

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Fact-Finding between

THE CITY OF CLEVELAND,)	
Employer)	SERB CASE NOS : 2016-MED-02-0990
)	2016-MED-02-0091
-and-)	
)	JEFFREY A. BELKIN,
CITY, COUNTY & WASTE PAPER)	FACT-FINDER
DRIVERS, IBT LOCAL 244,)	
Union)	

FACT-FINDERS
REPORT AND RECOMMENDATIONS

The parties were represented as follows:

For the City:

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For the Union:

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Teamsters Local 244
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I. BACKGROUND

A. Bargaining Units

The City of Cleveland currently has about 390,000 residents. In terms of its Union relations, the City recognizes a total of 31 bargaining units with 25 labor contracts. The two

Teamster units involved in this proceeding are “strike eligible” pursuant to ORC§ 4117. Among the bargaining units recognized by the City are four (police, fire, emergency medical services) that are prohibited from striking under State law.

Teamsters Local 244 (“the Union”) represents two bargaining units, one consisting of full-time employees (approximately 275 employees); and seasonal employees (approximately 143 employees), in the following classifications:

A. Full-Time Employees. Concrete Mixer Driver, Tanker Truck Driver, Truck Driver (all classifications), Tow Truck Operator, Airport Maintenance Man, Tractor Driver, Dog Warden, Hostler, Street Equipment Maintenance Specialist, Street Equipment Maintenance Leadman (working), Street Carry All Driver, Waste Collection Driver, Ground Maintenance Driver I, Ground Maintenance Driver II, Traffic Controller, Parking Enforcement Officer.

B. Seasonal Employees Concrete Mixer Driver, Tanker Truck Driver, Truck Driver (all classifications), Tow Truck Operator, Tractor Driver, Street Equipment Maintenance Specialist, Street Equipment Maintenance Leadman (working), Street Carry All Driver, Waste Collection Driver, Ground Maintenance Driver I, Ground Maintenance Driver II.

B. Collective bargaining agreements

Each of the teamster bargaining units has been covered by a separate agreement, the “Full Time Agreement” and the “Seasonal Agreement.” Both prior agreements had effective dates of April 1, 2013 – March 31, 2016.

C. Bargaining History

The parties commenced negotiations on March 31, 2016, and held four bargaining sessions over three months. On August 1, 2016 the parties participated in a mediation session. Neither the bargaining sessions nor the mediation resulted in significant progress toward resolution of the numerous issues separating the parties.

D. Fact-finding sessions

Fact-finding sessions were conducted at Burke Lakefront Airport on September 7, 8, 26, 27 and 28, 2016. Both parties were represented at all sessions, and presented numerous witnesses and documentary evidence in support of their respective positions. Stenographic transcripts were taken at all sessions.

II. FACT-FINDING REPORT

In reaching the Findings and Recommendations on the issues at impasse, the undersigned has considered the parties' prehearing statements, oral presentations, and exhibits. Also taken into account were the factors mandated by statute:

Past collectively bargained agreements, if any, between the parties;

Comparison of the unresolved issues relative to 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;

The interests 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;

The lawful authority of the public employer;

Any stipulations of the parties;

Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

E. Framework of the Report and Recommendations

Through five days of fact-finding, the undersigned observed several factors that should be addressed not only in this report, but also by the parties as they go through the process of finalizing the two Agreements, and then living with them for their duration. These factors are reflected in the parties' proposals and counter-proposals, and are primarily include the following:

1. The City's financial condition. This factor is overriding, and necessarily affects many of the recommendations in this report.

2. The diversity of the bargaining units. Because the bargaining units include diverse employee classifications spread throughout various operating Divisions, with often diverse concerns and bargaining objectives, it is very difficult to construct a coherent bargaining position. This factor contributes to the problem of satisfying the legitimate economic interests of some classifications at the expense of other classifications, in the face of the City's deteriorated financial condition.

3. Operating efficiencies in the face of contractual recognition and seniority provisions. It became apparent during the fact-finding that the City's operating objectives include the assignment of "bargaining unit work" to employees outside the bargaining unit, in order to gain the benefit of lower pay rates and/or greater operating efficiency. The City's managerial objectives, while legitimate, are frequently in conflict with the inherent work preservation/jurisdiction provisions of the collective bargaining agreements.

4. Observations on the role of fact-finding. In discussions with the parties during the fact-finding proceedings, both on and off the record, the undersigned expressed his view that

fact-finding should assist and support the parties in reaching a final agreement. That is, the undersigned considers fact-finding to be part and parcel of the negotiation process; and therefore, the factfinder should take into account that his recommendations are subject to rejection by either or both parties. This observation is particularly appropriate here, given the often difficult and acrimonious exchanges between the parties during the proceedings. Thus, any recommendations that are sure to provoke rejection by either or both parties should be avoided, and have been avoided where possible.

F. Background of the City's recent financial problems

On November 8, 2016 the residents of the City voted to approve an income tax rate increase of 0.5%. This fact will enable the undersigned to recommend very modest wage increases over the life of the two agreements. (To be more fully discussed below) However, given that much of the increased revenue will be directed toward satisfying other priorities, the City's financial condition remains precarious. This fact was not seriously contested by the Union during fact-finding. A full review of the City's finances was presented in its Opening Statement, and later augmented with testimony and numerous exhibits. The initial review is as follows:

The City's Financial Crises of 2004 and 2010 (as reported in the City's Opening Statement)

Over the last twelve years, the City has twice seen its financial condition deteriorate to such a level that it was forced to conduct layoffs, seek concessions, slash expenditures by other means, and seek new revenue sources. At the end of 2003, the City faced a \$60 million deficit

for upcoming 2004, resulting in a layoff of over 500 employees. Only as a result of this and other drastic measures did the City manage to balance its budget.

In the ensuing five years, the City was able to make ends meet from year-to-year, maintaining various belt-tightening measures. However, in 2009, a financial crisis, in the form of the Great Recession, once again struck the City. The result: concessions from employees in the form of unpaid furloughs and/or the suspension of other compensation-based benefits, and more layoffs. Then, if that were not enough, decisions emanating from Columbus in 2011 – slashing Local Government Fund (“LGF”) revenues, personal property tax (“PPT”), estate tax, and the commercial activity tax (“CAT”) to the tune of millions of dollars a year, required the City to sustain many of its cost-cutting measures and otherwise operate with employment rolls at their severely diminished levels.

Having suffered through these financial disasters, the City was compelled to undertake measures to ensure, as best it could, that layoffs and /or concessions not happen again. To that end, the City continued with a myriad of belt-tightening measures to reduce expenditures (reducing employment levels through attrition, delaying the filling of vacancies, restructuring City divisions and departments, etc.) On the revenue side, among other measures, the City imposed a trash collection fee on its citizens for the first time – a measure which resulted in the influx of sorely needed revenues.

City’s Slight Rebound: 2011-2015

With the aforementioned measures, the City gradually built its cash reserves to more reasonable levels through 2015 – yet still below that which is generally recommended by

financial professionals. Between 2011 and 2015, the City's General Fund revenue crept back towards its pre-recession levels, from \$502.7 million (2011) to \$516.8 million (2015). However, even at a growth of \$14.1 million, at the end of 2015, General Fund revenue still stood \$7.2 million below pre-recession levels (\$524 million in 2008). Counteracting this revenue growth, City expenditures likewise climbed, even exceeding revenue growth between 2013 and 2015. Specifically, while the City had \$492.7 million in General Fund expenditures in 2011, that number grew to \$524.9 million in 2015, surpassing 2008 expenditures by \$1.9 million.

Ongoing revenue loss and increasing expenditures throughout this time hampered the City's return to fiscal stability. Due to the property tax foreclosure crisis, the City saw a permanent annual loss of \$18 million. Furthermore, the state's decision to cut LGF revenues, the TPP tax, estate tax, and the CAT have resulted in the permanent annual loss of over \$30 million. In fact, between 2011 and 2015, the accumulated annual loss from State of Ohio revenue was an astounding \$146.6 million. Outside of these forces, the City has had to deal with additional stressors on its budget. For example, in 2014 the City's citizens voted out of existence the City's traffic camera program. Coupled with drops in fines and forfeiture revenue, the City saw the loss of \$13.2 million in General Fund revenue due to the elimination of the traffic camera enforcement program.

