

EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT FINDING

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BETWEEN

THE CITY OF CHARDON

AND

AFSCME OHIO COUNCIL 8, LOCAL 3824

SERB CASE # 08-MED-03-0170

ADVOCATE FOR THE CITY:

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INTRODUCTION

The bargaining unit is represented by the Local 3824, AFSCME Ohio Council 8, AFL-CIO (Hereinafter "Union" or "bargaining unit") and the Employer is the City of Chardon (hereinafter "Employer" or "City"). The bargaining unit is comprised of approximately nineteen (19) employees who provide vital services to the City as members of the Public Service Department working in the divisions of Water, Sewer, Streets, and Cemetery. The previous contract expired July 6, 2008. The parties held several negotiation sessions prior to fact-finding and were able to resolve a large number of issues. However, seven (7) issues remained unresolved, which led to fact finding.

A mediation/fact-finding hearing was held on February 3, 2009 over the issues addressed in this report. Prior to a formal submission of evidence, the fact-finder made a concentrated effort to reconcile the differences between the parties over the unresolved issues listed above. Settlement possibilities were explored with the parties in an effort to find common ground upon which to construct a settlement. While the discussion were particularly helpful to the fact finder in understanding the unique concerns of each party only one additional tentative agreement

was reached during mediation. The mediation effort was then followed by a hearing on the remaining open issues. Both advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute. The Employer's and the Union's position statements are attached to this report and for purposes of efficiency will be referenced and summarized, but not restated in their entirety in the body of this report. Under each issue the parties' respective positions shall be referred to in this report as simply EP, Employer's position, and UP Union's position.

OVERALL RATIONALE FOR RECOMMENDATIONS

Since the fall of 2008 the current state of the national and state economy has become a daily topic of conversation. Ohio's economy remains uncertain as does the financial outlook for many states. Recently Governor Strickland outlined the considerable magnitude of Ohio's revenue shortfall both in the current and next biennium budgets, and the necessity of having to take decisive action to reduce costs in order to balance the state's budget. However, the overall extent to which these serious financial conditions at the state impact the City of Chardon is unclear. Various public sector entities in the state are fairing differently, and as of this writing it is not apparent what benefits the recently enacted

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congressional economic stimulus package, as well as the new state budget will eventually have upon the City. All parties, employees and employers alike, are concerned about their bottom lines. On Yet, one must be careful in generalizing the impact of the economy's downturn on single employers without carefully examining the facts. While all public employers in Ohio appear to be taken a prudent approach to their finances, some are in better economic shape than are others. Furthermore, it is axiomatic that the delivery of quality service depends on recruiting and retaining quality employees, which includes bargaining unit, non-bargaining unit, and managerial employees. Central to maintaining a quality and experienced workforce is the maintenance of a competitive wage structure that provides a fair wage for knowledge, skills, and ability, along with quality benefits, and a reasonable working environment even in trying times.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

Issue 1 Article XVII HOURS OF WORK

Discussion/Determination:

Parties reached tentative agreement over this issue in mediation prior to the hearing.

Issue 2 Article XXI, HOLIDAYS

Union's Position

See UP, the Union proposes the addition of one additional paid holiday, which would occur the day after Thanksgiving or in the alternative one personal day. The Union basis its position on the fact that traditionally City Hall is closed the day after Thanksgiving and employees are forced to take the day without pay or utilize their one personal day. The Union also asserts that other organized employees in the City currently have more holiday time. And, comparable bargaining units of employees throughout the region have one or two more holidays than does the bargaining unit.

Employer's Position

See EP, the Employer proposes current language. The Employer agrees that the day after Thanksgiving is a day when City Hall is closed giving employees the option of taking their one personal day or losing a day's pay. The Employer points out that adding an additional holiday on the day after Thanksgiving it would incur the cost of holiday premium payments for employees who are called into work due to an emergency or to make necessary repairs or restoration of interrupted service.

Discussion

An examination of internal comparables reveals that other bargaining unit employees within the police department have more holiday time than does the AFSCME bargaining unit. The police department bargaining unit currently has 120 hours of holiday time verses the 96 hours currently available to the AFSCME bargaining unit. Based upon the data provided,

the bargaining unit is in the "middle of the pack" regarding holiday benefits with like jurisdictions.

It is important to be aware that in this report the Employer's position regarding longevity is being recommended, which in the future will permanently reduce its direct and indirect personal costs. This concession by the Union, along with creating more equity in holiday time among all organized City employees, and recognizing a long standing practice by the City in closing City Hall the day after Thanksgiving, creates a reasoned foundation for the Union's position in part.

