impasse with the Public Employment Relations Board (PERB) on September 13, 2016. Jt. Ex. 8. PERB appointed a mediator to assist in the negotiations, but despite meeting with the mediator twice, the parties still were not able to agree on a contract. On April 24, 2017, the Union petitioned PERB to appoint a fact finding board and on June 1, 2017, PERB appointed this fact finder, pursuant to Civil Service Law § 209(3)(b). Jt. Exs. 9, 10.

The parties agreed to a fact finding process in which they submitted briefs and exhibits supporting their positions by October 6, 2017. I followed up with written questions on November 6, 2017 and the parties provided their answers on December 1, 2017. Although there were several open issues, the parties agreed to have the fact finder make recommendations on the issues of health insurance and salary increases only, as they anticipated being able to resolve the

other issues once terms on health insurance and salary were finalized. I met with the parties in person on December 8, 2017 at the Town's offices and the representatives for both the Union and the Town had the chance to explain their positions and answer a few questions I had.

**C. Standards and Presumptions.** Section 209 of the New York Civil Service Law governs the fact finding process in this case, but it does not set forth standards for a fact finder to follow to make an informed recommendation to the parties as required by Section 209.

N.Y. Civ. Serv. L. §209(3)(c). In lieu of statutory standards directly applicable to this case, I have looked for guidance from the principles described in the statute applicable to binding arbitration of certain contractual disputes. These principles provide that recommended terms for a contract should reflect the terms that the parties would have or should have agreed upon based on:

- a) a comparison with similarly situated employees and employers in similar markets;
- b) the ability of the employer to pay for the terms of the contract and the impact of the contract's terms on the public interest; and
- c) the terms of agreed-upon contracts in the same or comparable regions and for similar or comparable employees and employers.

*See* N.Y. Civ. Serv. Law § 209(4)(c)(v).

## **II. THE TOWN'S FINANCIAL STATUS**

Both the Town and the Union provided comprehensive financial analyses of the Town's finances. Town brief, pp. 25-37; Union brief, pp. 15-45; Union Hynes Exs. 1-28. It would be impractical to go through all the data provided but the Town's description of its fiscal status provides a snapshot. It stated that its General Fund :

reported a net increase in fund balance of \$970,779. At December 31, 2016, the

unassigned fund balance for the General Fund was \$5,520,444 or 21.3% of total General Fund expenditures and transfers out.

The Town was able to pay for current services and maintain a healthy reserve fund by closely monitoring expenses.

Town brief, p. 25.

While the Town has managed its finances responsibly, it has had to deal with several financial challenges. The State's real property tax cap, General Municipal Law §3-c, limits the property tax increase a municipality can impose to 2% or the rate of inflation, whichever is lower, plus certain additional factors. Town brief, pp. 10, 19, 34; Union brief, p. 40. However, if the Town's Board votes to exceed the 2% limit with a 60% vote in favor, it can override the cap. *Id.*, pp. 40-41.

The Town lost its largest taxpayer when the Huntley Power Generation Station closed on March 1, 2016. Town brief, pp. 37-38; Union brief, p. 42. It had been paying the Town a payment-in-lieu-of-taxes (PILOT) since 2013 and made its last payment of \$2.2 million to the Town in February 2016. Town brief, p. 37; Union brief, p. 42. The New York State Legislature created an Electric Generation Facility Cessation Mitigation program in early 2017 that will share \$45 million in funds for all similarly affected municipalities statewide over a seven-year period. Town brief, p. 38. That program is supposed to reimburse the affected municipalities 80% of lost tax revenues for the first year, then decreases 10 percent each year to a 20% reimbursement in the seventh year. The program concludes after all \$45 million is spent, even if that occurs before the end of the seven-year program. Town brief, p. 15.

