ATTORNEY/CLIENT MEMORANDUM

To: Ulster County Executive Jen Metzger

From: Roemer Wallens Gold & Mineaux LLP

Date: December 15, 2024

Re: Legal implications of unilateral adoption of pay raises for represented employees

Ulster County ("County") has requested an opinion from the firm on the legal implications of the unilateral adoption of pay raises through the budget process by the County legislature for certain individuals who are members of represented bargaining units. The amendments to the budget provide raises for employees in many titles in the County's Public Works department (including Buildings and Grounds employees and Central Auto employees) covered by the CSEA bargaining unit, as well as employees in the UCSA bargaining unit.[1]

Negotiability Violation Under the Taylor Law

The actions of the legislature constitute a violation of the Taylor Law and an improper practice as a failure to bargain with the union representing these employees regarding compensation which is a mandatory subject of bargaining. If the County is held to have violated its obligation to bargain in good faith with the union regarding compensation, PERB can order the County to cease and desist from unilaterally implementing the increases to compensation.

The employees at issue are members of the bargaining unit represented by the CSEA and the UCSA. Article 2 Section 1 of the collective bargaining agreement between the County and CSEA states that the County acknowledges and agrees that the CSEA is the exclusive bargaining representative for these employees, and nearly identical language is included in Article 2 Section 1 of the UCSA agreement. The Taylor Law requires a public employer to negotiate with the duly recognized representatives of its public employees over terms and conditions of employment. N.Y. Civil Service Law 209-a.1(d). The New York State Public Employment Relations Board ("PERB") which enforces the Taylor Law has consistently held that compensation is a mandatory subject of

[1] Among the affected employees are those in the title of Cleaner in the County DPW which is represented by CSEA. There are employees in the same title and grade as these employees who work at SUNY Ulster (a joint employer with the County with respect to these employees), whose wages were not (and could not be) raised through the budget process. If adopted, the SUNY Ulster cleaners would be earning less per hour than the Ulster County DPW employees.

bargaining which cannot be unilaterally changed without negotiation with the union.[2] *See, i.e.*, *Huntington Union Free Sch. Dist. No. 3*, 16 PERB 3061 (1983); *County of Suffolk*, 15 PERB 3021 (1982), *Brookhaven-Comsewogue Union Free Sch. Dist.*, 22 PERB 3037 (1989); *Hempstead Union Free Sch. Dist.*, 9 PERB 3019 (1976); *Dutchess Comm. Coll. And County of Dutchess*, 46 PERB 4557 (2013.) PERB has held that compensation, specifically "wages and salaries…are the most basic terms and conditions of employment and, therefore mandatory subjects of bargaining. *Bellmore Union Free Sch. Dist.*¸34 PERB 3009 (2001); *Town of Scriba*, 35 PERB 4501 (2002). A unilateral change in compensation without negotiation with the union has been found under these cases to violate Section 209-a.1(d) of the Taylor Law as a refusal "to negotiate in good faith with the duly recognized or certified representatives of its public employees."

It is noteworthy that PERB has also rejected the argument that making the increases to compensation public by including them in the tentative and proposed budgets does not make the unilateral change in wages permissible under the Taylor Law in a case against this very County. In *County of Ulster*, PERB held "although the conduct of the County was not clandestine, that conduct cannot be deemed appropriate without prior notice to CSEA." (*County of Ulster*, 14 PERB 3008 (1981) Therefore PERB held that the County violated Civil Service Law 209-a.1(d) by making a unilateral change to compensation which is a mandatory subject of bargaining without negotiation with the Union. *Id.*

Where PERB finds that an employer made a unilateral change to employee compensation without negotiation with the union, it can order the employer to cease and desist from failing to negotiate with the union and to cease and desist from implementing the change. *See, i.e.*, *County of Ulster,* 14 PERB 3008 (1981.) PERB issued such an order to the County in that case, directing it not to implement merit increases which were adopted exclusively through the budget process without first negotiating with the Union. It is possible PERB may find that the County's actions here violate that prior order. Even if the instant actions were deemed to differ from those taken by

[2] There is an "emergency" exception to this principle adopted by PERB which allows an employer faced with an emergency that creates a compelling need to act unilaterally before the conclusion of negotiations. However, an employer relying on this "emergency" defense must demonstrate the following: (1) the negotiation between the parties remains "deadlocked;" (2) the employer is faced with an articulable compelling reason to act unilaterally at the time it took the unilateral action; and (3) the employer is willing to continue negotiations thereafter. *See Wappingers Cent. Sch. Dist*., 19 PERB ¶3037 (1986). None of these criteria are met here.

the County in that case, PERB would almost certainly find that these actions separately violate the Taylor Law and order the County to cease and desist if the unions filed an improper practice charge.

