

2008 JUN 16 P 1: 56

IN THE MATTER OF IMPASSE X
X
BETWEEN X
X
THE CITY OF VANDALIA, OHIO X
X
AND X
X
AFSCME OHIO COUNCIL 8 X
X
LOCAL 101 X

REPORT OF
THE FACT FINDER

SERB FILE NOS.: 2007-MED-07-0739

HEARING: June 2, 2008; Vandalia, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the City

Daniel G. Rosenthal, Attorney

For the Union

Marcia Knox, AFSCME Regional Director

ADMINISTRATION

By way of a letter dated April 2, 2008, from the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as fact finder regarding an initial labor contract, negotiations impasse. On June 2, 2008, and following receipt of pre-hearing submissions, a fact finding hearing went forward. During the course of the fact finding hearing, a number of issues were resolved. 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 impasse matter involves a bargaining unit that is represented in collective bargaining by the American Federation of State, County and Municipal Employees, Ohio Council 8, Local 101 ("AFSCME" or "the Union") and the City of Vandalia, Ohio ("the City"). Accordingly, the City and the Union ("the Parties") will be signatory to their first collective bargaining agreement ("the Agreement"). The Union represents approximately 16 employees who work in the City's Service Department.

What follows is the criteria set forth in ORC 4117.14 regarding the issuance of fact finding 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.

* * *

As to the “comparable work” standard, what is always important is internal “comparable work” involving the employer’s other employee units. Here, this would include the City’s Police Department and Fire Department units, where in each case the employment terms and conditions are governed by a collective bargaining agreement. Additionally, external “comparable work” is important as well. In this connection, the City greatly argues the comparability of the recently agreed upon labor contract between Washington Township, which like Vandalia is located near Dayton, Ohio, and the same labor organization, AFSCME Ohio Council 8. Also important is that many if not most argued for “comparable work” situations include other important features and circumstances which render them distinguishable, at least to some extent.

Against this backdrop and while recommending that all of the tentatively agreed upon contract provisions be adopted, the following is recommended concerning the remaining items at impasse:

I

Article 4. Management Rights.

City position: Adopt the “Management Rights” clause which it proposes in its entirety, including the “without prior consultation with the Union” proviso.

Union position: Delete the “without prior consultation with the Union” proviso.

It is recommended that this otherwise agreed upon “Management Rights” clause not include the “without prior consultation with the Union” wording as proposed by the City. While (as the City acknowledges) this management rights clause is strongly worded without the inclusion of this language and in noting that it does not appear in the other two labor contracts involving the City (although it does appear in the Washington Township contract), such an inclusion is felt to not be necessary. At the same time, since this “Management Rights” clause addresses the subject of “reasonable work rules”, it is recommended that the Union’s proposed Article 31 “Work Rules” provision not be adopted. Accordingly, since the City cannot arbitrarily make or change work rules – and a grievance procedure is available – it is felt that such a provision is not needed at this time.

II

Article 11. Union Dues/Authorization and Fair Share Fee

City position: That a “Fair Share Fee” provision not be adopted.

Union position: The adoption of this “Fair Share Fee” provision.

It is recommended that this provision be adopted. While viewing this issue as one which is close (the fairness argument of requiring all bargaining unit employees to pay for representation services rendered, versus the fairness of not imposing the cost of this service upon a bargaining unit minority which opposes it), what tips the balance is the undisputed fact that a “Fair Share Fee” provision appears in the City’s two other labor contracts.

III

Article 12. Substance Abuse and Rehabilitation

City position: Include the following Section 3 language in its entirety:

Searches. The Township (City) reserves the right to carry out searches based on reasonable suspicion of employees, including personal effects brought onto Township (City) property (lockers, purses, vehicles). Such searches may be carried out without prior notice. Refusal to submit to such searches is grounds for discharge.

Union position: Delete “vehicles” from the “(lockers, purses, vehicles)” proviso.

It is recommended that the City’s proposed Article 12, “Substance Abuse and Rehabilitation” provision be adopted in its entirety. While emphasizing that under this wording employee “searches” can only be undertaken on the basis of “reasonable suspicion”, and not randomly, and in also noting that in the past there has not been a substance abuse problem as to this particular group of employees; it is felt that excluding “vehicles” would unduly limit the scope of an investigation. In the end, and in noting that such wording appears in the Washington Township contract, the undersigned was not persuaded that an employee’s vehicle is sufficiently unique regarding the interest of employee privacy as compared to a search of a purse or a locker, neither of which is at issue.

IV

Article 13. Discipline Discharge

City position: Retain civil service review of more than 3 day suspensions, discharges, and demotions.