However, such a change should not increase overtime costs to the City. This can be accomplished if an additional personal day is added in Section 21.01 versus making the Friday after Thanksgiving an official holiday. The City can continue to close City Hall the day following Thanksgiving, which most likely saves the City operating costs, and it can continue to offer employees the option of taking a personal day or a day without pay, thereby avoiding holiday premium costs for unexpected call-ins during this Friday. The employees gain by having one more personal day the taking of which is spread throughout the year, minimally disrupting city services.

Determination:

Article 21.01 Maintain all current number of recognized holidays, but change total of Personal Days to (2). All other language 21.01 through 21.04 shall remain current.

Issues: 3 Article XXX, OVERTIME AND CALL OUT PAY
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Union's Position

See UP, maintain current language. The Union does not believe its bargaining unit has abused sick leave causing more overtime to be worked.

Employer's Position

See EP, remove paid sick leave from the computation of overtime. The Employer, admits is has not had to discipline any employee for abuse of overtime and no employee has been required to provide medical proof of illness, usually triggered by suspicion on the part of employers that there is potential for abuse.

Discussion

A change in long standing contract language requires the submission of facts that support said proposed change. In this matter, there is no evidence to indicate that the bargaining unit has abused its sick leave which has presumably avoided a situation where the City has had to invoke any steps to question or discipline any employees.

Determination:

Maintain current language.

Issues: 4 Article XXXI, STANDBY PAY
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Union's Position

See UP, the Union proposes to establish a minimum for a call out time of two (2) hours. Additionally, the Union is seeking to extend the amount of time to respond to a call-out to forty-five (45) minutes. The Union asserts that while most employees can make it to work within the thirty (30) minute timeframe, there may be conditions which prevent an employee from safely making it to work in thirty (30) minutes.

Employer's Position

See EP, the City proposes a call-out minimum of one (1) hour, and to maintain the response time to thirty (30) minutes. It argues that the City needs to maximize efficiency of operations in order to serve needs of the

public. Moreover, the City points out that when employees are hired into the bargaining unit they are apprised of the need, while on standby, to report to work within thirty (30) minutes.

Discussion

I find the Employer's proposal to increase the minimum call-out time from no guarantee to one (1) hour to be persuasive. The City always retains the option of working an employee for the entire time they are called into work and in most cities there is always work to be done. The Union's arguments regarding additional time to report to work are persuasive from the standpoint of safety. It would be tragic if an employee, because of hazardous road conditions beyond his control, endangered himself and others by having to rush to work to meet an absolute thirty (30) minute limit. In addition, absent a residency requirement by the City, it would be logical that employees may live outside of the City.

However, the need to keep employees safe does not negate a very persuasive argument by the City regarding the importance of timely responding to emergency situations, which justifies the additional language subjecting a unresponsive employee to discipline. It seems that a compromise position, which still ensures a relatively timely response and provides employees with a small, but additional cushion of time is reasonable.

Determination:

31.01 The Employer shall provide pagers, or other communication equipment, to all employees on standby. Employees assigned to standby duty shall be compensated for four (4) hours straight time per week which shall cover all hours the employee is on call. When responding to a call from standby duty, the employee shall be compensated according to Article XXX Overtime and Call Out Pay, and shall receive a minimum of one hour compensation. The Standby list shall include all employees, except the following: Street Superintendent, Water/Sewer Superintendent, Lab Technician, Lab Analyst, Operators and Foremen.

If an employee on standby fails to clock in, without supervisory approval within thirty-eight (38) minutes of receiving notification, the employee shall be subject to disciplinary action and/or loss of standby pay for the week.

Issue: 5 Article XXXV, LONGEVITY

Union's Position

See UP, the Union flatly rejects the Employer's proposal and proposes to maintain current language. It contends the City has no rational arguments for its elimination, nor can they point to an economic necessity to eliminate this benefit.

Employer's Position

See EP, the City asserts a need to focus all available resources into wages. It argues that its position is tied to its rationale regarding wages and it should be emphasized that the City already provides a competitive wage and benefits for all bargaining unit employees,

Discussion

The elimination of a benefit of this nature is a very significant event. And, the Union's arguments regarding the current and near future state of the City are persuasive. The facts support the conclusion that the City is clearly well managed from an administrative and a fiscal perspective. Therefore the immediate and total elimination of this important benefit makes less sense, particularly when one considers the likelihood that in the past the Union has accepted less in wages and other benefits in order to improve or maintain longevity. Moreover, current employees are likely to have reasonably factored this economic benefit in their household budgets.

However, it appears from the facts that the City's is looking several years into the future and is attempting to restructure its benefits with a greater emphasis on wages versus benefits. As noted elsewhere in this report, wages at the lower end of the wage scale are lower than other competitive wages rates, a condition that a longevity plan that starts after five years, would not address in terms of recruitment. However, it is one thing to take a benefit of this nature from current employees and another to not offer it future employees who are in a position to accept or turn down employment with the full knowledge of the benefits structure. Additionally, it must be recognized that other recommendations made in

his fact finding report giving greater weight to the Union's position factored in a change in this benefit for future employees.

