

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2009 JAN 20 P 12: 52

In the matter of	*	07-MED-12-1299
	*	
Fact-finding between:	*	
	*	
Metropolitan Park District of the Toledo Area	*	Fact-finder
	*	Martin R. Fitts
	*	
and	*	
	*	
AFSCME Ohio Council 8, Local 706	*	January 16, 2009
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Metropolitan Park District of the Toledo Area (the Employer):

David M. Smigelski, Attorney
Donald R. Rettig, Jr., Park District Staff

For AFSCME Ohio Council 8, Local 706 (the Union):

John Blessing, Staff Representative, AFSCME Ohio Council 8
Lora Goerlich, Local 706 President
Devin Connolly, Local 706 Vice President
LaRae Sprow, Local 706 Treasurer

PRELIMINARY COMMENTS

The bargaining unit consists of all regular, full-time employees of the Metropolitan Park District of the Toledo Area (the Employer) serving in the following classifications: Naturalist/Historic Interpreter, Graphics Designer, Ranger/Park Service, Deputy Ranger/Park Service, Ranger Mechanic, Park Maintenance, Building/Grounds/Maintenance and Repairs, Administrative Secretary, Accounting Clerk I, Accounting Clerk II, Building Serviceperson, Public Information Assistant, and Grounds Technician. There are approximately fifty (50) employees in the bargaining unit.

The parties engaged in Interest Based Bargaining during the period February 27, 2008 through May 6, 2008. At the conclusion of the last IBB session the parties requested mediation, and mediation sessions were held in May, July and August 2008. Mediation proved unsuccessful in resolving all the outstanding issues.

SERB appointed the undersigned as Fact-finder in this dispute on September 8, 2008. A fact-finding hearing was held on December 3, 2008 at the Oak Openings Lodge, Whitehouse, Ohio. *Prior to the hearing the parties presented the Fact-finder with written Position Statements. Both parties attended the hearing and elaborated upon their respective positions, presenting both testimony and exhibits. There were eight issues outstanding: Longevity; Health Insurance; Step System; Wages; Ranges of Compensation; Duration; Vacation Conversion; Shift Differential, and Staffing Levels. The issues of Vacation Conversion, Shift Differential, and Staffing Levels were withdrawn at the hearing. The issue of Duration was tentatively agreed upon at the hearing. Thus the five remaining issues were submitted for fact-finding.*

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, 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;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
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.

Any and all references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their Joint Position Statement presented in writing in the to the Fact-finder prior the December 3, 2008 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Longevity

Positions of the Parties

The Employer proposed amending the language in Article 31 to modify the current longevity system. Specifically, the Employer's proposed change would make new hires ineligible for longevity, current employees with more than ten years of service would continue to receive longevity but not progress beyond the Step number occupied as of March 1, 2009, and current employees with less than ten years of service would continue to receive longevity but could not progress beyond Step 4.

The Union proposed amending the contract to provide for longevity payments figured on a base rate of 2080 hours rather than the current provisions for all earnings for the year, but proposed maintaining the longevity steps for all employees, including new hires.

Discussion

Among the Union's objections to the Employer's proposal is that it would create a "second class" bargaining unit member – those hired after March 1, 2009, that would not receive longevity. The Union's proposal to cap longevity at 2080 hours would save the Employer an estimated \$6,000 in each contract year.

The Employer did not provide a compelling economic argument that its proposal was needed for reasons other than that the longevity rates may be at the higher end of the comparables offered. Given the stable financial condition of the Employer, and the Union's reasonable counter-proposal, the Fact-finder simply cannot find a sufficient reason to recommend the Employer's position.

Findings and Recommendation

In consideration of the

Therefore, the Fact-finder recommends the Union's proposal to amend Article 31 to provide that longevity calculations be based upon a base rate of 2080 hours rather than all earnings for the year.

Issue: Health Insurance

Positions of the Parties

The Employer proposed changing the language in Article 32 to provide for employee contributions to health insurance premiums in the event of increases of more than 3%. Specifically, it proposed that increases in the premium costs over 3% would be shared equally by

the Employer and the employee, and the employee contributions resulting from such increases would cumulate from year to year.

The Union proposed maintaining the current contract language.

Discussion

There is no argument that the trend in both the private and public sector is for employees to share in the cost increases for health insurance premiums. The Union makes a valid point that the employees do, in fact, contribute to health care as they have an 80/20 plan. And the Union also correctly points out that Lucas County has attempted to be very pro-active in keeping health insurance costs as low as possible without sacrificing benefit levels through the work of its Health Care Cost Containment Committee. In fact, the Union also stated this bargaining unit might be amenable to contributing to the premium cost if the Health Care Cost Containment Committee requested the various participating bargaining units to do so. That being said, the Employer makes a valid point that the benefit levels addressed by the Health Care Cost Containment Committee are a different issue than how the premium cost is paid for.

While the Union objected to the Employer's proposal on the grounds that it was simply not the right thing to do at this time, the reality it is simply unfair for the Employer to bear the entire burden of meeting the uncertain costs of continually rising health insurance premiums. While the Employer's proposal calls for an equal sharing of premium increases of more than 3% in a plan year, the Fact-finder does not believe that there is economic merit to that argument. Rather, a phasing in of a shared burden is fairer to the employees and still would provide the Employer with some protection against unexpectedly large premium increases.

