FACT - FINDER'S REPORT

AFSCME Ohio Council 8,
Local 673

(UNION)

- and -

CASE 08-MED-07-0724

JEFFERSON COUNTY
WATER & SEWER DISTRICT

(EMPLOYER)

September 28, 2009

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was selected by the Parties to serve in the role of Fact-Finder in the above-captioned case pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code.

I. APPEARANCES

For the Union

John J. Filak for ASCME.

For the Employer

Michael L. Seyer for the Employer.

II. BACKGROUND

This proceeding involves collective bargaining negotiations between AFSCME Local 673 (Union) and the Jefferson County Water and Sewer Authority (Employer). This bargaining unit has approximately 15 members, most paid out of the water fund, and the rest paid out of the sewer fund.

The current collective bargaining agreement ("contract") expired on September 30, 2008. Since expiration, the parties have been operating under the previous, expired agreement through a series of mutually agreed to contract extensions. Both before and after expiration, the parties had met on numerous occasions and in good faith, and had settled most of the open issues.

The Parties requested a fact-finding hearing to deal with the remaining unresolved issues. The same was held on September 16, 2009 in the Employer's administrative offices.

It should be noted that changes in the contract that the Parties had negotiated and tentatively signed off on to prior to the fact-finding hearing are adopted without discussion.

FACT-FINDER'S FINDINGS AND RECOMMENDTIONS

It should be noted from the outset that these negotiations have taken place during one of the most unsettled economic periods in our nation's history. Prior to September 2008, the economy appeared healthy and expanding. Later that month, unfortunately, the economy declined precipitously and with the near collapse of the banking system, unemployment skyrocketed and local, state and national budgets contracted significantly. As a result, collective bargaining agreements negotiated prior to September 2008 reflected historic moderate gains for the rank and file. However, public sector employers and their unions faced the stark reality that it would be difficult if not impossible to get many employers to provide even these modest improvements for contracts that had the bad fortune to expire after September.

In recognition of this new reality, the Fact-Finder has attempted to balance the respective equities of both parties in recommending a settlement that attempts to spread the sacrifice equally, without jeopardizing either the Employer's budget, or as a consequence, union staffing levels.

Article 33 – Wages

Union's Position

The Union asked for raises of 3%, 3% and 3% over the life of the new agreement, effective on October 1, 2008, October 1, 2009 and October 1, 2010 respectively.

First, the Union contends that the current state of the Employer's finances render it able to afford these proposed increases. In support, it points out that at the end of 2008 the county's general fund had an unreserved balance of $3.4 million representing 32% of annual expenditures, and fund revenue exceeded expenditures by $2.4 million.

Second, it points out that the water and sewer funds, which finance this bargaining unit's operations, not only had a surplus of $929,921 in 2008, but came in $274,385, or 4%, under budget. The water fund has unrestricted net assets of approximately $3 million and increased its customer base in 2008. And, the sewer fund ran a deficit in 2008 but still maintained an unrestricted fund balance of 37%. And, in any event, as enterprise funds, the Employer has the latitude to increase water and sewer rates if either positive fund balance ever became threatened.

Third, the Union pointed out that in previous contracts, members of this unit received wage increases of an even greater amount than what it is proposing for this new contract, to wit, 1999 – 4%, 2000-2003 3% per annum, 2004 – 3%, 2005-2006 3.5% per annum, and 2007 - 3%.

Fourth, the raises the Union asks are less than the raises granted by the county to its other units, to wit:

Jefferson County BCC	2008-5%, 2009-4% and 2010-4%
Jefferson County JFS	2007-3%, 2008-3%, 2009-3$
Jefferson County Engineers	2006-3.4%, 2007-3%, 2008-3.85%
Jefferson County Recorder	2006-5%, 2007-3%, 2008-3%
Jefferson County Sheriff	2007-4%, 2008-4%

Fifth, the proposed raises are also less than those received by other Jefferson County public sector employees: MHA clerical/technical and service/maintenance (4-4-4%); City of Steubenville (3.5-3.5-3.5%); City of Toronto (3-3-3%), Community College professional (2.4-2.6-2.1%) and support staff ($.10-.22-.24-.20/hour) and Jefferson County JVS (2-2%). 5).

Lastly, the Union points out that employees in this unit are paid less than many similarly situated employees (comparables) in other parts of Ohio.

Employer's Position

The Employer proposed maintaining the current wage scale for a second year of the agreement, with a re-opener during the 60 day calendar period prior to September 30, 2010 for the sole purpose of discussing wages for the contract year 2010-2011. In effect, the Employer's proposal would amount to a wage freeze in the first year, a wage freeze in the second year, and a re-opener in the third year. Or, 0%-0%-re-opener.

In support of its position, which the Employer admits is substantially less than the raises these employees have traditionally enjoyed over the years, the Employer points out the following.

One, from a big picture perspective, the economic meltdown has substantially limited the financial flexibility of the County. To illustrate, there have been layoffs, a shutdown of the County Jail, and rising unemployment throughout the County. In fact, in a spirit of shared sacrifice, the Director of Sanitary Engineers voluntarily gave up the 3% raise that he was to receive.

Two, while it admits that for the past decade this unit has received annual raises of between 2% and 4%, the economic collapse of late last year that devastated budgets and made tax revenues less certain has changed the dynamic of what public sector employers can afford this time around.

Three, while it is a fact that other County bargaining units have received raises this year, in almost every case these raises were negotiated prior to the September 2008 economic collapse.