Union position: Provide for the right of a grieving employee to choose either arbitration or civil service review.

It is recommended that the Union’s position be adopted. This follows due to the widely accepted greater neutrality and expertise associated with labor arbitration as to the resolution of collective bargaining agreement, “rights” disputes. Undoubtedly, this has been an important

factor as to arbitration clauses having been included in the vast majority of collective bargaining agreements, both in Ohio and nationally.

V.

Article 15. Seniority

City position: That seniority function as a “tie breaker” with respect to matters such as layoff, recall, and promotion.

Union position: That seniority be the primary standard as to layoff, recall, and promotion.

It is recommended that the City’s position be adopted. While stressing that an employee would have access to the grievance procedure should a relative ability/seniority dispute arise; this is felt to better balance the interest of the citizens of the City in having a capable work force and the interest of the employee in having seniority be involved as a standard. In addition, seniority “tie breaker” language appears in the Washington Township contract.

VI

Article 18. Vacation

City position: The following Article 18, Section 2(b) wording:

Requests for vacation leave must be submitted to the department head or his designee at least 30 days prior to the first date requested, unless there is a reason for later submission. The department head or his designee will evaluate all requests are submitted for the same time period and only one can be granted, preference will be given on the basis of seniority provided such a selection does not impede operations.

Union position: The following Article 18, Section 2(b), language:

Requests for vacation leave must be submitted to the department head or his designee at least 5 days prior to the first date requested, unless there is a reason for later submission. **Vacation leave may be scheduled in a minimum of one (1) hour increments.** The department head or his designee will evaluate all requests against the need to maintain efficient City operations. If two or more requests are submitted for the same time period and only one can be granted,

preference will be given to the basis of seniority provided such a selection does not impede operations.

It is recommended that the Parties adopt 15 days as the time period for making a request for a day of vacation. This follows in light of the record indicating that 5 days is provided for in the Police Department contract and 3 days as to the Fire Department contract. Accordingly, it is felt that 15 days is not unreasonable in this instance of a first time labor contract. At the same time, without there being a showing as to a specific need regarding the taking of vacation in “one (1) hour increments” or “four (4) hour increments”; the undersigned accepts the City’s point that the administration of less than one day vacation increments may be unduly burdensome.

VII

Article 19. Holidays

City position: Its proposed Article 19, Sections 2(a) and 2(b), concerning eligibility.

Union position: The Union seems to mainly object to the following wording contained in Section 2(a) of the City’s proposal: “The manager’s recommendation and the City Manager’s decision will be unreviewable (in arbitration or otherwise) and in their sole discretion”.

It is recommended that the City’s proposed Sections 2(a) and 2(b) be adopted, but not include the “unreviewable” language at issue. Here, the record is not seen to provide a basis for supporting such an exception to the otherwise reviewability of any provision contained in the Agreement.

VIII

Article 24. Call In Pay

City position: That call in pay be in the amount of 2 hours pay.

Union position: That call in pay be increased from two hours to three hours.

It is recommended that the City's position be adopted.

IX

Article 27. Wages

City position: A 3.5% increase effective upon signing, a 3% lump sum payment in 2009, and a 3% lump sum payment in 2010. Current employees will be eligible for step increases. However, new hires will receive any step increase he/she is entitled to under the current scale, but not the annual percentage increase.

Union position: A 3.5% retroactive increase in 2008, a 3% increase in 2009, and a 3.5% increase in 2010.

It is recommended that the Union's proposed annual increases be adopted (3.5%, 3%, 3.5%). Also, it is recommended that the City's proposal as to the annual step increase in the case of new hires be adopted. Finally, it is recommended that the 2008 annual increase be retroactively applied as to ½ of the herein period of bargaining.

As to the recommended annual wage increases, this is felt to be supportable in light of the annual increases granted the other City employee units and since the record did not establish any unique circumstances which would call for a "lump sum" wage increase arrangement. Also, this recommendation is seen to properly allow for these employees to remain where they are regarding the external "comparable work" cases cited.

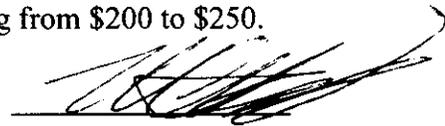
X

Article 37. Uniforms

City position: Opposes the Union's proposed increase in the uniform allowance from \$200 to \$350.

Union position: Proposes a uniform allowance increase from \$200 to \$350.

It is recommended that there be a uniform allowance increase going from \$200 to \$250.



William C. Heekin
June 13, 2008
Cincinnati, Ohio