

STATE EMPLOYMENT RELATIONS BOARD
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August 1, 2008

In the Matter of the Fact Finding Hearing Between:

CITY OF EAST CLEVELAND)

And)

DISTRICT 1199 OF THE SERVICE)
EMPLOYEES INTERNATIONAL UNION,)
AFL-CIO)

SERB Case No. 07-MED-10-1171

APPEARANCES

For the City:

Almeta Johnson, Esq.
Michael Esposito, Esq.
Ken Adams
Ron Brooks

Director of Law
Senior Consultant, Clemans Nelson
Deputy Safety Director
Finance Director

For the Union:

Marquis Frost
Dedeon Jackson
Amber M. Hughley

Administrative Organizer, 1199
Coordinator, 1199
Customer Service Representative, Chief Delegate

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the City of East Cleveland (the "City") and District 1199 of the Service Employees International Union (the "Union"). The bargaining unit consists of the following classifications: Administrative Assistant, Animal Warden, Bookkeeper 1-3, Cashier, Clerk-Typist 1-3, Chief Mechanic, Custodian 1-3, Housing Inspector 1-3, Mini Bus Driver 1-3, Parking Meter Readers, PBX Operator, Reports Clerk, Secretary 1-4, Senior Aides 1-2, Tax Assistant 1-2, Outreach Worker, Escort/Health Educator. Not all positions are filled. There are four classifications that are on the District 1199 Roster that are not listed in the above classifications. They are: Customer Service Rep, Building Inspector, Receptionist, and Food Service Aide. There are approximately fourteen (14) employees in the bargaining unit. The terms of the parties' previous collective bargaining agreement expired on December 31, 2006.

The parties held several bargaining sessions and were unable to reach agreement on numerous issues. Impasse was declared and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed fact-finder in this matter by SERB. A mediation session was held on June 10, 2008, at which the parties resolved of the outstanding issues. On June 20, 2008, a fact-finding hearing was scheduled. The parties continued to mediate and reached tentative agreement on many issues. The tentative agreements on all the issues are incorporated in this report and recommended by the Fact-finder.

A hearing on the remaining four unresolved issues was held, and the parties were given full opportunity to present their respective positions. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
2. 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;
3. The interest and welfare of the public, 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. 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.

UNRESOLVED ISSUES

1. Article XI – Grievance Procedure
2. Article XII – Hours of Work and Overtime
3. Article XVII – Health and Welfare
4. Article XXV – Wages

1. **Article XI – Grievance Procedure**

City's Proposal - The City seeks to add a new section to Step Five, Arbitration, that prohibits the introduction of new evidence to be considered in arbitration that was not presented by Step Three, during Mediation, or within thirty (35) calendar days prior to the date of arbitration. In an effort to encourage early and thorough investigation and the divulging of pertinent information, the City also proposes to add language which states that if the new evidence causes the Employer to reconsider the decision to terminate and the employee is

reinstated, the Employer will only be liable for back pay from the date of termination until the date of the Step Three or Mediation proceeding, as may be applicable.

Union Proposal – The Union does not oppose limiting the introduction of new evidence at arbitration, but seeks to have the cut off point for evidence to be ~~after~~ the employee has exhausted his or her right to appeal the Union’s decision regarding proceeding to arbitration. This time period may or may not be 35 days prior to arbitration.

Recommendation

The City’s proposal is recommended. Both parties agree that new evidence should not be introduced at arbitration. The 35 day time period prior to arbitration would allow for the parties to cancel a scheduled arbitration without incurring a cancellation fee, in most cases. The language that limits the City’s liability is also appropriate, because it encourages employees to be more forthcoming with information earlier in the process. Also, this provision will only be applicable if the City voluntarily decides to reinstate the employee based on the new information received and will not affect back pay if the employee is reinstated in arbitration.

Recommended Contract Language

Article XI – Grievance Procedure

New Section - No new arguments or evidence in support thereof may be considered in the arbitration that was not presented at Step Three, during Mediation, or within thirty (35) calendar days prior to the date of arbitration. In the event that the case is a termination appeal, and such new arguments or evidence in support thereof cause the Employer to reconsider his decision and to reinstate the employee prior to arbitration, the Employer will be liable only for back pay from the date of termination until the date of the Step Three or Mediation proceeding, as may be applicable.

2. Article XXI – Hours of Work and Overtime

City’s Proposal – The City proposes modifying the contract language to exclude sick leave from the computation of hours worked for overtime purposes. The City seeks to curb sick

leave abuse by not counting sick time as actual time worked, preventing employees from working overtime one day and calling off sick the next. This language also mirrors the FLSA standards.