Other Potential Taylor Law Violations

These actions could also constitute an improper practice for interfering with and undermining the authorized bargaining agent in violation of section 209-a.1(a) of the Taylor Law which makes it an improper practice for an employer "to interfere with, restrain or coerce public employees in the exercise of their rights..." PERB has in fact authorized injunctive relief in cases where the union has established that the employer's actions would cause irreparable harm to the purpose of the union and diminish the trust of the represented employees in the union by even temporarily circumventing the collective bargaining requirements of the Taylor Law. *See, Matter of Application of Civil Service Employees' Association, Inc., Local 1000, AFSCME, AFL-CIO, for Injunctive Relief,* 54 PERB 7008 (2021.) In *County of Monroe*, where the union alleged that the employer's actions undermined the ability of the union to negotiate and represent its employees, the court found that there was a danger of irreparable injury to the union and supported the union's request for injunctive relief. 42 PERB 7007 (2012). There is a strong likelihood that the union(s) will file an improper practice charge with PERB against the County on grounds that the County's actions here similarly undermine their exclusive authority to negotiate over wages and that such an improper practice, and potentially injunctive relief, could be substantiated by PERB.

Finally, it is also an improper practice under the Taylor Law to refuse to continue all the terms of an expired agreement until a new agreement is negotiated. N.Y. Civil Service Law 209-a.1(e). While the collective bargaining agreements with CSEA and UCSA expire at the end of 2024, the County is required to continue those terms in effect at that time until a successor agreement is reached. To make unilateral changes to compensation even after the technical expiration of the agreement would constitute an improper practice under this provision.

Unconstitutional Gift of Public Funds

Further, the actions of the County could be deemed a violation of the New York State Constitution which prohibits the gifting of public funds without an enforceable contract, resolution, law, or other legal directive to do so. Article VIII, Section 1, of the New York State Constitution provides "no county…shall give or loan any money or property to or in aid of any individual…" The case law interpreting this provision has given context to it by stating that the

expenditure of public money by a municipality must be based on a statutory or contractual obligation. *Antonopoulou v. Beame*, 32 N.Y.2d 126, 131 (1973); *see also*, *Karp v. North County Community College*, 258 A.D.2d 775 (3d Dept. 1999) (holding monetary payment to public employees for unused vacation time would be deemed a gift of public funds prohibited by this provision of the New York Constitution unless "expressly authorized by statute, local law, resolution or pursuant to a contract term.") No such authorization is present here. As set forth further below, the County does have a contract term covering compensation for these employees, but the Board's actions would exceed those payments authorized by the contract.

Violation of the Collective Bargaining Agreement(s)

The County legislature's actions also violate the collective bargaining agreement between the County and the CSEA and UCSA. Article 5, Section 2, of the collective bargaining agreement with CSEA expressly states:

> "Under the terms of this agreement and pursuant to the [Taylor Law], the County shall negotiate collectively and in good faith with the Union in the determination of salaries and the terms and conditions of employment and to enter into a written agreement with the Union."

Wages for bargaining unit employees, including those whose salaries were unilaterally changed in the County's budget, have in fact been negotiated and are set forth in the collective bargaining agreements (Article 7 of the CSEA contract and Article 6 of the UCSA contract.) The payment of wages which differ from those set forth in the contracts would violate the terms of the collective bargaining agreement(s). With respect to the title of cleaner, the changes made in the budget amendment would result in individuals in the title of cleaner in the CSEA contract being paid at two different rates. The employees of SUNY Ulster in the title of cleaner, whose wages were not changed, would remain at the levels set forth in the contract which would now be lower than other employees in the title. Both of these issues constitute violations of the CSEA contract.

The agreements include a grievance procedure (Article 16 for CSEA and Article 14 for UCSA) to challenge alleged violations of the agreement by either party, which culminates in binding arbitration. Either union would have a strong argument in such a proceeding that the County's implementation of wages which differ from those negotiated is a violation of the contract.