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IN THE MATTER OF IMPASSE X
X
BETWEEN X
X
THE CITY OF READING, OHIO X
X
AND X
X
AFSCME OHIO COUNCIL 8 X
LOCAL 1093 X
X
X

**REPORT OF
THE FACT FINDER**

SERB FILE NO.: 2005-MED-10-1141

HEARING: July 26, 2006; Reading, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the City

Paul R. Berninger, Attorney

For the Union

Walter J. Edwards, Staff Representative

ADMINISTRATION

By way of a letter dated May 9, 2006, from Walter J. Edwards, the undersigned was informed of his designation to serve as fact finder regarding a successor collective bargaining agreement, negotiations impasse. On July 26, 2006, and following receipt of pre-hearing submissions, a fact finding hearing went forward where testimony as well as document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a fact finding report.

FINDINGS AND RECOMMENDATIONS

This matter involves a bargaining unit consisting of eighteen employees who work for the City of Reading, Ohio ("the City") and are represented by AFSCME Ohio Council 8, Local 1093 ("the Union"). These include non-supervisory, Public Works Department employees as well as a number of clerical/administrative employees who work in the City's administration building. Thus, the City and the Union ("the Parties") are each signatory to the previously expired, instant collective bargaining agreement ("the Agreement").

The Parties have successfully negotiated many of the terms of the successor Agreement; including several which were tentatively agreed upon during the course of the July 26, 2006, fact finding hearing. However, a number of items remain at impasse. Accordingly, they will be dealt with in this report.

The following criteria set forth in ORC 4117.14 is the basis for the herein recommendations:

* * *

- Past collectively bargained agreements between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

- The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service,
- The lawful authority of the public employer.
- Any stipulations of the parties,
- Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

* * *

Accordingly, small cities of comparable size in southwestern Ohio have been considered for purposes of the herein “comparable work” standard. Also, the other City employee bargaining units, police and fire, are obviously very relevant as well. Indeed there appears to be little if any dispute between the Parties regarding the meaning and application of the “comparable work” standard at least from a general standpoint.

Against this backdrop, and in addition to it being recommended that all tentatively agreed upon and/or unchanged contract provisions be adopted, the following is recommended as to the remaining items at impasse:

I
ARTICLE 13
WAGES

City position: Effective August 1, 2006, 2% increase; Effective February 1, 2007, 2% increase; Effective February 1, 2008, reopener

Union position: Effective February 1, 2006, 4% increase; second year, reopener; third year, reopener.

In recommending a three year Agreement, it is recommended that there be a 3% increase in the first year effective February 1, 2006; a reopener in the second year; and a reopener in the third year.

This follows in light of the position of this particular group of employees in relation to the wages received by employees who perform “comparable work” at geographically proximate cities of comparable size and composition; as well as the wage increases granted to the City’s police and firefighter bargaining units. This takes into account the difficult economic circumstances of the City in recent years, as well as the recent passage of a public referendum calling for an increase in City taxes. As to the latter, this will generate additional revenues starting in the second half of 2006. This recommendation has as a main objective that the wages received by these employees at the very least not fall below their current “comparable work” position regarding nearby cities of comparable size and composition. At the same time, the undersigned accepts that there is a legitimate need for both the police and fire units to move up from their previous bottom half of the scale position in relation to comparable police and fire departments. This is properly reflected in the wage increases which they have received. The reopener recommendation as to the second and third year takes into account the fact that economic uncertainties remain despite the passage of the tax increase referendum.

Finally, the undersigned finds that the recent higher increases given several City department heads is largely irrelevant as to the “comparable work” criteria. Accordingly, these individuals are understood to have substantially different work responsibilities, in addition to a substantially different recent history of salary rate increases (and decreases).

II
ARTICLE 5
HOURS OF WORK AND OVERTIME

City position: Maintain the current Article 5 contract language, except for the following regarding Section C:

* * *

Work performed on the employee’s sixth day or the employee’s first day off, shall be compensated at the rate of time and one-half (1-1/2), provided the

employee has worked for forty (40) hours that week. In such cases, he receives straight time for the first forty (40) hours of the week and time and one-half (1-1/2) for the balance. Work performed on the employee's seventh day or the second off day shall be compensated for at the rate of double time (2), provided the employee has worked forty hours in the week. Hours "worked" includes approved vacation hours, paid holiday hours and paid personal leave.