Union's Proposal – Union proposes to maintain current contract language. This is a negotiated benefit to employees that should not be changed.

Recommendation

It is recommended that the current language be maintained. The City did not show that there was a problem of sick leave abuse that would warrant changing the negotiated language of the contract.

3. Article XVII – Health and Welfare

City's Proposal – The City proposes that employees contribute 6% of the cost of the premium for the health care plan they choose. The City argues that there has been no increase in health care costs to employees in eight years. The cost of health care for the City increases each year and employees must share some of the burden.

Union's Proposal – Maintain status quo.

Recommendation

It is recommended that employees pay 6% of premium cost of their chosen health care plan. There has been no increase in 8 years and while raises have been below the cost of living, the City is not in a position to withstand all the impact of the rising health care costs. The City has been under Fiscal Emergency status for many years and has just recently emerged from that. The City is seeking to receive the same contribution from other City employees. Other unionized City employees who have settled during this bargaining cycle will be paying 6% of

the premium costs. The wage package recommended below should more than cover the increase in health care costs to this bargaining unit.

Recommended Contract Language

Article XVII – Health and Welfare

Section 2. Employees shall contribute 6% of the premium amount for the plan in which they choose to enroll. The employee's percentage of premium contribution identified herein shall not be increased during the term of this contract.

4. Article XXV – Wages

City's Proposal – The City proposes the same wage package offered to other unionized employees in the City. First, it proposes that the City pay 8.5% of the employee's contribution to the PERS pension plan, instead of the current language in which the City pays 100% of the employee's contribution. The City also proposes a 2% wage increase for 2008 and wage reopeners for 2009 and 2010. The City argues that it does not have the resources to meet the Union's wage proposal. The City has just emerged from Fiscal Emergency and is seeking to contain costs. The City has modified its PERS contribution to the 8.5% and reached agreement for a 2% wage increase for 2008 and wage reopeners for 2009 and 2010 with other unionized employees. The City seeks the same settlement with this union.

Union's Proposal – The Union modified its proposal to request a 2.5% increase for 2008 and wage reopeners for 2009 and 2010. The Union argues that police and fire have other methods of compensation not available to this bargaining unit, such as firearms proficiency and uniform allowances. Therefore, the extra 0.5% would compensate this bargaining unit similarly to police and fire.

Recommendation

It is recommended that the current contract language regarding the City's 100% pick up of the employee's PERS contribution remain the same. It is also recommended that the bargaining unit be awarded a 2% increase, effective January 1, 2008 and that the City renegotiate wages beginning in November 2008 for 2009 and 2010. Because this bargaining unit does not receive the same kind of additional compensation as police and fire unions, this unit will receive additional compensation in form of the 100% PERS pick up by the City that the other unions do not.

As to the wage issue, one of the factors that a fact-finder must consider is seeking parity with other City employees, especially unionized employees. With the issue of wage increases, parity is important to promote stability and equity for the City and protects both parties from whipsawing. Therefore, the 2% wage increase awarded to other unionized employees in this bargaining cycle is recommended here.

Recommended Contract Language

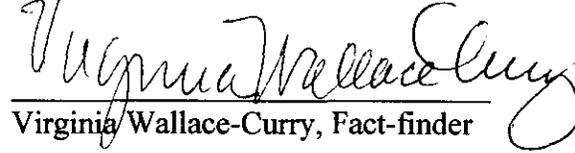
Article XXV – Compensation

Section 1. Maintain current contract language.

Section 2. Each bargaining unit member will receive a two percent (2.0%) increase in his/her annual base wage effective January 1, 2008. The parties agree to reopen negotiations on wages and other matter with cost implications in November 2008 for the years 2009 and 2010.

5. All other tentative agreements are incorporated into this agreement and are recommended by the Fact-finder.

Submitted by:


Virginia Wallace-Curry, Fact-finder

August 1, 2008
Cuyahoga County, OH

CERTIFICATE OF SERVICE

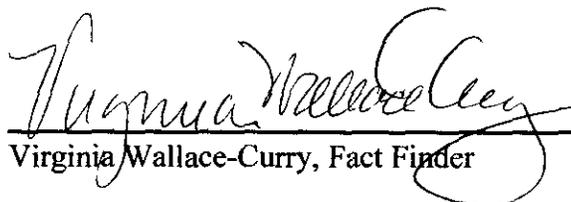
This is to certify that a true copy of the Fact-Finding Report for the city of East Cleveland, Ohio and District 1199 of the Service Employees International Union, AFL-CIO was sent to the parties by email and overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, August 1, 2008. The Fact-Finding Report was served upon:

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