After seeing revenues substantially exceed expenditures in 2012 due to extreme cost-cutting measures, the City saw structural deficits of \$2.6 million and \$2.2 million in 2013 and 2014, respectively. The City managed these deficits by leaving positions unfilled and from one-time revenues such as land sales and a significant worker's compensation refund. However, by the end of 2015, expenditures once again far outpaced revenues, this time by approximately

\$8.1 million. An increase in salaries and benefits significantly contributed to this gap. Between 2013 and 2015 the City saw a net increase of \$14.9 million, or 4%, in salaries and benefits.

Therefore, while the City's General Fund carryover initially climbed out of the depths of the recession (2011 to 2012), the decreasing revenues and increasing expenditures have led to further reductions. Due to the City's extreme cost-cutting measures, the City finished 2012 with a \$50.6 million carryover (approximately 10.4% of expenditures) after sitting at a \$16.9 million carryover in 2011. However, by 2015 the carryover dropped to \$42.1 million, or 8.0% of expenditures. Even then, this figure was inflated, as the City did not pay \$5.3 million in retro wage payments (from 2013-2016 CBA) to Cleveland Police Patrolmen's Association ("CPPA") until January 2016. Otherwise, as has been its practice of late, the City only survived 2015 with a positive carryover balance by delaying payments owed until 2016. As such, despite its best efforts, the City's General Fund carryover still stood at substandard levels at the close of 2015.

The City's Current Financial Outlook: Tenuous

In 2016, the City has faced a number of challenges as it works to re-establish some semblance of fiscal stability. First, the City faces the upfront costs emanating from the first year of the Consent Decree agreement reached with the U.S. Department of Justice. The City had been embroiled in negotiations with the DOJ over its police operations. As part of a five-year agreement, the City estimated 2016 Consent Decree costs at \$10.6 million.

In addition, the City owes significant payments – approximately \$12 million – stemming from lawsuits against the City. Those include: \$3 million to the estate of Tamir Rice (and another \$3 million in 2017); \$3 million to the estates of Timothy Russell and Malissa Williams;

and a multimillion dollar settlement with Xerox (Company originally sought \$9 million) based on the cancellation of its traffic camera program.

Furthermore, the City faces significant increases in employee salaries and benefits. The City anticipated a net increase of \$27.8 million, or 11%, in 2016 alone from the retroactive pay provided to employees as a result of the collective bargaining process for the 2013-2016 cycle. In addition, the City predicted a 9% increase, or \$3.4 million, in health care costs. Additional 2016 increases in expenditures include \$6 million in Justice Center maintenance and \$700,000 in Civil Service testing.

Finally, the City expects to see a continued reduction in some revenue areas. For example, based on the County's triennial reappraisal of property values, property taxes are expected to decrease by 5.3% in 2016. In addition, although the City has seen significant business development, it receives little (if any) direct benefit, i.e. sales tax, business tax. Generally, to incentivize such development, the deal includes tax increment financing, which means the property taxes go back to the developer. The City does receive a portion of any property taxes paid. However, the majority of property tax receipts goes to schools and the County. In addition, the City does not levy a local sales tax, so when new restaurants open and are booming the sales tax goes to the state and county. From these developments, the City only receives admission, parking and bed taxes. Similarly, while the City received significant positive exposure from its handling of the RNC, it is not clear whether the City will receive any positive economic impact during 2016. If anything, it will lead to the booking of future events.

In sum, the City faces a tough fiscal year in 2016. Originally, the City projected 2016 General Fund revenues of \$525,371,291 and General Fund expenditures of \$566,816,628,

which would have led to a nearly non-existent General Fund balance. However, through July, revenues have come in slightly over projections and expenditures slightly under estimates. Even with the improved numbers, the General Fund carryover still projects to drop from \$42.1 million, or 8% at the end of 2015, to a miniscule \$3 million, or 0.53% of expenditures. Furthermore, such projections include no wage increases – for, as is clear, any 2016 wage increases are simply not feasible. A 1% wage increase, applied City-wide, would cost approximately \$4.8 million in the first year alone.

The City faces dire straits once again and, absent a significant influx of new revenue, does not expect its financial picture to improve anytime soon. Additional 2017 expenditures include multi-million payments for lawsuit settlement and ongoing DOJ Consent Decree costs (\$7 million annually starting in 2017). As it stands, the City projects annual deficits ranging from \$33 million to over \$39 million between 2017 and 2020.

As such, the City must act now to improve its financial forecast and certainly cannot afford to hand out significant wage increases to its workforce. With the drastic measures the City already has taken since 2006 (including reducing the workforce by 1,280 General Fund employees – approximately 22% of the General Fund workforce), the City simply seeks to avoid further furloughs, layoffs, or other extreme cuts.

Tax Increase, a Means for Survival

Based on its dire economic forecast, the City proposed increasing its income tax rate from 2.0% to 2.5%. Expected to generate an additional \$83.5 million for the City's General Fund, the City plans to use one-half of the additional funds to ensure a structurally sound

budget. This influx of additional revenue would eliminate the projected astronomical deficits. In addition, it will enable the City to end its practice of delaying payments owed so that it may close the year with a positive balance. However, this additional revenue would not provide anything more than a modest surplus. Implementation of any tax increase would not occur until 2017. As such, it will not wipe away the projected \$39 million deficit in 2016, which stands to reduce the General Fund carryover balance to \$3.0 million. Furthermore, even with the additional revenues, the City does not project more than a \$12.4 million surplus in any year between 2017 and 2020. In fact, based on current projections, the City will end 2020 with a carryover of \$41.5 million, or 6.52%. While stable, that still stands far below generally accepted levels and below the 8% Carryover the City had in 2015.

Therefore, with approval of the income tax rate increase, the City will be able to establish a structurally sound budget and avoid further reductions in services, furloughs, or layoffs. However, such an increase will not provide the City with a large surplus of funds.

The City's Massive Unfunded Needs

Despite the construction projects and new enterprises downtown making headlines, the City maintains an extremely high poverty rate and a very high unemployment rate amongst its residents. Additionally, the City has immense infrastructure, capital, and service needs. Therefore, the City plans to use the second-half of the income tax rate increase to address these issues. Those plans include:

- Division of Police – Hire additional police patrol officers, supervisors, and community engagement officers to allow for more community engagement and strengthen the City's existing crime reduction strategy.

- Division of Emergency Medical Services – Purchase additional ambulances and add additional personnel to reduce overall response time to critical/life threatening 911 calls.
- Division of Animal Care and Control – Support expanded services in a newly constructed Animal Care and Control kennel, including spaying, neutering, and other veterinary care.
- Division of Code Enforcement – Hire additional inspectors to perform rental and vacation/abandoned property inspections, and provide more timely and consistent follow-up on inspections for code enforcement and preparation of cases for prosecution.
- Building and Housing – Systematically inspect all rental properties on 5-7 year cycle, hire additional inspectors to reduce wait time for requested permits, increase elevator inspection capacity, and increase prosecution capacity.
- Department of Public Works – Allocate additional funding for pothole/snow removal crews, which would also support leaf collection, residential street sweeping, and vacant lot maintenance.
- Department of Aging – Expand service capacity to the City’s senior population through automation, comprehensive assessment, and neighborhood outreach. Double the Department’s budgeted social workers to better assess senior social service needs.
- Division of Air Quality – Conduct environmental crimes investigations, illegal dumping investigations, and provide enforcement specific to the City’s air quality.
- Division of Environmental/Health – Fill additional staffing positions necessary to support the Childhood Lead Poisoning Prevent Program, the Food Funds Program, Infant Mortality, and general nuisance programs.
- Community Relations – Add staff positions to enhance City’s youth violence prevention strategy and add outreach specialist to communicate with City residents who possess limited English proficiency.
- Capital Projects – Improve turnaround time on permits for street openings and sidewalk uses.
- Public Health – Increase the number of Public Health Lead Investigators, add HIV/AIDS staff positions, add sanitarians to respond to annual resident complaints, and expand air quality services.
- Division of Recreation – Increase Recreation Center staff and Cultural Arts offerings.
- Division of Parks Maintenance – Reduce levels of high grass/weeds on vacant lots, ensure steady annual funding for illegal dumping and clean-up program, improve maintenance of parks and playgrounds.
- Division of Waste Collection – Reduce completion of daily waste collection routes by 1.5 hours and return to weekly bulk items curbside pick-up.