* * *

Union position: Maintain the current Article 5 language, except that Section G,

"Compensatory Time," Paragraph 6, be modified as follows:

The employees may elect to be paid for accrued compensatory time, in whole or in part, not to exceed one hundred twenty (120) hours, in June of each year.

ARTICLE 9 – SICK LEAVE

City position: That the Article 9 "Sick Leave" provision be modified as reflected in the following by way of bold lettering:

A. Paid sick leave is intended to protect an employee from a loss of income when the employee is so debilitated because of illness or injury that he/she is unable to carry out the normal functions of the employee's job, or when a covered member of the employee's immediately family is so debilitated due to illness, or injury, or is otherwise in need of care and attention, that the employee's presence is necessary. Sick leave cannot be used as an excuse for time off. Excessive sick leave burdens co-workers and the city.

All full-time employees shall earn sick leave at the rate of 3.7 hours per completed pay period. Sick leave earned is pro-rated for periods of less than full pay for a pay period. Sick leave is not earned for overtime and premium hours worked or paid. Sick time is accumulated without limit.

The previously accumulated sick leave of an employee who has been separated from public service shall be placed to his credit upon his re-employment in the public service, provided that such re-employment takes place within ten (10) years of the date on which the employee was last terminated from public service.

Employees may use sick leave, upon approval of the supervisor and the Safety-Service Director for absence due to personal illness, pregnancy, injury, exposure to contagious disease, and to illness or injury to the immediate family, the words "immediate family" shall mean: spouse, child, parent, stepchild, foster child, or any child in the immediate household.

B. To be eligible for paid sick leave, an employee must report the reason for his absence to his department head or his/her immediate supervisor according to the rules, regulations, and/or procedures set up by each department and approved by the Safety-Service Director. **An absence must be reported not later than thirty minutes before the start of the employee's regularly assigned shift.**

C. The Employer shall pay up to 1,440 hours of unused and accumulated sick leave earned in the employ of the Employer when such an individual leave the City's employ, provided he has served a minimum of five (5) years in the City's employ, **has a balance of 700 hours of unused and accumulated sick leave**, and was hired prior to April 2, 1981.

D. The Employer shall pay up to 1440 hours of unused and accumulated sick leave earned in the employ of the City when such an individual retires **from** the City's employ, provided he has served a minimum of five (5) years in the City's employ, **has a balance of 2,000 hours of unused and accumulated sick leave**, and was hired after March 31, 1981.

E. The Employee shall pay up to 960 hours of unused and accumulated sick leave earned in the employ of the city when such an individual retires the City's employ, provided he has served a minimum of five (5) years in the City's employ, **has a balance of 2,000 hours of unused and accumulated sick leave**, and was hired after January 31, 1997.

F. **An individual who retires from city service under Section D. or E. of this Article having an unused and accumulated sick leave balance of less than 2, 000 hours shall be paid at the rate of one (1) hour of pay for each two (2) hours of unused and accumulated sick leave. An individual who retires from city service under Section C. of this Article must have 700 hours of unused and accumulated sick leave in order to receive any payment under Section C.**

G. **For purposes of Section D, E, and F "retires" means receiving a length of service retirement under the Ohio Public Employee Retirement System.**

H. The City will list on the payroll check stubs a running total of sick leave hours accumulated.

I. **ATTENDANCE. Regular attendance is required during all scheduled working hours, and is an essential requirement for employment. While the city understands that employees must occasionally be absent from work due to illness or injury and recognizes that employees have certain rights under the Family and medical Leave Act (FMLA), employees who habitually use sick leave and are frequently absent for non-FMLA related incidents, represent a serious employment problem.**

Any usage of sick leave, other than a usage which is covered by the Family Medical Leave Act, is referred to as an "incident." An incident is defined as: any total time period more than fifty-nine minutes of paid sick leave used by the employee for himself or immediate family. Each continuous period of hours or days of absence shall constitute one incident regardless of the duration of the period of absence (e.g., five hours of five workdays of sick leave could equal one incident, for the same related injury or illness).