Anthony Hynes, the Union's fiscal expert, calculated that the 2017 loss of revenue due to the termination of the Huntley PILOT program was a "net 0.52% decrease compared with 2016

Actual Revenues in the General Fund-Townwide . . . a net 0.59% decrease compared with 2016 Actual Revenues in the General Fund-TOV . . . [and] a net 0.88% decrease compared with 2016 Actual Revenues in the Highway Fund-TOV.” Union brief, p. 43. Mr. Hynes also pointed out that the PILOT program reduced the revenues from the Huntley plant by 50% from \$4.4 million annually to \$2.2 million in 2013, but the Town was still able to provide salary increases to its non-bargaining unit employees and Police Club unit members for 2013-2017. *Id.*

As the Town started collecting less in taxes from the Huntley plant, the Town experienced an increase of \$835 million in the full value of taxable real property starting in 2014, going from \$3.7 billion to over \$4.5 billion. Union brief, p. 29; Union Hynes Ex. 11, p. A-10. As highlighted in Town Supervisor Emminger’s 2017 State of the Town address, the Town has experienced a great deal of new investment in property and jobs by existing and new companies since 2010. Union brief, pp. 29-30; Union Ex. 40, pp. 17-22.

The Town also has a total of \$124,258,552 in unfunded post-employment benefit liability (OPEB) for the cost of health insurance and benefits other than pensions for retirees. Town brief, p. 34. At the December 8, 2017 fact finding meeting, the Union’s financial expert, Anthony Hynes, pointed out that OPEB liability is not accounted for as a current liability. The Town acknowledged that all municipalities pay OPEB on an ongoing basis.

Despite the challenges the Town faces, the Union’s expert found the Town to be in a very healthy fiscal position with more than adequate resources. The sum of the Assigned and Unassigned Fund Balance across all funds has increased every year from 2013 to 2016. Union brief, p. 32. These are essentially cash reserves. At the end of fiscal year 2016, the Town had \$34.4 million in total fund balances, with \$5.5 million unassigned in the General Fund and

\$28.849 million assigned in all funds. Mr. Hynes said this was more than enough to pay for the Union's proposed retroactive raises from January 1, 2012 through August 2017, which he estimated would cost \$1.917 million. Union brief, p. 37. At the December 8, 2017 meeting, Mr. Beiter, the Town's attorney, pointed out that having fund balances is what helped make the Town's financial position relatively healthy. He said that although there might theoretically be funds available from assigned or unassigned fund balances, it would not be in the best interests of the taxpayers nor would it be prudent to spend down fund balances unnecessarily.

The Town did not budget in past years or this year for the possibility of retroactive wage increases because it had taken the position that there should be no wage increases in any year in which all members of the TOTSWA bargaining unit were not paying a percentage share of the health insurance premium. The Union counters that the Town's decision not to budget for retroactive wage increases should not be used to justify no retroactivity in wage increases.

The bottom line is that the Town is in good financial shape, but only because it has tried to manage its finances appropriately and avoid large tax increases. It has managed to pay for raises for the police bargaining unit and the non-bargaining unit employees even when its largest taxpayer was closing down. While it lost a large taxpayer when the Huntley plant closed, it has added new properties to the tax rolls and benefitted from new business investment in the last seven years.

### **III. HEALTH INSURANCE**

The current monthly cost for the health insurance plan for the TOTSWA bargaining unit is \$781 for single coverage and \$2158 for family coverage. Town brief, p. 7. The chart below shows what the cost to employees would be of various percentage contributions that the parties

have proposed or that are currently in place for some employees.

**Current Health Insurance Cost by Percentage**

<b>Percentage</b>	<b>Single</b>	<b>Family</b>
100%	\$781.00	\$2158.00
25%	\$195.25	\$ 539.50
20%	\$156.20	\$ 431.60
10%	\$ 78.10	\$ 215.80
5%	\$ 39.05	\$ 107.90

**A. The three classes of health insurance status for this bargaining unit.** The Town and Union created three different classes of health insurance status over the years. First, there is a group of employees who currently do not pay any part of the health insurance premium. Since the 1995-1997 contract, there has been a class of employees who were required to pay 25% of the health insurance premium during their first three or four years on the job, depending on the CBA. After that three or four-year period, the Town became responsible for 100% of the health insurance premium. *See* Union brief, pp. 8-9. The 2002-2006 CBA provided that employees hired before April 1, 2004 (“pre-4/1/04 employees”) would pay 25% of the premium during their first four years and 0% thereafter. *Id.*; Jt. Ex. 3, §11.03. The 2007-2009 and 2009-2011 contracts did not change the status of the pre-4/1/04 employees, so at this point, all of them have completed their four-year period of making a 25% health insurance contribution and the Town currently pays 100% of their premium. Jt. Ex. 1, § 11.03; Town brief, p. 2.