Of note, a number of these planned enhancements will benefit this Union. For example, the Division of Public Works funding improvements would allow the Parks Maintenance

Division to keep seasonal employees for an additional seven weeks. Further, the Division of Waste Collection could hire more full-time and seasonal drivers. Finally, the Animal Control Officers will be working in a newly constructed facility. Therefore, this Union will see a direct benefit from the City's decision to address long-neglected needs.

Overall, the City has done what it can to address the needs of its very needy-resident base and, when it comes to its roads, bridges and buildings, the City has scraped by with band aids and duct tape. Indeed, the identified repair and replacement cost of its buildings, roads and bridges may exceed \$1 billion! Of course, the City could never come close to satisfying such needs. Indeed, even the City's lesser repairs – electrical, plumbing, carpentry – have been largely ignored with literally thousands of work orders for its facilities being placed on hold. These glaring needs serve to drive home an irrefutable point – the City truly has no money to spare.

III. UNRESOLVED ISSUES

CITY'S PROPOSALS

1. Wages – Article XXX (Full-time)/XXVI (Seasonal)

City's Proposal

First year – wage freeze

Second year – wage freeze

Third year – 1% wage increase effective April 1, 2018

Union's Proposal

First year – 2% wage increase effective April 1, 2016

Second year – 2% wage increase effective April 1, 2017

Third year – 2% wage increase effective April 1, 2018

Positions of the Parties

City

The City presented its position through the testimony of Natasha Brandt, Manager of Internal Audit, who testified both as to her personal knowledge; and also to identify numerous documents related to the City's financial condition. A good deal of her testimony concerned the City's history of financial distress, which has already been related above. More pertinent to the Fact-Finding is the City's current financial condition; and her testimony and the supporting documents on that subject are summarized as follows:

1. The City derives close to 60% of its revenues from income tax receipts. Approximately six percent of revenues come from property taxes.

2. Approximately 80% of the City's expenditures are related to personnel costs (including unemployment, workers compensation, insurance and retirement).
3. Most City monies are segregated into two funds, the General Fund and the Enterprise Fund. General Fund revenues are primarily generated from income tax receipts, with small portions from State revenue sharing and grants. Enterprise Fund revenues are largely derived from fees charged for products or services such as water or the airport. Enterprise Fund monies cannot be used to make up shortfalls in the General Fund; but General Fund monies (if available) can be transferred to the Enterprise Fund.
4. For 2016, General Fund revenues are estimated at \$525 million; however, General Fund expenditures are estimated at \$566 million.
5. A critical factor in the City's financial condition is the General Fund carryover from year to year. The carryover balance is available to meet expenditures in the following year. Moreover, the ratio of the carryover balance to expenditures helps to determine the City's bond rating, and thus its ability to borrow. According to Brandt, the ideal ratio is about 10%.
6. At the end of 2015, the General Fund carryover balance was \$42.1 million, a reflection of declining balances year-by-year from 2012. The ratio of carryover to expenses for 2015 was about 8%. Due to anticipated expenditures in 2016, the anticipated General Fund carryover at year end is projected at \$3 million, or barely .05%.
7. It is not necessary to enumerate the expenditures anticipated (or already incurred in 2016), including wage and insurance increases; multimillion dollar legal settlements; expenditures related to the Consent Decree between the City and the DOJ; necessary capital expenditures and infrastructure improvements, among others. Also to be considered is the loss of revenues from other sources, including the elimination of traffic cameras.
8. Passage of the income tax increase will have no effect on the City's financial picture in 2016, as the increase will not go into effect until 2017. Beginning in 2017, the

City projects that the General Fund carryover balance will increase from \$3 million (2016) to \$15 million (2017) to \$26 million (2018) to \$35 million (2019) to \$41 million (2020). Even with these increases in the amount of carryover balance year to year, however, the anticipated increases in the ratio of carryover balances to expenditures are projected to increase from 0.5% (2016) to 6.5% (2020), still well below the optimum 10% ratio.

9. Brandt testified that the City has settled with “two or three” (unidentified) bargaining units for 0 wage increase in contract year 2016; followed by a 1% increase in contract year 2017; and a 2% increase in contract year 2018.

Union

The Union’s position, stated on the first day of fact-finding, is that “the employer’s wage proposals [are] not consistent with wage increases for other city employees throughout the State of Ohio.”

In support of its position the Union introduced bargaining agreements between IBT Local 244 and three cities in the Greater Cleveland Metropolitan Area that include percentage wage increases: Warrensville Heights; Willoughby Hills; and Euclid. The increases in these agreements, according to the Union, are in line with the Union’s proposal in this negotiation.¹

Thus:

Warrensville Heights

January 1, 2015 (retroactive)	1.5%
January 1, 2016	3.0%
January 1, 2017	3.0%

Brunswick

January 1, 2014	1%
January 1, 2015	1%
January 1, 2016	2%

¹ The Union also introduced its Agreement with the City of Brunswick, but the wage increases there are not expressed in percentages.

Euclid

January 1, 2015	1.5%
January 1, 2016	2%
January 1, 2017	2%

Recommendation

While both parties have presented their wage proposals sequentially in terms of percentage increase, i.e. 0-0-1 (City) and 2-2-2 (Union), the undersigned concludes that the evidence warrants treating each year of the Agreement as a separate component.

In year one of the Agreement (April 1, 2016 – March 1, 2017), It is evident that the City's financial situation does not warrant an increase in wage rates for these bargaining units. As the City pointed out, this fact-finding covers the first negotiation in a non-safety force bargaining unit in this round. Although the Union rejected any notion that this fact-finding would set a pattern for other units, that assertion is unlikely to carry much weight with the other labor organizations. In view of the size of the deficit and the magnitude of the City's financial commitments, as explained above, the cost of the Union's first year proposal of a 2% increase, especially if achieved by the other bargaining units, would increase the deficit to unsustainable levels, and likely result in layoffs.

Therefore the recommendation for Wages under Article XXX (Full-time) and XXVI (Seasonal) in year one of the Agreements is -0- increase.

In year two of the Agreements (April 1, 2017 – March 31, 2018) the effects of the recently-approved income tax increase will begin to ease the City's financial situation to a slight

degree, warranting a small increase. Therefore, the undersigned recommends an across the board increase of 1% for both bargaining units.

In year three of the Agreements (April 1, 2018 – March 31, 2019), the effects of the income tax increase will further ease the City's financial situation and, significantly, should begin to improve the ratio of the General Fund carryover to expenditures. Moreover, in view of the recommendation for increases in health insurance contributions (see below), additional wage increases are warranted, to ease the impact of the new levels of employee contributions. Therefore, the undersigned recommends an across the board wage increase of 2 % for both bargaining units.

To summarize, the recommendations for wage adjustments, for both bargaining units, are as follows:

Article XXX (Full-time)/XXVI (Seasonal) -- Wages

Effective April 1, 2016: -0-

Effective April 1, 2017: 1% increase

Effective April 1, 2018: 2% increase

2. Insurance – Article XXIV – (Full-time)

City's Proposal

- Effective April 1, 2017, modify employee-premium contributions by requiring employees to pay eighteen percent (18%)/family and nineteen percent (19%)/single of the City's monthly cost for hospitalization, prescription drug, vision and dental coverage. Allow for employee premium contributions to be reduced to fourteen percent (14%)/family and fifteen percent (15%)/single for those employees participating in City-defined wellness initiatives.
- Effective April 1, 2018, premium contributions will be increased to fifteen percent (15%)/ family and sixteen percent (16%)/single for those employees participating in City-defined wellness initiatives. Non-wellness premium contributions will be nineteen percent (19%)/family and twenty percent (20%)/single coverage.
- Effective April 1, 2017, modify plan-design on Plus plan as follows:
 - Modify annual deductible to \$750 single/\$1500 family
 - Increase out-of-pocket maximums to \$1500 single/\$3000 family for in-network
 - Out-of-network terms to continue to be set by carrier
- Modify premium contributions for an optional high deductible plan by requiring employees to pay nine percent (9%)/family and ten percent (10%)/single of the City's monthly premium cost for hospitalization, prescription drug, vision and dental coverage. Allow for employee premium contributions to be reduced to five percent (5%)/family and six percent (6%)/single for those employees participating in City-defined wellness initiatives. See attached plan design.
- Eliminate HMO options
- Smoking Cessation. The City reserves the right to implement a smoking-cessation policy during the life of this contract.

