

ALAN M. WOLK
IMPARTIAL FACT-FINDER
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

THE CLEVELAND PUBLIC LIBRARY [CPL])	
)	
EMPLOYER)	SERB NO. 09-MED-09-1029
)	
and)	
)	
TEAMSTERS LOCAL No. 244)	REPORT and RECOMMENDATIONS
[CITY, COUNTY & WASTE PAPER DRIVERS])	
)	of FACT FINDER
Union)	

Appearances:

FOR THE EMPLOYER:

Thomas H. Bernard ESQ.; Ellen K. Toth, Esq., Ogletree, Deakins, Nash, Smoak & Stewart, P.C. Ellen Toth, Counsel for the Cleveland Public Library.

Witnesses: Melvin Abrams, CPL Assistant Chief of Security; Larry Novotny, CPL Assistant Human Resources Administrator; Myron Scruggs, CPL Property Management Administrator; Sandra Kuban, CPL Financial Administrator and Fiscal Officer CPL Felton Thomas, Jr. Director; Sharon Tufts, CPL Human Resources Administrator

FOR THE UNION:

Jarrell B. Williams, Local No. 244 President/Business Agent;

Witnesses: Joseph Stefano, CPL Security Officer; James Southerland, CPL Security Officer/

History of the Proceedings

Pursuant to Ohio Revised Code Chapter 4117, Section 4117.14(C), and by letter issued by SERB, the undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral fact-finder to hear, consider evidence and arguments, and report findings and recommendations pursuant to Ohio law.

In compliance with Ohio Administrative Regulations position statements with supporting documentation were timely submitted to the opposing parties and to the Fact-Finder prior to the hearing.

Commencing at 10 a.m., hearing was held and concluded at the Cleveland Public Library 325 Superior Avenue, N.E., 10th Floor Board Room, Cleveland, Ohio 44114. A court reporter was *not* present.

Submission

I. PARTIES

The Union is Teamsters Local No. 244 [City, County & Waste Paper Drivers];

The Union's principal representative: Jarrell B. Williams, President/Business Agent, 2800 Euclid Avenue, Suite 100. Cleveland (Cuyahoga County), Ohio 44115; Phone: 216-344-9909, FAX 1-216-344-9476, CELL: 216-773-6226; Email: teamsters244@sbcglobal.net

The Employer is The Cleveland Public Library with administrative offices located at 325 Superior Avenue, N.E., Cleveland (Cuyahoga County), Ohio 44114; it is a public library system with a main office in downtown Cleveland and 29 branches throughout the City of Cleveland

The Employer's principal representative: Thomas H. Bernard ESQ., Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 127 Public Square, Suite 4130, Cleveland (Cuyahoga County), Ohio 44114; Phone: 216-357-4731, Fax: 216-357-4733, Cell: 216-570-6119, Email: tom.barnard@odnss.com | www.ogletreedeakins.com; Ellen K Toth, Esq.; CPL Counsel.

II. Description of the Bargaining Unit

The bargaining unit consists of approximately fifteen (15) full and part-time employees and an additional two members on lay-off [Q]; all are classified as Security Officers.

The Union became exclusive representative of the bargaining unit(s) approximately ten (10) years ago.

The employees are responsible for security functions for the Employer

III. Current Collective Bargaining Agreement

The current Collective Bargaining Agreements expired December 31, 2009, and extended pending retroactive resolution of the impasse described herein.

V. Current negotiation history

Negotiations for the parties' contract commenced October 20, 2009; meetings were held the parties met at least a total of six (6) times prior to the hearing; i.e. December 11, 2009; January 21, 2010; February 2, 2010; March 8, 2010; June 28, 2010 and July 29, 2010.

Criteria

In making recommendations, full consideration to the statutory criteria served as the guidelines.

"The FACT-FINDER, in making Recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;

- (2) Comparison of unresolved 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 agree upon dispute settlement procedures in the public service, or in private employment.”

Stipulations

The parties extended the time of the due date for issuing the Report and Recommendations.

The parties agreed that the Report and Recommendations when finalized shall be effective retroactively beginning January 1, 2010 through December 31, 2012, subject to an Economic Re-opener [See: SEIU Article 14 A. 3].

Report and Recommendations

After opening statements, evidence, including testimony and exhibits, was admitted, followed by closing arguments, Briefs were waived.

FINDING of FACT – Background:

The Cleveland Public Library (CPL) is a free library, highly regarded nationally; consisting of Main Library buildings located in downtown Cleveland, Ohio, and 29 branches within the city limits. It is managed by a Director who is selected by and reports to a seven-person public board with lawful authority as a public employer.

Two unions have labor relations with the CPL: SEIU #1199 with several hundred members employed by the CPL, and Teamsters Local 244 representing 15-17 security guards, stationed at the main library. In addition to the Teamsters' security guards, the CPL has a contract with a company named "Tenable," which provides 28-30 non-union guards at the 29 branches of the CPL.