Determination:

Article XXXV LONGEVITY

35.01 and 35.02 Maintain current language

35.3 Employees who are currently employed with the City as of the ratification of this Agreement shall continue to be eligible to receive longevity benefits in accordance with the provisions and schedules contained in Section 35.01 and 35.02, as long as they remain employees of the City (in accordance with the provisions contained in Article XIII). Any employees hired after April 1, 2009 shall not be eligible to receive benefits under the provisions of 35.01 and 35.02, providing the City does not offer a longevity benefit to any non-bargaining unit employee(s) hired after April 1, 2009. In the event that the Employer provides longevity benefits to a non-bargaining unit employee(s), the Union shall have the right to re-open the contract for negotiations over the issue of longevity in accordance with the provisions contained in O.R.C. 4117 (including all impasse provisions contained therein).

Issue: 6 Article XXXIII, HEALTH INSURANCE

Union Position

See UP, the Union opposes the City's attempt to eliminate the bargaining unit's health insurance parity with that of other bargaining units in the City. Furthermore, the Union opposes a substantial increase in employee premiums from 10% to 25% for health and dental insurance. The Union points out that current language, not only provides parity with other employees in the City, it provides the Union with a "seat at the bargaining table."

Employer's Position

See EP, the Employer seeks to modify the language of the current Agreement in order to create the flexibility to spread risk, maximize

benefits, and reduce expenses. It specifically refers to ever increasing costs and points out that the City has to date, resisted the temptation to adopt a plan with high deductibles.

Discussion

Certainly health care is one of the most contentious, yet important benefit to union and non union employees alike. It's an issue in which management and labor are actually on the same side and must find creative ways to work with the insurance industry. However, it is axiomatic that other than the amount of wage increases given to differing groups of employees, health care is one of the most watched benefits by employees. It is also a benefit that is routinely uniform throughout the jurisdiction of most public employers, particularly smaller employers. The economies of scale favor a uniform approach to health insurance for smaller employers. Furthermore, the current amount of the employee's premium (10%) is commonly found among public employers in Ohio. The facts support the Union's position to maintain benefit parity and the current percentage of the employee premium.

Determination:

Maintain current language

Issue: 7 Article XXXVII, WAGES

Employer's Position

See EP, the Employer proposes a three year wage freeze. While it desires to maintain a quality workforce and recognizes the importance of providing a competitive wage in order to retain and recruit the best employees, it argues that current circumstances prevent it from raising wages. The Employer points out that the City has had some unique problems during the past year. The Service Garage was destroyed by fire in March of 2008, including several pieces of equipment. The City recognizes that while the building was insured, it will have to build a more modern facility that will require funding beyond what the insurance policy will cover. The City also argues that compared to like jurisdictions it

provides a competitive wage and benefit package to employees. Finally, the City points to the economy and the uncertainty presented by job losses and

Union's Position

See UP, the Union proposes uniform increases of 3.25% each year in the wage rate of each employee and in the wage scale. It rejects the City's proposed wage freeze for three years, arguing the City has the ability to pay what it considers to be a reasonable wage increase.

Discussion

Although some employers in Ohio have had to propose multi-year wage freezes, it is only with great reluctance that said proposals are made and only when the facts dictate there is absolutely no other choice. The facts in this case do not support freezing wages for three years and they also do not support an across-the-board wage increase. As indicated in the overall rationale contained in this report the fact finder is cognizant of the uncertainty in the economy and the need for the City to maintain its prudent approach to finances. The evidence also indicates that while the top wage earners on the salary schedule currently compare favorably to like jurisdictions, the wage earners at the bottom of the scale are low by comparison. The facts indicate that the application of a cents per hour increase on the first step of the salary range would aid those at the bottom of the wage scale, while providing a modest, but affordable increase to employees at the upper end of the wage scale.

Determination

Article 37.01

Retroactive to 7/08 wages shall be increased by .45 cents per hour at Step 1 of all pay grades and shall be applied in accordance with the current wage scale.

Effective 7/09 wages shall be increased by .47 cents per hour at Step 1 of all pay grades and shall be applied in accordance with the current wage scale.

Effective 7/10 wages shall be increased by .49 cents per hour at Step 1 of all pay grades and shall be applied in accordance with the current wage scale.

TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues, copies of which they have retained. These tentative agreements, on all or portions of articles, and any language recommended to change and or remain current are all part of the recommendations contained in this report. Any issues, or sub-issues not specifically addressed are also intended to remain current language for purposes of this report.

The Fact-finder respectfully submits the above recommendations to the parties this 6th day of March 2009 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein", is written over a horizontal line.

Robert G. Stein, Fact-finder