The second class of employees are those who currently pay a fixed dollar amount towards the premium. They were hired on or after April 1, 2004 but before February 28, 2011 (“post-4/1/04 employees”). The 2002-2006 contract required them to pay 20% of the health insurance

premium during their first four years of employment and then \$145.09 per month for family coverage and \$51.78 for single coverage for the remainder of their time as employees. Union brief, p. 9; Jt. Ex. 3, § 11.03. The 20% percentage premium share for the first four years of employment for this group stayed the same through the current 2009-2011 contract but the post-four-year contribution amount changed to require a \$100.00 per month contribution for a family plan and \$50 per month for a single plan. Jt. Ex. 1, § 11.03.

The third class of employees pays a percentage of the health insurance premium throughout their careers with the Town. This group includes employees hired after February 28, 2011 (“post-2/28/11 employees”). The 2009-2011 contract provides that they must contribute 20% of the health insurance premium during their first four years on the job and then 10% of the premium after that, continuing through their retirement. Union brief, p. 10; Jt. Ex. 1, § 11.03.

**B. Health insurance contributions in other bargaining units and for non-unionized employees.**

**1. The Police Club unit.** In March 2016, the Town and the Police Club agreed to a contract covering the years 2013 to 2019. Town brief, p. 46. As part of the deal for 17% in wage increases over seven years, the Union agreed to have all members of the unit hired prior to January 10, 2011 pay 5% of the health insurance premium up to a maximum of \$2100 per year. Previously, these employees had not contributed anything to the cost of the premium. The new contract continued the 10% contribution that unit members hired after January 10, 2011 pay. *Id.*; Town Response, p. 6. The Police Club also agreed to convert the health insurance plan from the POS 229 to the POS 204 Plan the Town had proposed. *Id.* Town brief, p. 46.

**2, Hourly employees.** The Hourly Employees Association (HEA) and the Town



had reached agreement on a tentative contract in December 2016, but that union's members did not approve it. Therefore, the HEA bargaining unit is currently operating under a contract that expired on December 31, 2011. Town brief, pp. 46-47. The tentative agreement had included a switch from the POS 229 to the POS 204 Plan and a 5% health insurance contribution for all employees. *Id.*, pp. 46-47.<sup>1</sup>

**3. Non-bargaining unit workers.** Each year, the Town adopts resolutions concerning the salaries and benefits of elected officials, non-bargaining unit workers, and part-time and temporary workers who are not part of the HEA unit. Union Ex. 44 (2017 resolutions). Under the 2017 resolutions, the Town continued its practice of having two health insurance classes of non-bargaining unit employees. Those employees hired between January 1, 2002 and April 1, 2004 had to pay 25% of the health insurance premium for their first four years with the Town and then nothing after that. All of those employees still with the Town have been employed for more than four years so they currently do not contribute anything to the health insurance premium. Non-bargaining unit employees hired before January 1, 2002 also do not contribute to health insurance. Employees hired on or after April 1, 2004 pay 20% of the cost of health insurance during their first four years of employment and then after that, pay \$51.78 monthly for single coverage and \$145.09 per month for family coverage. Town's Response, p. 7; Union Brief, p. 5; Union Ex. 44.

Of the 42 non-bargaining unit employees eligible for health insurance, seven do not take the insurance. 20 of the remaining 35 non-bargaining unit employees who use the Town

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<sup>1</sup>I had not requested information on the current HEA health insurance arrangement from the parties, but based on the tentative agreement that was not ratified, there are at least some employees in that unit who currently do not contribute to the health insurance premium.

insurance plan pay nothing for health insurance and 15 are subject to the four-year 20% contribution followed by the fixed dollar contributions. Town Response, p. 7.

**4. Health insurance in comparable municipalities.** The Union provided comprehensive information on the health benefits for employees with comparable titles in comparable municipalities. Union Ex. 3. Because of the great variation among the communities, it was hard to detect a trend or a prevailing practice with respect to percentage versus dollar amount employee contributions, the amount of the employee contribution, if any, and the types of employees paying the health insurance contributions.