Four, the County takes issue with the comparables that the Union tried to introduce at the hearing. Particularly, the size of the cities referenced in the Union's statistics, as well as the fact that the comparables did not take into account that this unit may enjoy other non-wage economic enhancements that the other contracts referenced by the Union may lack.

Five, the County disagrees with the Union's assertion that it has the present ability to pay 3-3-3% raises. To illustrate the uncertain pressure to come on its revenues, in the last seven months alone the County unemployment rate has jumped over 30% from 10.6% to 13.1%, along with an increase in the mortgage foreclosure rate. And, the number of new housing starts in the County have declined, and water and sewer delinquent accounts have increased over 12% from $235,000 to $266,000 while the number of water and sewer customers has remained flat. Finally, Michael Warren, the County Auditor, explained in detail how the County's finances have deteriorated over the past 12 months, and the uncertainly going forward in projecting revenues yet to be received, particularly since the new budget will not be complete until April 2010. While he acknowledged that theoretically the County could adjust water and sewer rates to whatever level it wished, both practical and political constraints made that unfeasible, and even more so in a recession, and with sewer rates being raised just this year. He discussed how in 2009 the sewer fund would end up with a small surplus while the water fund would experience a deficit, and how going forward he projected the sewer fund to end up with another small surplus while the water fund could end up almost $300,000 in the red. And, he concluded with the observation that anticipated water and the sewer fund revenues were lagging behind actual revenues received to date.

Six, the Employer suggests that while this unit has been asked to accept a wage freeze, the proposed contract still is not without certain economic improvements. Specifically, the sick/funeral leave has been liberalized, call in pay for 3:30 pm Friday-Monday has been increased from $50 to $75, the educational incentive has been increased from $.50/hour to $.75/hour, the allowance for work boots has been agreed to up to a maximum cost of $150/year, and the employee's share of the healthcare premiums was suspended in October-December 2006, November-December 2007 and November-January 2008, an accommodation that alone was equivalent to average of $.46/hour in wages.

Lastly, it points out that the County Engineer has recognized the economic realities facing the County and have accepted modest contracts to reflect those realities, i.e., a wage freeze followed by a contract re-opener, as have two other units, the corrections administrators and the corrections officers.

Finding and Recommendation

After weighing all of the competing interests, the bargaining history between the parties, wage comparables, and ability to pay arguments, the Fact-Finder comes to the difficult conclusion that, as with so many other recent public sector contracts in the state of Ohio, it would be imprudent at the present time to recommend wage increases, at least for the foreseeable future.

Local, state and federal economic metrics are still abysmal. The unemployment rate keeps rising, the state budget remains uncertain, and the economic conditions in this County are among the worst in the state. Further, the testimony of the County auditor explaining how the County's budget remains fragile and uncertain was both credible and convincing. The Fact-Finder also takes note of the fact that even with a wage freeze, the proposed contract is not wholly concessionary in that other economic improvements such as uniform allowance and shift differentials have been granted in spite of the economy.

So with these factors in mind, this Fact-Finder believes that it would be imprudent to recommend saddling the County budget with a pay increase at this time, a sober economic reality shared by many other units in the County and evidenced in their contracts.

On the other hand, having found that a wage freeze is prudent, the Fact-Finder believes that the Employer's proposal to freeze current wages for two years is unnecessarily conservative. Rather, he believes that a 1-year freeze followed by modest increases in the last two years of the contract should suffice to provide reasonable budgetary breathing room for the Employer.

Therefore, the Fact-Finder recommends that there be a wage freeze only in the first year of the agreement (10/1/08-9/30/09), with 2% raises in each of the last two years of the contract.

Because the unfortunate timing of the expiration date of this contract came as it did just at the market collapsed, and this unit is funded differently than other units, the Fact-Finder recommends that during the second year of the agreement only (10/1/09-9/30/10) that the employees in this bargaining unit receive an additional personal day off. To ease scheduling concerns, this day off would need to be requested a minimum of 48 hours in advance, and in recognition of the supervisor's responsibility to maintain adequate staffing levels and meet anticipated workload requirements. Due to the transitory nature of this enhancement, it is suggested that perhaps this language should be memorialized in a letter of understanding rather than in the contract itself. The Recommended language is as follows:

"During the second year of the contract, employees will be provided one (1) paid personal day off to be taken during the pendency of that contract year. Employees requesting to use their personal day must submit their request to their immediate supervisor at least forty-eight (48) hours prior to commencement of such leave. Absent

scheduling or workload needs, personal leave requests shall not be unreasonably denied. Requests for the same day off by two or more employees shall be determined by seniority. These notice requirements may be waived at the discretion of the Employer".

Finally, it is recommended that once the new contract is signed off on, that all T.A.'s signed by the parties be effective upon execution.

Conclusion

While this Fact-Finder realizes that neither Party will be fully satisfied with this Report, in light of the current economic conditions I believe that it meets the standard of both Parties being equally unhappy with the recommendations. In that respect, I am confident that it's a recommended settlement that both parties can feel comfortable recommending to their respective constituencies.

Issued: September 28, 2009

Respectfully submitted,

JARED D. SIMMER

Jared D. Simmer, Esq.

Fact-Finder

attach.

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Consent Report and Recommendations were served upon the following parties, to wit, AFSCME, Ohio Council 8, Local 673 (via John J. Filak) and the Jefferson County Water and Sewer Authority (via Michael Seyer) by electronic mail, and upon the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediation) by first class mail, this 28th day of September, 2009.

JARED D. SIMMER

Jared D. Simmer, Esq.

Fact-Finder