Work-related injuries deemed compensable by the Bureau of Worker's Compensation and necessary ongoing treatment for such shall not be counted as an incident for the purposes of this policy.

Family Medical Leave Act rights shall not be limited by this policy, the legitimate use of which shall not be considered an incident for the purposes of this policy.

J. SICK LEAVE CONTROL. The provisions of this section shall supersede any provisions of city policy regulating sick leave.

1. A doctor's excuse must be presented by the employee to their respective Department Head following any incident which involves the use of more than sixteen (16) consecutive hours of sick leave.

2. Five incidents of sick leave usage in a twelve (12) month period shall be deemed an attendance problem. An employee shall be issued a written advisory of the fifth incident and advised that the employee is on an attendance watch.

3. More than five (5) incidents of sick leave usage in a twelve (12) month period shall be deemed as unacceptable attendance pattern.

4. An unacceptable attendance pattern is a disciplinary matter.

5. Disciplinary penalties will normally be progressive in nature, however, a more severe penalty may be imposed if the circumstances warrant.

6. The Employer has the discretion to determine the appropriate penalty, subject to the disciplinary provisions of Article IV. The Employer shall take into consideration the employee's prior history of attendance, the amount of unused and accumulated sick leave available as compared to the amount of sick leave earned, and any evidence of the reasons for the prior use of sick leave, and the reasons for the current use of sick leave.

7. “Falsification” of a sick leave usage or a sick leave request means the use or requested use of sick leave for a reason other than the illness or injury of the employee or a covered member of the employee’s immediate family, or the presentation of false medical information. Falsification is grounds for immediate discharge.

8. The Employer reserves the right to have an employee examined by a physician of the Employer’s choice to determine the existence of a medical condition which causes the employee to be unable to work, or to determine the employee’s fitness to continue employment. The Employer shall pay the cost of such examination and the employee shall be paid for the time of such examination.

Union Position: That Article 9 remain unchanged.

It is recommended that both Article 5 and Article 9 remain unchanged at this time. This follows mainly in light of the fact that the status quo regarding the “sick leave” benefit structure, as reflected mainly in Article 9, is in accordance with what the police and fire bargaining units currently have. Accordingly, in order for this set of City proposals to be accepted here which are understood to call at least in part for fundamental change as to how sick leave is to be handled – a very important matter to both sides – it is felt that a clear and compelling basis is necessary. In essence, a compelling basis is found to not be present when one considers that the current sick leave structure is apparently similar to that which the City’s police and fire units currently have, while control of sick leave abuse is addressable by way of effective department leadership and management.

As just referred to, what underlies the City’s sick leave proposals is the too common problem of sick leave abuse, which drives up operating costs while also undermining the delivery of City services. At the same time, all acknowledge that sick leave usage has been reduced under the leadership of the current Public Works Department head. Moreover, while in the police and fire units excessive sick leave usage has not been a significant problem, what arguably are the disincentives in the sick leave structure there are the same as here (most notably, a 15 days set amount of sick leave being contractually provided for as the City greatly

emphasizes). Indeed this also leaves the City vulnerable were the quality of leadership in the police and fire departments to decline. The upshot of all this is not to deny that the City in recent years has had a problem of excessive sick leave usage as to this particular group of employees, even in accepting the point made by the Union that these employees can't switch shifts as apparently they can in the police and fire departments. Instead, it is seen as one which can be dealt with without a substantial modification of the Agreement's sick leave structure. In light of all of this, it is felt that, on balance, any change regarding this important matter is best left to future collective bargaining.

As to the Union's proposal to change Article 5, Section G (6) – asking to increase the amount of accrued compensation time from 80 to 120 hours – this is not recommended in the absence of a clear basis for doing so.



William C. Heekin
August 10, 2006
Cincinnati, Ohio