**C. The type of health insurance plan offered for the TOTSWA unit.** In March 2006, the Union agreed to the Town's proposal to change from offering health care options from more than one insurer to offering plans from a single insurer as of April 1, 2006. Union brief, p. 9; Jt. Ex. 2. Under the 2009-2011 contract, the Town changed to a Point of Service ("POS") 229 base health insurance plan for all its employees. Jt. Ex. 1, §§ 11.01, 11.02; Union brief, pp. 9-10.

**D. The parties' proposals.**

**1. The Town.** During the negotiations for a new contract, the Town had taken the position that all employees should contribute a percentage of the cost of the health insurance. 82 of the 130 bargaining unit members who participate in the health plan do not contribute anything towards the premium. 23 unit members pay \$50 per month for single coverage and \$100 per month for family coverage. The 25 other participating employees pay 10% of the health insurance premium after having paid 20% during the first four years of employment. Town brief, pp. 2-3. 109 employees are currently enrolled in a family plan and 21 are enrolled in a single plan. *Id.*, p.52.

The Town's most recent proposal was to phase in a 5% contribution for those employees not paying a percentage of the premium that would take full effect by the final year of a new agreement. *Id.* The terms for the post-2/28/11 employees would remain unchanged under the Town's proposal. In addition, the Town took a firm position that since any change in health insurance contributions would not be retroactive, there should be no retroactive salary raises for the TOTSWA. This issue will be addressed in further detail in Section III below, concerning salary increases.

In addition, the Town sought to switch from the current POS 229 health plan to a POS 204 Plan, which has a less costly premium, but increases co-pays for doctors' visit from \$5 to \$15 and for prescription drugs from \$1 (Generic)/\$10 (Tier 2)/\$25 (Tier 3) to \$7/\$25/\$50. Town brief, pp. 4-6; Town Ex. 2; Union brief, p. 59. The POS 204 plan otherwise provides equivalent coverage except for some "minor variances" in benefit maximums. Town brief, p. 6; Town Ex. 6. In addition, the network of providers is the same for the POS 204 Plan as it is for the POS 229 Plan. Town brief, p. 8. For the POS 204 Plan, the monthly cost is \$739 for a single and \$2051 for a family, as compared with the current POS 229 Plan's monthly cost of \$781 for single coverage and \$2158 for family coverage. *Id.* p. 7.

**2. The Union.** The Town reports that at one point the Union had taken the position that it would rather have no salary increase than forgo the 0% health insurance contribution that a majority of the bargaining unit members enjoy. Town brief, pp. 13-14. However, the Union has since made proposals allowing for premium contributions by all employees, including a proposal on September 1, 2016. Union Ex. 12. The Union's most recent position on health insurance was to agree to the change to the POS 204 Plan for employees hired after ratification. As to premium contributions, the Union proposed that pre-4/1/04 employees

would pay \$25 per month for single coverage and \$75 for family coverage during the first four months of a contract, which would then increase to \$35 per month for single coverage and \$100 per month for family coverage. Their proposal did not change the \$50/\$100 contributions for the post-4/1/04 employees and did not change the treatment of the post-2/28/11 employees, who contribute 20% of the premium in the first four years of employment and then 10% thereafter. The Union's proposal was contingent upon the Town accepting its proposals for salary increases. Union brief, pp. 59-60.

**E. The parties' positions.**

**1. The Town.** The Town points out that continuing to have 82 employees pay nothing for health insurance is very costly for the Town, is not consistent with current trends and provides no incentive to the employees to be cost conscious in using their health benefits. The Union's proposal to have those employees join the post-4/1/04 employees in paying a small fixed dollar amount towards the health insurance premium does not address the current problems sufficiently. The Town will still have to absorb the entire cost of any increase in the premium and the proposal would not encourage employees to curb costs or health care utilization. Therefore, the Town is insistent on every employee being responsible for a percentage share of the premium. The Town acknowledged that employees who currently pay nothing for health insurance and those who pay either \$50 or \$100 per month might need a phase-in period and did not propose that they match the 10% contribution that post-2/28/11 employees who have worked for at least four years currently pay. Instead, the Town proposed that the pre-4/1/04 and post-4/1/04 groups would pay 5% of the premium by the final year of a successor agreement, allowing for the contributions to be phased in during the prior years.