Union's Proposal

Current contract language

Positions of the Parties

City

Through the testimony of Natasha Brandt and the financial information demonstrated in several exhibits, the following facts were established:

1. In 2015 the City began to see a measure of healthcare control as a result of adopting a self-insured plan.
2. As of the end of 2015 the City's budget for health care exceeded \$81 million.
3. Over the past three years the City's cost of providing health care benefits has increased almost 15%.
4. From 2012 to 2015 the employees' share of health care premiums has increased about 1.25%.
5. The city had hoped for an increase in health care costs for 2016 to be around 3%, but it is more likely to be a 6% increase.
6. If the City's proposal is adopted, the estimated cost savings over the life of the contract (versus maintaining the current levels of employee contributions, as the Union proposes), is about \$160,000.
7. The City acknowledges that its proposal to increase premiums in contract years 2017 and 2018 in both "wellness" and "non-wellness" options is 1% higher than the pattern health care proposal for other bargaining units; but it contends that the extra increase is justified by alleged Union misconduct during the bargaining process.

8. Regarding elimination of the HMO options, the City contends that such plans have become too expensive; and that other plan options will be offered to City employees based on comparable rates.

9. In proposing the right to adopt a “smoking cessation policy” over the life of the contract, the City contends that such a plan “will be complicated and take time to develop,” but would eventually lead to potential savings that could benefit bargaining unit members.

Union

According to Mr. Williams, the Union’s position is based on the fact that “after the City became self-insured, there was a significant reduction in cost to the City for the years 2014, 2015 and 2016.

In other respects the Union has not challenged the facts introduced by the City, or countered the City’s arguments in support of its proposal.

Discussion

Recognizing that health care costs have risen dramatically in recent years, and are projected to increase further (albeit at a lower rate) during the remaining term of the contract, the City’s proposal would significantly increase employees’ out-of-pocket costs in the contract years 2017 and 2018. Contract year 2017 is of particular concern because a wage increase for contract year 2016 is unlikely; and any increase for 2017 is likely to be minimal. In contract year 2018, however, wage increases should more than cover any increases in health care costs. Therefore, the undersigned recommends no change in Article XXIV of the previous contract, for contract years 2016 and 2017. But for contract year 2018, the City’s proposal is justified in view of the facts of health care cost increases listed above – with the exception that there is insufficient basis for breaking the pattern and by charging employees an additional 1% increase due to alleged (and unproven) Union abuses in bargaining tactics.

The other components of the proposal were not contested, and are hereby recommended. Therefore the following contract changes are recommended:

Recommendation

Article XXIV (Full-time) -- Insurance

- Contract year April 1, 2017 – March 31, 2018: no change in contract language.
- Effective April 1, 2018, premium contributions will be increased to fourteen (14%)/family and fifteen percent (15%)/single for those employees participating in City-defined wellness initiatives. Non-wellness premium contributions will be eighteen percent (18%)/family and nineteen percent (19%)/single coverage.
- Effective April 1, 2018, modify plan-design on Plus plan as follows:
 - Modify annual deductible to \$750 single/\$1500 family
 - Increase out-of-pocket maximums to \$1500 single/\$3000 family for in-network
 - Out-of-network terms to continue to be set by carrier
- Modify premium contributions for an optional high deductible plan by requiring employees to pay nine percent (9%)/family and ten percent (10%)/single of the City's monthly premium cost for hospitalization, prescription drug, vision and dental coverage. Allow for employee premium contributions to be reduced to five percent (5%)/family and six percent (6%)/single for those employees participating in City-defined wellness initiatives. See attached plan design.
- Eliminate HMO options
- Smoking Cessation. The City reserves the right to implement a smoking-cessation policy during the life of the contract.

3. Management Rights – Article III (Seasonal)

City's Proposal

Amend Section 1 as follows:

Except as specifically limited herein, all rights are reserved to and remain vested in the City, including, but not limited to the sole right to:

J. Use laborers as temporary drivers because of operational needs.

Union's Proposal

Current contract language

Positions of the Parties

City

This proposal is driven by poor attendance, especially among waste collection drivers. Use of sick leave is one factor leading to poor attendance, with most bargaining unit members having used up all or most of their accrued leave. (38% having used more than 90% of their leave, etc.). Paul Alcantar, Commissioner of Waste Collection, testified that from five to ten waste collection drivers call in sick on a given day (out of 69 routes). If the City were allowed to use laborers to fill in, there would be improved efficiency and significant savings in overtime payments.

Union

The Union objects to any erosion of the bargaining unit, and has several pending arbitrations protesting the City's assignment of laborers to work previously performed by the bargaining unit. Mr. Williams stated on the record, "we will never agree to that provision."

Discussion

The undersigned fully recognizes the problems with attendance that are manifest in the record. It is also recognized that management can only go so far in attempts to rectify such a difficult, longstanding problem. However, it is clear that work assignments under the Agreement are jurisdictional in nature, with their foundation in the Recognition language of the contract. That is, the City has recognized the jurisdiction of the Union over work traditionally assigned to enumerated classifications.

Frankly, it is not conceivable that the Union would ever agree to such an explicit derogation of its work jurisdiction as represented in the City's proposal. Therefore, under the circumstances, the proposal is not recommended.

Recommendation

Article III (Seasonal) – Management Rights

Existing language to remain the same.

4. Union Rights – Article IV (Full-time)

City's Proposal

Amend Section 2 to increase the shelf life of discipline from two (2) to three (3) years.

Union's Proposal

Current contract language

Positions of the Parties

City

This is a "Core Proposal," meaning that the City's objective is to implement it in all of its bargaining units.

Ms. Nycole West is Director of Human Resources for the City. She testified that the City is in the process of consolidating disciplinary action throughout all City Departments and Divisions. During this process, instances were discovered of employees committing various disciplinary infractions after "two years and one week, two years and one month, two years and six months, while it is the same and similar discipline." To deter such behavior the City is seeking to extend the time period in which prior discipline may be considered, from two to three years.

Union

Mr. Williams stated on the record that the Union has not experienced any problems with the existing language during the term of the prior Agreement. Further, that “people who have behavioral problems should not set the standard by which we all are judged.”

Discussion

From the standpoint of attempting to standardize personal practices alone, this is a reasonable proposal. No employee will be prejudiced by inclusion of this proposal in the new agreement; and there is no sound basis for rejecting it.

Recommendation

Article XV (Full-time), Sec. 2 (“Union Rights”)

Amend current language to increase the shelf life of disciplinary action from two to three years.

5. Leaves of Absence – Article XV (Full-time)

City's Proposal

Amend Section 2 E as follows:

Upon retirement or death, an employee, or his legal representative, shall have the right to convert his accumulated paid sick leave into cash. ~~For persons who are employed by the City on or before April 15, 2014,~~ The rate shall be one (1) day's pay for each three (3) days of unused accumulated paid sick leave, and ~~the pay rate used shall be the same three (3) years average as used under "P.E.R.S."~~ ~~For persons who are hired after April 15, 2014,~~ the conversion **pay** rate **used** shall be the employee's base wage rate of pay at the time of retirement, exclusive of overtime, longevity or other earnings.

Union's Proposal

Current contract language

Positions of the Parties

City

As stated on the record by Mr. Crisci:

“We would like to change the formula for the sick leave pay-out that occurs when employees leave. Right now, we fold in a number of different things in determining the Load Star rates. We would like to reduce that. It is a money saver. It is driven entirely by the attempt to save money. We have an older workforce. We anticipate that a lot of employees City wide, this is another core proposal, a lot of employees are going to be leaving. It’s going to cost us a lot of money to pay out the sick leave. This is not a proposal that we think really affects this Bargaining Unit because you have seen on the evidence we provided, most of the employees have drained most, if not all, of their sick leave balances. They don’t expect to get any payment anyway. For other groups that are very frugal with their sick leave, looking at it as a return on investment, it is going to cost us a lot of money, and it’s going to happen pretty soon.”