Also considered by the Fact-finder is the reality that most of the taxpayers employed in the private sector are currently paying a share (in many cases a major share) of health care premium costs. In fairness to those providing the revenue supporting the Metro Parks, a modest employee contribution toward large health care premium cost increases is justified.

Findings and Recommendation

In consideration of the

Therefore, the Fact-finder recommends that Article 32 be amended to include the following language:

Commencing in 2009, bargaining unit employees shall share with the Employer in any annual increase to health insurance premium payments in excess of three percent (3%) as follows: any increase in 2009 over three percent (3%) shall be shared seventy-five percent (75%) by the Employer and twenty-five percent (25%) by the employee; and any increase in 2010 and subsequent years over three percent (3%) shall be shared sixty percent (60%) by the Employer and forty percent (40%) by the employee. Employee contributions resulting from such increases shall cumulate from year to year.

Issue: Step System

Positions of the Parties

The Employer proposed that the current Step System be elongated from the current 6 years to twelve years, applying only to employees hired after March 1, 2009.

The Union proposed maintaining the current contract language.

Discussion

The Employer argued that the current step system can provide very large increases to employees in the first five years of employment, when across the board pay increases provided for in the collective bargaining agreement are factored in. It argued that the current employees would be grandfathered in under its proposal, and that only new hires and current employees who are promoted up to a higher grade would be affected.

The Union, however, noted that at one time there were more steps, and that they were reduced from 9 to 6 steps in a previous contract at the request of the Employer. It also argued that 33 out of 48/49 employees are already maxed out in steps and thus would be unaffected. However, as with the Employer's proposed change in longevity, the Union argued that this Employer proposal would create a "second class" of employees hired in the future who would receive significantly lesser benefits than more senior employees.

As with the Longevity issue, there is simply no compelling economic reason offered by the Employer for the Fact-finder to recommend the Employer's position. As the undisputed testimony showed, the parties reached the current system through a negotiated settlement that undoubtedly included give and take by both sides. To unilaterally recommend the Employer's position without a compelling economic reason would be unfair to the bargaining unit employees. Major changes affecting the compensation structure are best achieved through the negotiation process and not through fact-finding unless a major change is necessary due to serious economic constraints for the Employer. In this case there are no serious economic constraints facing the Employer that would justify such a change.

Findings and Recommendation

In consideration of the

Therefore, the Fact-finder recommends the Union's proposal for the retention of current language.

Issue: Wages

Positions of the Parties

The Employer proposed wage increases of 2.1% effective retroactively to March 1, 2008, an additional 2.1% effective March 1, 2009, and an additional 2.1% effective March 1, 2010.

The Union proposed a 3% wage increase for the first year, an additional 3% increase for the second year, and an additional 3% wage increase for the third year for all classifications except the Graphic Designer and Ground Technician classifications. For those two classifications it proposed a job audit and pay equity adjustment in the first year, with an additional 3% increase for the second year, and an additional 3% wage increase for the third year.

Discussion

The Employer is fortunate to have a stable funding mechanism that, with the recent renewal of its levy, will provide stable revenue throughout the life of this agreement. That being said, a prudent wage increase is justified. The parties' respective proposals are not far apart in the main, with less than one percent separating their respective proposals except for the Union's proposals for the Graphic Designer and Grounds Technician classifications.

Much discussion was held regarding what was or was not a reasonable and proper comparable for the Ranger classification. There is no question that the Rangers have law enforcement powers and wear uniforms, which have the potential to place them in harms way to a greater degree than other employees in this bargaining unit. However, the vast majority of their duties and work day are not spent on the same kinds of law enforcement activities that a city police officer or deputy sheriff would on road patrol, making such comparisons difficult to justify for the purposes of *determining an appropriate wage increase.*

Regarding the Union's proposal for a job audit and pay equity adjustment for the Graphic Designer position, the Union stated that this is the fourth contract negotiation that it had brought this issue up. It argued that the duties have changed considerably since the position was created, which is why the issue is back. It contends that the position is more appropriately titled "creative art director" and it offered considerable evidence that such positions should pay considerably more than the current pay scale for Graphic Designer. It is noted by the Fact-finder that there is only one individual serving in this classification. The Employer agreed that the individual currently serving as Graphic Designer is a talented individual. It argued, however, that there is a Marketing Director that serves as that classification's superior and that has the ultimate authority in creative matters.

From the evidence and testimony presented, it appears to the Fact-finder that one of the major differences between the Union's and the Employer's interpretation of the current Graphic Designer position duties is that of control and autonomy. It is clear to the Fact-finder that the Graphic Designer position is a support position to the Marketing Director, and given its creative responsibilities would be expected to have its job functions change over time. However those functions may change, the classification itself remains one of technical support to the Marketing Director. While the Fact-finder is sympathetic that the individual currently holding this position may well have a "creative worth" that makes it difficult to determine the actual value of the work performed, nonetheless it is a support function and must be judged not on the individual person's

creative value but on the more generic value of the position to the Employer regardless of which individual currently holds the job.