The Town's position is consistent with the health insurance structure of the Police Club's 2016 contract. Every Police Club member is now contributing a percentage of the health insurance premium. The Town argues that TOTSWA should therefore agree to its proposals.

**2. The Union.** The Union urges the fact finder to reject the Town's proposal to have all employees hired prior February 28, 2011 pay 5% of the health insurance premium. Although the Police Club agreed to a 5% contribution for longer-tenured employees with an annual cap of \$2100, the Police Club members earn a much higher salary than most TOTSWA members. The 2017 base salary of a top step member of the Police Club bargaining unit was \$69,015, whereas the average salary for TOTSWA members is \$50,000, with many members earning less. The financial burden of a 5% contribution would be too great, the Union argues. Furthermore, the Town continues to pay 100% of the health insurance premium for many non-bargaining unit members while the remainder pay 20% during their first four years and then the set dollar amounts after that. If the Town thought it was so important to have all employees contributing a percentage of the premium, it could have made that change unilaterally for non-bargaining unit members, but it did not. Union brief, pp. 61-62.

**F. Discussion.** It is difficult to square the Town's position of requiring all bargaining unit employees to contribute a percentage of the health insurance premium with its position on non-bargaining unit members, who either pay nothing or a fixed dollar amount after four years of service. The Town Board could have changed this practice unilaterally, but it did not do so. The Town Board's 2017 resolutions on non-unionized employee health insurance occurred under fiscal conditions similar to today's circumstances and after the Town had reached its current agreement with the Police Club in 2016 in which all employees in that bargaining unit pay a

percentage share of the health insurance premium.

It is also difficult to see consistency in the Union's position. On the one hand, it rejects a 5% contribution and wants to maintain a fixed dollar contribution for members hired prior to February 28, 2011 because the Union believes a percentage contribution with a \$2100 cap would be too great a financial burden to its members. On the other hand, it accepts no change in the 20% contribution rate for employees hired after February 28, 2011 for their first four years and 10% thereafter. Newly hired employees are usually brought in at the lowest possible salary in their titles. If paying a 5% contribution would be too great a burden on more senior and more highly paid employees, why is a 20% contribution, dropping to 10%, acceptable for less senior employees?

I realize that some of the perceived inconsistencies are artifacts of the bargaining process. The Town may have followed a practice of waiting for the settlement of all bargaining unit contracts before making changes for its non-bargaining unit employees. The Union may have been willing in the past to give partway on the issue of employee contributions to health insurance in exchange for something else, while effectively grandfathering employees who had a long tenure with the Town.

Rather than make a recommendation based on the parties' tactical positions, which might only perpetuate and enlarge some of the inequities, my recommendation is based on what I think the parties would have agreed to based on the current circumstances. Both parties did not propose changing the health insurance contribution regime for employees hired after February 28, 2011, so I, too, do not recommend any change.

As for the employees who are either paying nothing or paying a fixed dollar amount for health insurance, the Police Club's settlement is instructive. Although the Police Club's

membership have different jobs and higher salaries, they arguably had a stronger position at the bargaining table than TOTSWA did because of the possibility that an interest arbitration award might resolve their impasse. *See* Town brief, p. 15. Therefore, their agreement to require all Police Club members to pay at least 5% of the health insurance contribution is evidence of what the Town was willing to settle for and of what the Police Club thought was the best that it could get. The TOTSWA bargaining unit should follow the same course.

**G. Recommendation.** For the reasons discussed above, my recommendation for the TOTSWA contract parallels the Police Club's contract. All employees hired prior to February 28, 2011 should pay 5% of the health insurance premium starting in the year after there is an agreement on a contract. I also recommend the same cap of \$2100 on contributions and the switch to the POS 204 Plan. The current health insurance requirements for employees hired on or after February 28, 2011 should not change. They should continue paying 20% in their first four years followed by 10% contributions for the rest of their careers. Although I do not think it is desirable to treat employees differently with respect to health insurance based on their date of hire, the parties agreed to and have lived with this arrangement for many years and appeared to have accepted that the differential would continue.