Union

Mr. Williams stated the Union’s position that this is a “concessionary” proposal. The Union has not experienced any problems with this issue, and Mr. Williams is unaware of what might be happening in other units.

Discussion

This proposal, if implemented, does not detract from the ability of employees to cash out a portion of their unused sick leave. Rather, it seeks to somewhat limit the amount of the payout by using the employees’ base pay rate (rather than the P.E.R.S. three-year average) as the measure of computing the payout.

This proposal is also part of the City's overall attempt to control costs and standardize personal practices. As such the proposal is reasonable, and will be recommended.

Recommendation

Article XV (Full-time) ("Leaves of Absence"), Sec. 2E

Amend current language to reflect the method of computing payment for unused sick leave at the time of retirement to be the employee's base rate at the time of retirement, exclusive of overtime, longevity or other earnings, as proposed by the City.

6. Assignment of Work – Temporary Transfer – Article XVI (Full-time)/XIII(Seasonal)

City's Proposal

- Amend Section 1 as follows:

A temporary transfer shall not exceed thirty (30) working days, **unless financial reasons dictate otherwise**, ---(1) to fill a vacancy caused by an employee being on sick or other approve leave of absence, (2) to provide vacation relief scheduling, (3) to fill an opening temporarily pending permanent filling of such an opening, or (4) to meet an emergency situation.

- Amend Section 2 as follows:

When an employee is temporarily transferred to another job classification, he shall receive his regular rate. However, if the rate of pay for such other classification is higher than his regular rate, he shall receive **a five percent (5%)** adjustment in pay **for the duration of his or her temporary transfer** ~~within his own classification commensurate with the work he is doing in the other classification.~~

Delete Section 4.

Union's Proposal

Current contract language

Positions of the Parties

City

The city contends that the components of this proposal will provide “a mixture of financial and operational relief.” The rationale appears to be the assertion that the City often has difficulty filling vacancies, so some operational relief would be afforded “where merited by financial circumstances,” if temporary transfers could be extended beyond 30 days.

Regarding the pay rate for temporarily transferred employees, the City contends that the transferred employees do not assume all the job responsibilities of the job they fill; so their rate of pay on the new job (if higher than their regular rate) should be a 5% adjustment to their regular rate.

Regarding deletion of Section 4, that requires temporarily filled jobs to be posted and filled after 30 days, the City presented no supporting information or evidence.

Union

According to Mr. Williams, the City has failed to fill vacancies and post jobs, and has exceeded the 30-day limit on temporary vacancies, sometimes for more than a year. The Union regards this as a concessionary proposal.

Discussion

One of the established tenets of the “common law of labor relations” is that temporary transfers are for the benefit of the employer and, therefore, the right to effectuate the

temporary transfers should not be abused. A corollary of these principles is that an employee subject to temporary transfer should be paid his/her regular pay rate, or the rate of the job to which he/she is transferred, whichever is higher. The first component of the City's proposal would effectively confer the right to transfer an employee indefinitely at, potentially, lower pay than the job is rated in the contract. Example:

Employee's regular pay rate:	\$16.00/hr.
X 5% =	<u>.80</u>
	\$16.80/hr.
Rate of job to which employee is transferred:	\$17.50/hr.

Under the above example, the City would get the benefit of \$.70/hr. for the duration of the temporary assignment.

The undersigned recognizes that extensions of temporary assignments may sometimes be necessary; but the evidence did not support the sweeping changes that would result from the City's proposal. This proposal is not recommended.

Recommendation

Article XVI (Full-time)/XIII (Seasonal)

Existing language to remain unchanged.

7. Overtime – Article XVIII (Full-time)/XV (Seasonal)

City's Proposal

a. Article XVIII (Full-time) – amend Section 1 (D) as follows:

The City must ask bargaining unit members first when an overtime situation presents itself for work within one of their classifications **involving equipment that requires a CDL.**

b. Article XV (Seasonal) – Revise Section 1 (D) to permit assignment of work to other employees to avoid the need for overtime

Union's Proposal

Current contract language

Positions of the Parties

City

This proposal, covering both full-time and seasonal agreements, is designed to save money (through reduction of overtime expenditures), and improve efficiency. The premise of the proposal is that some employees in the bargaining unit drive or operate vehicles that do not require a CDL. Therefore, according to the City, when overtime becomes necessary, the City should have the right to assign the work to any employee, including those outside the bargaining unit, who possess a regular driver's license.

Union

The Union contends that this proposal “destroys the concept of jurisdiction,” claiming that the Mayor “wants to be able to use any employee anywhere he sees fit, regardless of [w]hat the Bargaining Unit parameters are.”

Discussion

As, already stated, the concept of work jurisdiction is fundamental to the bargaining relationship especially where, as here, there are multiple bargaining units and many opportunities to assign work to members of one bargaining unit or another. The City is in a difficult position because of its financial situation, and understandably would like to save money wherever and whenever possible. However, in pursuing such a legitimate objective, the City will frequently be confronted by the jurisdictional provisions of its many bargaining agreements.

With respect, the undersigned believes that matters of bargaining unit jurisdiction need to be resolved by consensual agreement between the parties; and not imposed by an outside fact-finder. This proposal is not recommended.

Recommendations

Article XVIII (Full-time)/XV (Seasonal) – Overtime

Current language in both Agreements to remain in effect.

8. Call-In Pay – Article XIX (Full-time)

City's Proposal

Amend Section 1 as follows:

When an employee is called in to work at a time when he is not regularly scheduled to report for work, he/she shall receive a minimum of ~~four (4)~~ **two (2)** hours of pay at his applicable pay rate.

Union's Proposal

Current contract language

Positions of the Parties

City

Contending that the four-hour guarantee on call-ins was “originally designed to compensate employees for the inconvenience of coming into work when not regularly scheduled,” the City states that “it is now a “highly inefficient practice.” This is a cost issue for the City, because call-ins may only involve work of a short duration, but the employee still receives four hours pay.

Union

The Union states that the four-hour guarantee on call-ins has been in the contract for more than 30 years. Further, most call-ins occur in emergency situations, and the employee does not have the option of refusing. Also, when an employee responds to a call-in, and the work is completed in less than four hours, the employee is usually assigned by supervisor to other work to fill out the remaining time.

Discussion

There was not sufficient evidence presented by the City to substantiate a claim of cost savings in connection with this proposal. Moreover, the fact that employees are required to come in when called, and may be assigned to other work if the call-in involves less than four hours work, demonstrates that the City has not suffered significant harm under the existing contract language. This proposal is not recommended.

Recommendation

Article XIX (Full-time) – Call-in Pay

Existing language to remain unchanged.

9. Shift Scheduling – Article XXI (Full-time)

City's Proposal

a. Amend Section 3 as follows:

If an employee has been receiving a shift adjustment and is either off-paid sick, on vacation, or celebrating a holiday, he shall continue to receive this adjustment **only for one shift of pay and only when the shift adjustment is continuous into the next shift.**

b. Amend Section 4 as follows:

Employees receiving a higher rate of pay (plus adjustment) in affected divisions at the time they report off sick shall continue to receive the higher rate of pay until **the end of their shift**
~~their return to work.~~

Union's Proposal

Current contract language

Positions of the Parties

City

As to both components of this Proposal, the City is of the belief, both as a matter of “principle” and “economic savings,” that employees who may be receiving premium pay for

working a non-traditional shift; or an add-on (“plus adjustment”) when they operate certain equipment or perform certain tasks, that such pay adjustments are inappropriate when the employee is on paid time off or other sick leave.

Union

As with other City proposals, the Union regards this as a “concessionary” proposal. Also the Union points out that the subject language has been in the contract for many years, and there have been no problems with it.

Discussion

This proposal has two components, dealing with different subjects. The first component raises the question of whether employees who regularly receive a shift premium, should continue to receive the premium when on paid time off (vacations, holidays, sick leave). The current pay practice clearly carries an extra cost. However, when an employee regularly works an off-shift over an extended time period, for all intents and purposes the shift premium becomes part of the employee’s regular pay. While the City’s contention that in principle, employees should not be paid extra for time they are not actually working, is sound, the reality of employee relations is that those employees who have become accustomed to receiving a certain pay rate should not have the pay rate reduced, absent compelling circumstances not present here.