Regarding the Grounds Technician position, the situation is a little more complicated. The Union argued that when the Grounds Technician position was created it agreed to the wage scale based upon the understanding that it was an entry level position. The Union argued that now, however, the Grounds Technicians are consistently assigned and expected to complete the same skilled work that the higher paid maintenance personnel do. It argued that the job duties have changed from what initially they were, and that is why a job audit is requested.

The Fact-finder understands the Union's argument that the job duties of both the Graphic Designer classification and the Grounds Technician classification have evolved and that is why it desires a job audit and pay equity adjustment for each of them. However, the parties provided an opportunity for themselves to do that in the previous agreement, and failed to reach an agreement on it. To recommend similar language for the new agreement likely would fail to satisfy both parties as well. In addition, such major changes in compensation are not, in this Fact-finder's opinion, best resolved through fact-finding but rather through the give and take of the parties' whole negotiating process. Specific to the Grounds Technician classification, if the Union feels that the Grounds Technicians are performing substantial work belonging to another job classification, it has the grievance procedure as an avenue to seek redress for any such contract violations.

Findings and Recommendation

For the reasons discussed above, the Fact-finder cannot support the Union's proposal for a job audit for the Graphic Designer position and the Grounds Technician classification, and thus cannot recommend an equity increase.

In consideration of the recommendations contained elsewhere in this Report with regard to Health Insurance, the recommendation below provides a larger increase for the bargaining unit employees in the second and third year to offset the probable contribution to health insurance premiums that they will face.

Therefore, the Fact-finder recommends that Article 30, Section 2 be amended to provide for an across the board increase in the base rate of pay of 2.1% effective March 1, 2008; an additional across the board increase in the base rate of pay of 3.0% effective March 1, 2009; and an additional across the board increase in the base rate of pay of 3.0% effective March 1, 2010.

Issue: Ranges of Compensation

Positions of the Parties

The Employer proposed deletion of language in Article 30 which provided for discussion in the second half of 2007 on appropriate ranges of compensation.

The Union did not offer a position on this issue.

Discussion

The provisions of Article 30, Section 2 in question in the prior contract deal specifically with the Employer and Union meeting during the June 2007 through November 2007 time period to discuss appropriate ranges of compensation for bargaining unit work. It further provided that any modification of the Agreement's compensation system "shall be by mutual agreement." The evidence presented at the hearing showed that the parties did meet during that time period, and did not reach a mutual agreement on compensation modifications. As the provisions in question dealt with a specific action and time period that no longer have any meaning, the provisions have no purpose remaining in the new Agreement.

Findings and Recommendation

This is an opportunity to clean up language in the contract that has no continued meaning or purpose. There was no indication by the parties that they intended to provide for such action during the life of the new agreement.

Therefore, the Fact-finder recommends the Employer's proposal for the deletion of the paragraph of Article 30, Section 2 dealing which reads in its entirety:

The Employer and Union commit to proceed expeditiously with discussions regarding appropriate ranges of compensation for the classification of work in the bargaining unit commencing June 2007 and concluding no later than November 2007. Any modification of the compensation system shall be by mutual agreement.

Additional recommendations of the Fact-finder

The parties expressed to the Fact-finder that they had reached agreement on a number of other issues during their negotiations. At the hearing the parties reached a tentative agreement on Duration, agreeing to a three-year contract effective on the expiration of the previous agreement.

The Fact-finder has reviewed all the agreements reached by the parties during their negotiations, and finds them reasonable and fair to both of the parties and to the public.

Therefore, the Fact-finder recommends all agreements reached by the parties during their negotiations.



Martin R. Fitts
Fact-finder
January 16, 2009

Martin R. Fitts

Labor Arbitrator
P.O. Box 2945
Toledo, Ohio 43606-0945

phone: 419-530-3546
fax: 419-530-3548
e-mail: mfitts@utnet.utoledo.edu

January 16, 2009

Mr. David M. Smigelski
Spengler Nathanson, PLL
Four SeaGate, Suite 400
Toledo, OH 43604-2622

Mr. John Blessing
AFSCME Ohio Council 8
420 S. Reynolds Road
Toledo, OH 43615-5980

Re: SERB Case No. 07- med-12-1299
Toledo Area Metropolitan Park District
AFSCME Ohio Council 8, Local 706

Gentlemen:

With this letter I am sending to both of you via overnight mail for Monday delivery my Fact-finding Report in the above-referenced matter. A copy is being sent to SERB via regular mail.

As requested, a copy of this Report is being sent via fax to each of you.

An invoice with my fee for this Fact-finding will be sent to you under separate letter.

Sincerely,



Martin R. Fitts
Fact-finder



Martin R. Fitts
Labor Arbitrator
PO Box 2945
Toledo, OH 43606



0000



43215

U.S. POSTAGE
PAID
TOLEDO, OH
43606
JAN 16, '09
AMOUNT

\$1.00
00010701-18

First Class Mail
First Class Mail

Bureau of Mediation
State Employment Relations Board
65 E. State Street, 12th Floor
Columbus, OH 43215-4213