Because my recommendation saves the Town money, at least for the immediate future, its fiscal status will improve and the Town's ability to pay is not in doubt. In contrast, I recognize that a 5% contribution, coupled with the higher co-pays of the POS 204 is not an insignificant burden for employees with an average \$50,000 salary who have planned their financial lives presuming that they would contribute either nothing or a set amount for health insurance. However, as discussed below, I am also recommending retroactive and prospective raises as part

of the entire package, which should provide a financial cushion. In addition, 5% of the current monthly premium is \$39.05 for single coverage and \$107.90 for family coverage, which is close to the \$50/\$100 contributions the post-4/1/04 employees are already making.

### **III. WAGE INCREASES**

Because the contract expired in 2011, the TOTSWA bargaining unit has not had a raise since then. The raises in the 2009-2011 contract were 2% in 2009, retroactive to January 1, 2010, and 2.75% in 2010 and 2011. Union brief, p. 10. The 2007-2008 contract provided for 3% raises for each year of the contract, as did the contract covering 2002-2006. *Id.*

**A. The Police Club raises.** The contract that the Town and the Police Club agreed on in 2016 to cover 2013 through 2019 contained a cumulative 17% across-the-board increase to the base salary (2.4% average per year). Union brief, pp. 4-5; Town brief, p. 46; Union Ex. 24. The 2013-2016 raises were retroactive, even though the commencement of the 5% health insurance contribution for employees hired before January 10, 2011 was not. The “availability of compulsory interest arbitration” was a factor in the negotiations, the Town contends, and the Police Club circumstances should not be considered to be comparable to the TOTSWA circumstances. Town brief, p. 15.

**B. The HEA raises.** The members of the Hourly Employees Association bargaining unit have also been without a raise since 2011. They voted down a tentative agreement reached in December 2016 that would have had no retroactive wage increases, but provided “a significant ratification bonus.” Town brief, pp. 46-47

**C. Non-bargaining unit raises.** The Town made the unilateral decision to provide non-bargaining unit employees with a 2% raise in 2012, 1.5% in 2013, 2% in 2014 and 1% in each



year from 2015 through 2017, which the Union calculated to be an overall 8.5% increase between 2012 and 2017. Union brief, p. 4; Union Ex. 44. During that period, the current health insurance contribution structure was in place with employees hired before April 1, 2004 paying nothing for their health insurance and those hired on or after April 1, 2004 paying 20% during their first four years and then \$51.78 for single coverage and \$145.09 for family coverage for the rest of their tenure with the Town.

The Town notes that there are only 42 non-bargaining unit employees eligible for health insurance, as compared with the 147 people in the TOTSWA unit. Town Response, p. 7. The 2016 compensation costs for non-bargaining unit employees was about \$2.5 million as compared with \$9.2 million for the TOTSWA employees. *Id.* p. 8.

**D. The parties' proposals and positions.**

**1. The Town.** The Town's position was that there should not be any retroactive wage increases for years in which any members of the bargaining unit were not contributing to the cost of health insurance. Town brief, p. 9. The Town sees raises as a quid pro quo for "all employees paying a percentage of their health insurance." *Id.* Further, the Town noted that the Union leadership stated at some point during the negotiations that they would prefer to forgo wage increases in order to allow some of its members to continue paying nothing for their health insurance. *See id.*, pp. 4, 13, 52, 54-55.

Provided that all employees would begin contributing a percentage of the health insurance premium during the contract term and the bargaining unit would change over to the POS 204 health plan, in 2016 the Town had proposed raises to the top step only<sup>2</sup> of 2.0% effective

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<sup>2</sup>The salary schedule shows there are four steps. Jt. Ex. 1, § 7.01.

September 1, 2016, 1.5% effective January 1, 2017, 1.5% effective January 1, 2018 and 2.5% effective January 1, 2019. Union brief, p. 4; Union Ex. 9. A 2% raise increases the bargaining unit's payroll by approximately \$182,000 in one year. Town Response, p. 9.

The Town's updated wage proposal, provided in its October 6, 2017 brief, would provide no retroactive raises, but would award a one-time ratification bonus of \$1,000 for each full year of service up to a maximum of \$5,000 as of January 1, 2017. Town brief, p. 47. This bonus would not be added to the base salary. \$1,000 is 2% of the average \$50,000 wage and \$5,000 is 10% of the average wage. The Town also proposed raises of 2% on January 1, 2018, January 1, 2019, and January 1, 2020, plus a 1% raise on October 1, 2020. Town brief, p. 47.