The second component of the City’s proposal is a different matter. A “plus adjustment” was explained, as noted above, as an add-on for performing certain work. Plus adjustments are

not figured in on overtime compensation, or on across the board percentage wage increases. The City' proposal boils down to the proposition that when an employee is not performing the specific tasks associated with the plus adjustment while on sick leave, there is no basis for continuing that adjustment. This is a reasonable, cost-saving position, and should become part of the new contract.

Recommendation

- a. The component of the City's proposal seeking elimination of the shift premium when employees are on paid time off is not recommended.
- b. The component of the City's proposal covering elimination of the plus adjustments when employees are on sick leave is recommended.

Article XXI (full-time) – Shift Scheduling

- a. Existing language of Sec. 3 to remain unchanged.
- b. Sec. 4 to be amended as proposed by the City.

10. Vacations – Article XXIII (Full-time)

City's Proposal

Section 4 – Amend the vacation selection period from the first quarter of the current year to “by November 1st of the prior year.”

Union's Proposal

Current Contract Language

Positions of the Parties

City

The objective of this proposal is “operational efficiency.” In support of this proposal, HR

Director West testified as follows:

“Given that employees need to submit a request, management then needs to review all of those requests, from not only Bargaining Unit 244 but citywide, and then manage all those days off. They need to make sure that the operation is covered. That it is done by seniority. That can take more than one set of eyes to review and to verify. Then to insure that the correct days are selected, Management was requesting that the submissions occur earlier, so that we’re given enough time to review and insure vacation approvals are given with enough time to review and approve.

Q. What will this proposal provide for the City?

A. It will provide us the ability to forecast better with our operations. We will be able to see sooner the dates that employees are requesting to be off. Therefore, we can forecast how to best and most efficiently run that operation, given the number of vacation selections.

You have to remember that these are scheduled days off. We still have to account for unscheduled days off, such as sick leave, or FMLA, or Workers’ Compensation. So, this allows us to better forecast, up front, who is going to be

scheduled off, and then we can appropriately forecast and develop formulas to account for other unforeseen call-offs, to make sure the operation can most effectively run.”

Union

Mr. Williams expressed serious objections regarding the current system of vacation scheduling. In particular he was critical of the delay in vacation approvals that apparently has occurred many times. He spoke of being in “numerous discussions and conflicts relating to this matter,” and stated his belief that “moving the date back will not resolve the issue.”

Discussion

As the City’s proposal was being reviewed during Ms. West’s testimony, the City produced a document entitled “Vacation Policy” that is applicable “citywide,” and according to Mr. Crisci, the City has no objection to incorporation of the policy into Article XXIII. The undersigned has done so, with two significant changes: first, the proposal to advance the vacation selection period from the first quarter of the current year to “by November of the prior year” is part of the recommended language; because doing so is likely to alleviate some of the problems and frustrations expressed by Mr. Williams. Second, the time period for the City’s response to vacation requests after the selection period is set firmly at 10 working days as proposed by the Union.

Recommendation

Article XXIII (Full-time) – Vacations

The City’s proposal to advance the vacation selection period from the first quarter of the current year to “by November of the prior year” is recommended. The remainder of the recommended language is as follows:

Section 2. Administration and Eligibility

The administration of vacations (including eligibility requirements) shall be in accordance with the following rules and regulations established by the Office of Personnel Administration and the Union:

* * * *

H. Accrual and Use

An employee may use any vacation leave earned prior to December 31st of the preceding year. Vacation leave being earned currently in any calendar year may not be used until after December 31st of that year. Employees may use vacation leave in increments of no less than one full day, upon approval of the City in its discretion based upon operational needs.

I. Use and Carryover/Vacation time Spend-Down

~~Vacations shall be taken during each current year, provided that the City may permit an employee to accumulate and carry over his vacation leave to the following year and must be taken during that period of time.~~

1. Use and Carryover: All vacation time must be taken during the year following the year it is earned. Unused vacation balances earned in one year will automatically carry over to the next year.

2. Vacation Time Spend Down

a. An employee with a projected vacation time balance of more than 80 hours remaining at the end of the calendar year must complete a

Vacation Spend Down Plan and submit the form for approval to their appointing authority.

- b. The Vacation Spend Down Plan allows an employee a fixed period of time (in number of years, ending on December 31st of a given year) to use all their accumulated vacation time, as well as all vacation time earned during that period of time. At the end of the fixed period of time, the employee's vacation time balance must be no greater than 80 hours. The fixed period of time may not be greater than five years.
- c. Failure to follow this requirement may result in vacation time being assigned by the manager/appointing authority or in disciplinary action

* * * *

Section 4. Vacation Preference

Employees may take their vacation during the calendar year at the convenience of the City. On or before November 1 of the year before the employee wishes to use vacation leave ~~During the first quarter of each calendar year,~~ employees will be given an opportunity to indicate on a form provided by the City their vacation leave preferences, and their departmental or job classification seniority to the extent consistent with operational requirements. Once the departmental vacation schedule is determined, it shall not be changed without the consent of the involved employee(s) except in response to an operational emergency. Any employee who fails to make his vacation application by November 1 of the year before the employee wishes to use vacation leave, will be assigned his vacation leave by his superior within 10 days, without regard to seniority based upon when his application was made.

11. Pay Day – Article XXV (Full-time)/XXII(Seasonal)

City's Proposal

a. Amend Section 2 as follows:

At their option, employees may be paid either by hand delivery (being issued the pay check at the work site) during their work shift, by direct mail, or direct deposit or payroll debit card.

b. Delete Sections 3 and 4 as unnecessary

[Note: Based on the City's prehearing statement, and record testimony, it is clear that the proposed amendment to Sec. 2, set forth above, is erroneous, being a restatement of the contract language in the prior agreement. To correct the error the undersigned will restate the proposal consistent with the parties' stated positions and the evidence in the record:

“At their option, employees may be paid by direct deposit or payroll debit card.”]

Union's Proposal

Current contract language

Positions of the Parties

City

The City characterizes this as a Core proposal, intended to improve operational efficiencies consistent with “today's practices.” The effect of the proposal would be the

elimination of paper paychecks and the institution of pay by direct deposit or debit card only.

The rationale for the proposal was stated by HR Director West:

“The practice of issuing live checks has become increasingly difficult for the City to manage. Especially when checks are lost, checks are allegedly stolen, misplaced things of that nature. So things are deposited directly into an account or into a payroll debit card. Accounts has shared with me it’s easier to track, easier to manage, easier to reimburse, easier to do minus adjustments, easier to pay people in general. The City is looking to do either the direct deposit or the payroll debit card to issue all paychecks through.”

Union

The Union’s position was stated on the record by Mr. Williams:

“Due to the high volume of paycheck errors, many employees find it more complicated to resolve paycheck errors of issues when receiving payment by direct deposit or with these credit cards. They are concerned about it.

There are some employees who do not have bank accounts, choose not to be affiliated with banks.

One of the major issues we can offer testimony regarding today is the fact that there are a lot of people who’ve experienced paycheck errors and those paycheck errors range from \$1,000 per pay, to \$100 per pay. The majority of these paycheck errors range between \$600 and \$300 per pay.

Discussion

It is true, as the City asserts, that most employees today accept the concept of direct deposit of their pay. It is also correct that the City has gone to great pains to assure that every employee is properly paid. However, while the notion of paper paychecks may be archaic, many employees still prefer that method of payment.

With due respect to the City’s efforts to make its operations more streamlined and efficient, the undersigned believes this is an extremely important issue for many employees in jobs such as those described in the recognition provisions of the agreements. Perhaps the

concerns expressed by Mr Wiliams will abate as the practice of automatic deposit becomes more widespread. But at this time the undersigned believes that the City's proposal is premature.

Recommendation

The City's proposal to eliminate paper paychecks is not recommended.