FINDING of FACT - Past Collective Bargaining Agreement:

The 2007-2009 Collective Bargaining Agreement, between Teamsters with the CPL, includes [EX-N, pages 19-21]; in part [*underlined words are in contention*]:

“ARTICLE 16 Holidays

Section 1. Holidays.

“All full-time (and part-time regular employees on a prorated basis) are paid for the following days observed as legal holidays in Ohio or declared holidays by the Library Board; New Years Day, Martin Luther King Day, Presidents’ Day, Founder’s Day, Memorial Day, 4th of July, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving and Christmas. When any of this holidays falls on a Sunday, it is observed on the following Monday.”

“5. When an employee works on a paid holiday when the Library is closed, he/she shall be paid at two and one-half (2½) times the hours worked, plus the day of holiday pay.”

“6. Employees who volunteer to work and are scheduled to work at the special event held on Martin Luther King Day shall be paid at the rate of two and one-half (2½) times the hours worked.”

FINDING of FACT - Financial Background

[i. e. the ability of the public employer to finance and administer the issues proposed]:

There are two (2) major sources of revenue: Property Tax (1 Mill continuous levy since 1995) and a 5.8 Mill Levy (2009-2013) together with the Public Library Fund which was 2.2% of State General Revenues but reduced to 1.9% as of 7/1/09 [Employer EX-A].

The assessed valuation of property in Cleveland was \$6.5 Billion in 2007, but, due to a current recession and a significant increase in foreclosures, real estate values went downward to \$5.4 Billion in 2010; furthermore actual collection of taxes is down from 96.45% to 84.57%. The result is that the CPL’s property tax revenue expectations are down \$9.1 million. Previously budgeted revenue from the 5.8 Levy are now expected to amount to \$7.3 million less than anticipated.

General Fund Appropriations for 2010 are projected to be \$59.2 million compared to \$66.6 million in 2009. Salary and benefits was \$44.2 million in 2009 but are \$37.1 in 2010 down from 66% to 62% of all appropriations.

The Public Library Fund, as Certified, is down from \$26.9 million in 2007 to a projected \$19.6 million in 2010; the projected accumulated loss is \$22.6 million.

The budget revenues for 2009-2013 from all sources are down from \$66.6 million to \$54.1 millions. Furthermore, revenue from Intangible tax, once converted to a Commercial Activity Tax, is now being phased out.

Thus, revenues from all sources have been reduced some \$9 million in 2009 and 2010.

Many other library systems have been forced to make drastic reductions in Ohio and all over the United States.

In response, the CPL discontinued prior practice of granting annual across the board 3 % salary/benefit raises for all non-union staff (including the Director). Note: the Union memberships by Contract received three (3%) raises in 2009.

The library is now closed Sunday and has eliminated later evening open hours. It also delayed posting vacancies and/or froze the filling of vacancies, and trimmed overtime for non-emergency reasons as well as substitute hours.

On January 21, 2010 the CPL Board adopted the following [EX-G] regarding its Compensation Practices (#300) and other time Allowances With Pay (#380) as change # 231 to Legal Holidays – 385:

“385.4 – For 2010 only, Presidents Day, Columbus Day, Veterans Day, and June 1, 2010 are unpaid furlough days on which the Library will be closed. Part-time regular employees will be scheduled for four hours on the closed furlough days in 2010 within their normal schedule. The pay rate for substitutes and page employees will be adjusted to reflect the equivalent of four furlough days.”

These payroll reductions as well as purchasing cutbacks for supplies, library materials, external contracting and capital outlays, achieved a reduction of approximately \$7.3 million annually. A significant budget shortage remains.

Many staff members left, some due to these cutbacks. Accordingly, staffing is down some 141 employees to 679. Of that 141, two are from Teamsters Local No. 244.

In view of the foregoing, the CPL has demonstrated that without such measures, the CPL would lack the “ability of the public employer to finance and administer the issues proposed.

FINDING OF FACT:

Accordingly, CPL policy covering all remaining non-union staff (including the Director) [Ex-E; Ex-F], as well as ARTICLE VI of the SEIU 2010-2012 in its negotiated Collective Bargaining Agreement [EX-O], provides for four mandatory unpaid furlough days, and the reduction of compensation, for working on a holiday, that had been calculated by a multiple that was effectively 3 ½ times the hourly rate and is now effectively 2½ times the hourly rate. [*Emphasis added*].

FINDING OF FACT

Management’s *reduced outlay* from the two layoffs for earnings, OPERS, Medicare and Workers’ Compensation less Unemployment Benefits [available for 99 weeks] amounted to approximately \$28,500 for the last seven (7) months of 2010, and may amount to somewhat more than \$72,000/annually (unless or until these two employees are recalled or replaced) [MX –C; UX 1].

FINDING of FACT

CHANGES PROPOSED BY THE EMPLOYER (at the parties July 29, 2010 meeting):

“ARTICLE 16 HOLIDAYS, FURLOUGHS AND SPECIAL CLOSINGS

Section 1. Holidays.

ARTICLE 16, Section 1.