The retroactive raises the Union proposed would cost the Town \$4.25 million in 2018, along with \$1.67 million for a raise in 2018. Because the Town has already adopted its 2018 budget, this means funding for retroactive wage increases would have to come from the Town's fund balance. Although the fund balance may be enough to cover the retroactivity, it would deplete the funds that Tonawanda has been able to keep on hand to address budgetary gaps. This would not be a prudent way to spend the fund balance, according to the Town. Town Response, p. 10.

**2. The Union.** The Union proposed retroactive wage increases of 2% for 2012-2015, 3% for 2016-2018 and 4% for 2019. The Union analyzed the wages and benefits of the comparable communities of the Town of Amherst, Town of Cheektowaga, Town of Hamburg and Town of West Seneca and found that the TOTSWA unit's wages and benefits lagged far behind. Union brief, pp. 12-13, 47; Union Ex. 1. The Union's wage increase proposals are necessary to close that gap, according to the Union.

In addition, the Union argued that the wages and benefits of the Town's own non-bargaining unit employees in Tonawanda and the Police Club members were the best basis for comparison. Union brief, p. 13. The Union stated that many non-bargaining unit employees "perform similar services, are required to have similar skills and work under similar working conditions as many of those employees in [the TOTSWA] bargaining unit." Union brief, p. 13. For example, the following titles are found in both the non-bargaining unit group and the TOTSWA unit: Clerk, Clerk Stenographer, Code Enforcement Officer, Dog Control Officer, Paramedic and Paramedic Trainee. *Id.* As to comparisons with the Police Club, even though the TOTSWA employees are not police officers, many of them face similar physical demands in jobs that require someone on duty 24 hours per day, 365 days per year, and have to respond to emergencies. This includes the Town's Paramedic Corps, Highway Department employees and Dispatchers. Union brief, p. 14. The Police Club members received retroactive raises and a significant overall 17% wage increase and non-bargaining unit members received raises all along even while a significant portion of both those groups was not paying anything for health insurance or paying a "small flat rate." *Id.*, pp. 5, 13. Therefore, the Union contends, the TOTSWA unit members should receive retroactive and prospective wages that are similar.

The Town can afford the retroactive raises, according to the Union and its fiscal expert. Anthony Hynes. A comprehensive analysis of the Town's overall fiscal health shows that it has consistently been in good financial shape and that it can pay for the proposed retroactive and prospective raises without a significant impact on its fund balance or tax levy and without implicating the tax cap. Union brief, pp. 15-45. For example, Mr. Hynes calculated that the Union's salary proposal through 2017 for employees paid out of the General Fund-Townwide

would cost about \$1.9 million and there was \$8.1 million in the total assigned plus assigned fund balance at the end of 2016. *Id.*, pp. 37-38.

**E. Discussion.** The Town's bargaining position of no retroactive raises when employees do not pay for a percentage of their health insurance premiums is not consistent with its position concerning the retroactive raises it agreed to with the Police Club and the raises it used its discretion to provide to its non-bargaining unit employees. Moreover, it appears that although the Town understandably would prefer not to have to pay large lump sum retroactive payments out of its fund balances or to budget for future raises, it has the ability to pay for them. The Town's willingness to provide raises to its 42 non-bargaining unit employees even though it did not have to is one of the best indicators of the Town's willingness and capacity to provide something similar to other employees. Although there are more than three times as many employees in the TOTSWA bargaining unit, the cost of what the Town provided to its non-bargaining unit employees is not insignificant. Total compensation for non-bargaining unit employees in 2016 was approximately \$2.5 million. Town Response, p. 8. A 2% raise for just one year cost \$50,000. In addition, the Town's most recent proposal for the TOTSWA unit would provide a ratification bonus of between \$1,000 and \$5,000. Since only 21 out of the 147 unit members have fewer than five years of service, this means that the Town can afford, at a minimum, a lump sum payout of about \$672,000 (assuming an average of \$2,000 for the 21 employees who have not worked for five full years). *See* Town brief, pp. 39-44 for employee dates of hire.