Article XXV (Full-time)/XXII (Seasonal) – Pay Day

Existing language to remain unchanged

12. Discipline – Article XXVI (Full-time)

City's Proposal

Amend Section 4 as follows:

An employee who is disciplined must be disciplined ~~within five (5) working days of the event(s) upon which the discipline is based, or~~ within a reasonable time from the date the City had knowledge of ~~said~~ **the event(s) upon which the discipline is based.**

Union's Proposal

Current contract language

Positions of the Parties

City

Characterizing this as a "Core proposal," the City states that five working days is simply not enough time in which to conduct a thorough investigation. Moreover, that a "reasonable time" to investigate disciplinary action is beneficial to both the City and the employee. The rationale for the proposal was more fully explained by HR Director West:

"Through the same revised policy and Disciplinary Committee meetings, departments have consistently brought to us that the investigation prior to someone actually being charged with any violations of Civil Service rule, policy or contract, the investigation takes a considerable amount of time. We have trained Departments and Divisions that she should only bring forth charges that they can reasonably believe would lead to disciplinary action.

We're trying to curb just holding a predis to gather information. A lot of time we're finding ourselves that we have to just hold a disciplinary hearing because we have these contractual time restraints. Employees are being consistently brought up on charges. If we had more time to investigate discipline, potentially, employees wouldn't always be in these factfindings, if you will, investigations. Because there are such contractual time restraints, we have to levy charges against someone in order to preserve actually acting or not acting upon that discipline.

So, the reason for the proposal is to allow us, to give us time on the front end to investigate, and allow us time on the end to actually respond to any of the things that the employee has brought up in the actual disciplinary hearing."

Union

The primary reason for opposing this proposal is that the City has on numerous occasions violated the prior contract by taking disciplinary action in violation of the terms of the Agreement. On one occasion the City took disciplinary action against an employee in August, for an infraction that allegedly occurred in January.

Discussion

The City has presented compelling reasons to extend the time period for investigation of alleged employee infractions. Given the diversity of this bargaining unit alone (not to mention the 30 others recognized by the City), the task of properly investigating potential disciplinary action within five days is clearly unrealistic. At the same time, the "reasonable time" proposed by the City is too open-ended, and subject to possible misunderstandings or abuse.

Recommendation

The proposal is recommended with the modification that a “reasonable time is not to exceed 14 working days.”

Article XXV (Full-time) – Discipline

The City’s proposal is recommended with the following addition:

After the word “time,” add “not to exceed fourteen (14) working days.”

13. Grievance Procedure – Article XXVII (Full-time)/XXV(Seasonal)

City's Proposal

- a. Add language to Section 1 – confirming that a grievance not timely filed and processed by the Union shall result in the denial of the grievance with prejudice; and confirm that a grievance not timely answered by the City shall result in the grievance advancing to the next step.
- b. Section 3 – insert “signed” between “The grievance” at the start of the first sentence.
- c. Section 4 – amend the first sentence of Section 4 as follows:

It is important that the employees grievance(s) regarding unjust or discriminatory discharges, ~~or wage rates/Step placement~~ be handled promptly.

- d. Modify the first sentence of Section 5, Step 3 as follows:

STEP 3. If the grievance is not satisfactorily settled at Step Two (2), it shall be presented in writing to the City's Labor Relations Representative **along with the initial grievance, Step 2 appeal, amendments to same, and any Step 1 and 2 responses**, with a copy to the affected Director or his designee, within ten (10) working days after receipt of the Step Two (2) answer.

Union's Proposal

Current contract language

Positions of the Parties

City

The City contends that the components of this proposal would “simply add and clarify procedural issues for everyone’s benefit.” The first component, it states, adds nothing new, and just puts in writing the consequences for failure to comply with the contractual time limitations set forth in the steps of the grievance procedure, as are “commonplace in the labor world.” The other components of the proposal do not require further exposition.

Union

Mr. Williams was adamantly opposed to the entire proposal, stating that the problem was the City’s repeated failure to provide timely answers at the various grievance steps.

Discussion

This proposal provoked a heated, acrimonious exchange between the parties’ representatives. But having reviewed the existing language of the respective agreements, the undersigned believes that whatever problems may exist regarding the processing of grievances are the result of administrative breakdowns, rather than contract language. The City’s proposal to modify the language of the contractual procedure is not recommended.

Recommendation

Article XXVI (Full-time)/XXV (Seasonal) – Grievance Procedure

Existing language of the agreements to remain unchanged.

14. Wages – Article XXXVI (Seasonal)

City's Proposal

Section 2 – Amend the section to reflect phase-out of plus adjustment compensation for
Airport employees.

Union's Proposal

Current contract language

At the City's request, consideration of this proposal is deferred, and will become part of
the discussion of City Proposal No. 17

15. Term of Agreement – Article XXXI(Full-time)/XXVII(Seasonal)

City's Proposal

The City proposes a three (3) year agreement, from the date of ratification through March 31, 2019

Discussion

Both parties are amenable to an expiration date of March 31, 2019. The Union contends that the City's proposed starting date of the new Agreement as "the date of ratification" is a tactic to prevent retroactivity of a pay or benefit increases.

It appears that the parties have negotiated a series of three-year contracts with an effective starting date of April 1, terminating on March 31. Based on the facts developed on the record, there is no reason to deviate from those established dates.

Recommendation

Article XXXI (Full-time)/XXVII (seasonal) –Term of Agreement

The effective dates of the new Agreement shall be April 1, 2016 – through March 31, 2019.

16. Waste Collection – Addendum IX (Full-time)

City's Proposal

The City proposes to add a new section and language will permit the City to consider Waste Collection Laborers when there is a vacancy in Drivers.

Union's Proposal

Current contract language

Positions of the Parties

City

The City has advanced this proposal as a response to excessive absenteeism in the Waste Collection Division. As already discussed, absenteeism among the waste collection drivers averages five a day calling in sick. The level of absenteeism leads to excessive overtime costs and, even worse, uncollected trash (with associated health hazards).

Thus the City seeks operational relief, and cost control, through the ability to fill driver positions with (non-bargaining unit) Waste Collection Laborers.

Union

The Union raised several objections. First, it views the proposal as a jurisdictional issue, i.e., an attempt to erode the bargaining unit. It also contends that the City has already been

assigning bargaining unit work to laborers, which is the subject of pending arbitration. Further, this issue involves the entire bargaining unit, and is making them “really angry at what is going on.”

Discussion

The City’s concerns over the level of absenteeism in the Waste Collection Division, and the costs and other problems associated therewith, are certainly legitimate. However, the proposed method of correction – erosion of the bargaining unit jurisdiction – is problematic.

The undersigned recognized that the City has serious financial and operational problems that it working hard to solve. On the other hand, the City has contractual obligations in 31 bargaining units it has recognized, with the attendant jurisdictional parameters of each. In an ideal world, the City would be able to assign available work to any qualified employee; but in the labyrinthine world of multiple labor agreements the City is simply precluded from assigning work across established, contractual jurisdictional lines it itself has recognized. The undersigned does not believe that this Union, or any union, could countenance the sort of outcome this proposal represents. The City’s proposal is not recommended.

Recommendation

Addendum IX (full-time) – Waste Collection

Existing language to remain unchanged

17. Airport – Addendum X (Full-time)

City's Proposal

The City proposes to convert the plus adjustment compensation system to regular base wages as follows:

a. Sections 3 (A) and 3 (C) – Delete

b. Section 3 (B) – amend as follows:

~~They shall receive an additional dollar (\$1.00) per hour when operating a double axle piece of equipment. If the work lasts four (4) hours or more, after four (4) hours they shall be paid for hour for hour thereafter. Overtime assignments are made as the situation dictates. No supervisor shall perform this work unless an inadequate number of maintenance men are available.~~

c. Add language reflecting the following:

- The regular base wages of persons employed in the Airport Maintenance Men classification as of the date of ratification of a new agreement shall be adjusted as follows:

- Each employee's total plus adjustment compensation covering the period commencing on the later of January 1, 2013 or the employee's date of hire and ending on the date of ratification of a new agreement shall be converted to an hourly wage equivalent, by dividing the employee's plus adjustment compensation by the total hours worked during that same time period;

- Each employee's plus adjustment hourly wage equivalent that does not end in a zero shall be adjusted upward to the dollars/cents figure ending in zero nearest the employee's plus adjustment hourly wage equivalent (e.g. an employee's plus adjustment wage equivalent of \$0.89 shall be rounded to \$0.90; an employee's plus adjustment wage equivalent of \$0.90 shall remain at \$0.90; and an employee's plus adjustment wage equivalent of \$0.91 shall be rounded to \$1.00)

d. Section 4 – current contract language

e. Section 5 – current contract language

f. Add a new Section 9 as follows:

In the event of a snow code event, shifts will change to mandatory 12-hour shifts at the discretion of management.

g. Add a new Section 10 which reflects the following:

All employees must receive certification for equipment proficiency for operation of the following:

- Loaders;
- Tandem (Multi-Purpose Vehicle);
- Snow Removal Vehicles;
- Trenchers;
- Back Hoes;
- TK (tractor);
- Bobcats;

- Bull Dozer;
- Grader;
- Asphalt Roller.