Add new paragraph “Four (4) unpaid furlough days in 2010: Columbus Day, Veteran’s Day, and two (2) furlough days on CPL holidays to be determined.”

ARTICLE 16, Section 1.

Add: “If a day off occurs on an unpaid furlough day staff will be assigned another day off during the pay period without pay.”

ARTICLE 16, Section 1.

Change paragraphs 5 and 6 --

Employees who work on a paid holiday when the Library is closed and at Martin Luther King Day special event are paid at one and one-half (1 ½) times the hours worked, plus the day of holiday pay.” [changes are underlined]

REASON

It is Management’s position that the members of Teamsters Local No.244 should be subject to the identical provisions as all non-union staff members as well as the membership of SEIU 1199, all of whom are now mandated four unpaid furlough days, in addition reducing the hourly rate for working on a holiday from an effective 2½ times the hours worked replacing the current effective rate 3 ½ times the hours worked.

PROPOSED BY THE UNION:

A majority of Teamsters Local No. 244 membership voted to reject the foregoing.

REASON

The Union contends Management achieved significant savings (approximately \$72,000 to \$100,000 annually) because it laid-off two of their members.

Furthermore, the Union members believe that Management has not comparably reduced the amount paid for 28-30 security guards supplied at the 29 CPL branches by a CPL sub-contractor, Tenable.

Discussion:

Management’s proposal to the Teamsters mandates four (4) unpaid furlough days. Approval of CPLs proposal will continue premium pay for working on the holiday in addition to the regular rate, but reduce the two and ½ time factor to one and half (1½) times the hourly rate, thereby effectively paying the employee two and a half (2½) times his/her regular rate rather than three and a half (3 ½) times.

The much larger SEIU #1199 accepted the four unpaid furlough days and the reduction in holiday pay rates.

Two Laid-off Teamsters

After 141 employees have left in connection with the cutbacks, there are no wage increases for any remaining employees at any level. All except the Teamsters have accepted the four unpaid furlough days.

In my view, union members are not entitled to any money saved, by reason of layoffs of two of their members any more than the other remaining 620 staff members are entitled to the savings arising from the of the other 139 departed employees. To do so would subvert the whole purpose aimed at the financial survival of their Employer.

Accordingly, the Union position is rejected.

Subcontracted guards*

It is the Union argument that Tenable were not required by the CPL to have Tenable guards sustain equivalent income reductions. Tenable provides security services for the 29 outlying library branches. However, there was insufficient supporting relevant and material evidence whether Tenable undertook or CPL imposed cost cuts e.g. reduced hours, lower holiday pay and/or unpaid furlough days, or otherwise.

More important there was no evidence that the Tenable subcontract can legally and feasibly be renegotiated or amended.

• Note:

Employers, particularly public employers, often determine that subcontractors are more efficient and less expensive than direct payroll and benefits. For a period of time there may be a saving, but over time the costs of subcontracting become less competitive and may exceed the costs of payroll and benefits. Sometimes subcontractors pay lower compensation and fewer benefits and are less comprehensive in responding to expectations. When that becomes identified as problematic, employers revert to direct payroll. Over time, there is a new cycle and a subcontractor will offer competitive rates. Therefore, it may be wise for Management to conduct a complete review, audit and evaluation of the CPL contract with Tenable with respect to cost reductions expected by contracting out guard duties.

RECOMMENDATION

In “the interest and welfare of the public,” I find the need for the provisions proposed by Management are reasonable and appropriate.

I therefore recommend adoption of the following:

“ARTICLE 16 HOLIDAYS, FURLOUGHS AND SPECIAL CLOSINGS

Section 1. Holidays.

:

Add new paragraphs:

ARTICLE 16, Section 1.

“Four (4) unpaid furlough days in 2010: Columbus Day, Veteran’s Day, and two (2) furlough days on CPL holidays to be determined.”

“If a day off occurs on an unpaid furlough day staff will be assigned another day off during the pay period without pay.”

Section 1 Holidays [NOTE: changes are underlined]

5. “When employees work on a paid holiday when the Library is closed, he/she shall be paid at one and one-half (1 ½) times the hours worked, plus the day of holiday pay.”

Section 1 Holidays

6.”Employees who work at Martin Luther King Day special event shall be paid at the rate of one and one-half (1 ½) times the hours worked, plus the day of holiday pay.”

RECOMMENDATION

ARTICLE 29. WAGES AND BENEFITS

I recommend adoption of the following:

Economic Re-opener

“The Agreement shall be reopened upon sixty (60) days written notice prior to December 31, 2010 by either party for the limited purpose of negotiating economic issues only.”

REASON: The parties mutually agreed regarding this provision.

ALAN M.WOLK, J.D.
Fact-Finder

Made effective in Cuyahoga County, Ohio,
this ____ day of _____, 2010.

EXHIBITS:

Jointly agreed exhibit notebook prepared by Management

Union:

2010 Salary information regarding two laid-off members [Colston and Smith] of Teamsters Union Local 244

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