For the reasons discussed above, I am recommending retroactive raises, but at a lower rate than proposed by the Union. Because of the inherent difficulty in comparing packages of

wages and benefits among other municipalities due to the variation in titles, benefits provided, prior wage increases and other components, a wage increase to close a perceived gap with other municipalities is not justified. However, the Town-provided raises to its non-bargaining unit members are a very good indicator of what the parties could have agreed to at the bargaining table: a 2% raise in 2012, 1.5% in 2013, 2% in 2014 and 1% in each year from 2015 through 2017.

Although the Union pointed out that many TOTSWA members face hazards, stress and schedules that are similar to what the Police Club membership faces, their jobs are, overall very different. Although they are not directly comparable in terms of jobs, they are somewhat comparable in terms of collective bargaining for raises since both groups have the same employer. However, there is one difference between the two units. Compulsory interest arbitration in which an arbitrator imposes a contract on the Town and the Police Club was a possibility pursuant to New York Civil Service Law § 209(4)(c). There is no compulsory interest arbitration for the types of employees in the TOTSWA bargaining unit. The Town implied that it felt additional pressure to settle the Police Club contract due to the unknown outcome of interest arbitration. *See* Town brief, p. 15. At our December 8, 2017 meeting, we also discussed the fact that the Police Club raises have not set the pattern for other units' raises historically, and I do not recommend that the Police Club's retroactive raises serve as a model for the TOTSWA bargaining unit.

The Town had offered a large ratification bonus which could represent up to 10% of the average \$50,000 salary in the TOTSWA unit. However, I am recommending a retroactive wage increase instead for two reasons: 1) both the non-unionized workers and the Police Club

members received retroactive raises; and 2) raises are added to a base salary, whereas the one-time bonus offered would not. I recognize that the Town made this proposal to both provide an incentive to unit members to agree to its proposed terms and to save money in the future by avoiding the compounding effect of raises added to the base salary. A ratification bonus in lieu of retroactive wages could be something for the parties to consider when they resume negotiations on the contract. However, I am recommending retroactive wage increases due to the guiding principle of trying to recommend terms that the parties would have agreed to. My recommendation is based on the Town's actions with respect to raises and health insurance with its other groups of workers and TOTSWA'S consistent demand for retroactive raises,

As to future raises in 2018 through 2020 (assuming a contract extends through 2020), the Union had proposed a 3% raise for 2018 and 4% for 2019. The Town's most recent proposal provides 2% in three separate years, as of January 1 of 2018, 2019 and 2020, and a 1% raise as of October 1, 2020. This proposal was contingent upon all employees paying percentage contributions to health insurance and a switch to the POS 204 Plan, which I have recommended. The Union's proposal exceeds what the Police Club membership received (an average of 2.4%) per year, so it is unlikely that the parties would have agreed to the Union's proposals. Assuming the parties would have agreed to future wage increases that were somewhat lower than the police, but taking into account that I am recommending a relatively small retroactive wage package, I recommend that the parties adopt the Town's wage increase proposal for 2018-2020.

**F. Recommendation.** I recommend that there be retroactive wage increases as follows: 2% for 2012, 1.5% for 2013, 2% for 2014 and 1% in each year from 2015 through 2017. The retroactive wages may be paid two lump sums: one within six months of adoption of an

agreement and the other six months later. Future wage increases should be: 2% on January 1, 2018, January 1, 2019, and January 1, 2020, plus a 1% raise on October 1, 2020.

#### **IV. CONCLUSION**

My recommendations were based on the financial data and other information the parties provided and the parties' arguments for their proposals. The parties are to be commended on their comprehensive research and presentations and on their willingness to answer my questions and provide additional information when I requested it.

In making my recommendations, I was also guided by the principles set forth in Section I of this report and believe that my findings reflect as close an approximation as possible to agreements the parties theoretically would have reached on the issues of health insurance and wage increases. I took into account the Town's ability to pay and the treatment of other Town employees. The Town and the Union will, hopefully, be able to adopt my recommendations or use them to jump start their negotiations to find alternative solutions.

December 29, 2017  
Amherst, New York

  
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Lise Gelernter, Fact Finder