Union's Proposal (See below)

Positions of the Parties

City

This proposal has three components: (1) the elimination of plus adjustments at the Airport, and recalculation of hourly rates to approximately include the prior plus adjustments; (2) management discretion to impose mandatory 12-hour shifts in the event of a snow code event; (3) require certification to operate specified pieces of equipment at the Airport.

(1) Removal of plus adjustments, and recalculation of wage rates

The majority of the City's proposed changes revolve around transitioning away from the plus adjustment compensation system for the Airport Maintenance Man classification.. The City has prioritized phasing out the plus adjustment system for several contract cycles. For 2013-16 the City proposed phasing out plus adjustments for Waste Collection Drivers regularly assigned to plus adjustment tasks, and proposed rolling those plus adjustments into the employees' regular hourly base wage rate, and the Union agreed to the City's proposal. Now, the City seeks to phase out plus adjustments for another Division – the Airport.

The plus adjustment system has created a significant administrative burden and headache for the City. Under it, the City pays employees an additional hourly compensation for

using certain equipment or engaging in certain tasks. For example, Airport Maintenance Men receive an additional \$.60 per hour when driving tow trucks, asphalt trucks, and other vehicles. They also receive an additional \$1.00 per hour when operating a double axle piece of equipment or MVP snow removal vehicle.

Under the plus adjustment system, the employees manually report their use of certain equipment or performance of certain tasks. Then, the City has to calculate the employee's hourly rate for that time and enter that into payroll records. For example, if an employee reported operating an MPV snow removal vehicle for two hours on a shift, the City would have to adjust the employee's pay for two of their eight hours on shift.

As could be expected, this system imposes a huge administrative burden on the City. First, the City must manually calculate the adjusted pay for the plus adjustment time. At times this leads to payroll errors. In addition, the system relies on honest reporting and is difficult to monitor.

As such, the City is working toward phasing out the plus adjustment system, hereby transitioning the compensation into a percentage of employees' base salary for Airport Maintenance Men. Under the City's proposal, it has calculated an hourly rate for each employee based on the plus adjustment compensation they have earned, and hours worked, since January 1, 2013. Each Airport Maintenance Man will have a new base hourly rate which incorporates the hours worked while earning plus adjustments. Furthermore, their rate will likely include a slight additional raise. Also, by folding the plus adjustment compensation into the employee's' regular wage rates, the employees will receive overtime compensation and

across-the-board wage increases on the new, higher rate; currently the overtime rates and across-the-board increases do not apply to plus adjustment compensation.

Therefore, through this proposal the City seeks to relieve a substantial administrative burden, reduce payroll errors, and avoid further time reporting abuse. In addition, the City will do so in a manner which fairly compensates employees for the work they have and will continue to do.

(2) Mandatory 12-hour shifts during snow code events

The City's proposal for mandatory 12-hour shifts during snow code events arises from recommendations by the Federal Aviation Administration designed to provide a safer driving environment for Snow Removal Vehicle ("SRV") Operators. Historically, the SRV Operators often have worked double shifts (16 hours) during snow code events. Mandating 12-hour shifts will allow for a fixed time that Operators are behind the wheel, and insure that Operators can obtain eight hours of sleep between shifts. Furthermore, mandating 12-hour shifts based on weather predictions will enable both management and employees to prepare for overtime during the snow season. Of note, under this proposal, employees will still receive overtime pay for all hours worked over eight in a shift.

(3) Certification requirements

The City's equipment proficiency certification proposal will ensure all employees can operate the assigned equipment under the current rotating schedule. Presently, if an employee rotates into a task and is not certified for the subject machinery, the City must bypass that employee for the job. Then, the City must pay that employee and the employee who completes the job. Ensuring all employees are certified on the appropriate equipment will

make the rotation system much more efficient and practical. In addition, certification requirements will help insure the safety of the employees and worksite.

Union

The Union's position is included in a series of proposals that will be considered below.

Discussion

Eric Turner, Deputy Commissioner of the Department of Port Control, testified in connection with the three components of the City's proposal. Regarding the elimination of plus adjustments, Turner emphasized the administrative challenges of calculating the adjustments off of hand-written time cards, as well as the potential for error. He also testified at some length as to how the City would calculate a new hourly rate based on each employee's history of receiving plus adjustments since 2013.

There are two concerns with respect to the proposed method of recalculating the employees' pay based on a four-year "look back." The first is that some individuals were on sick leave or other leave for extended time periods and as a result their average of plus adjustment compensation will necessarily be lower, affecting their recalculated hourly rate. The second concern is that the proposal contemplates a one-time calculation of wage rates; and once the new rates are in effect there will be no further adjustments. Other than those concerns, which will be reflected in the recommendation, the City's proposal is reasonable. Of particular benefit is the fact that employees will be eligible for overtime under their recalculated rates. The

elimination of plus adjustments makes sense in terms of operating efficiency. And with the recommended changes (below), the recalculation of wage rates should be beneficial to most all of the affected employees.

The next component, mandatory 12-hour shifts in the event of a snow code, is part of the aftermath of a \$735,000 penalty imposed by the FAA (later negotiated down to \$200,000) due to staffing issues during snowstorms. According to Mr. Turner, bargaining unit employees, who are responsible for clearing the runways, have been required to work double shifts of 16 hours; but this proposal is intended to create a “ more safe and productive environment” for employees working under such difficult conditions. This component is reasonable, and will be recommended.

The third component of the proposal, requiring employees to become certified to operate a specified list of equipment, is not reasonable. Nothing prevents the City from conducting training programs on the pieces of equipment; but in requiring certification (to be renewed annually, according to Mr. Turner), the City would be creating a term and condition of employment where none had previously existed. Since the City has not clearly established the need to implement this component, it will not be recommended.

Recommendation

Addendum X – Airport

1. Effective April 1, 2017, revise the addendum as follows:
 - a. Sections 3(A) and 3(C) –Delete
 - b. Section 3 (B) amend as follows:

~~They shall receive an additional dollar (\$1.00) per hour when operating a double axle piece of equipment.~~ If the work lasts four (4) hours or more, after four (4) hours they shall be paid hour for hour thereafter. Overtime assignments are made as the situation dictates. No supervisor shall perform this work unless an inadequate number of maintenance men are available.

c. Add language reflecting the following:

- The regular base wages of persons employed in the Airport Maintenance Men classification as of the date of ratification of a new agreement shall be adjusted as follows:
 - Each employee's total plus adjustment compensation covering the period commencing on the later of January 1, 2013 or the employee's date of hire and ending on March 31, 2017, shall be converted to an hourly wage equivalent, by dividing the employee's plus adjustment compensation by the total hours worked during that same time period;
 - Each employee's plus adjustment hourly wage equivalent that does not end in a zero shall be adjusted upward to the dollars/cents figure ending in zero nearest the employee's plus adjustment hourly wage equivalent (e.g. an employee's plus adjustment wage equivalent of \$0.89 shall be rounded to \$0.90; an employee's plus adjustment wage equivalent of \$0.90 shall remain at \$0.90; and an employee's plus adjustment wage equivalent of \$0.91 shall be rounded to \$1.00)

- In those instances wherein the recalculation of an employee's hourly rate is adversely affected by extended absences or other events beyond the employee's control, the City shall recalculate his/her pay at the employee's request, based on the average of plus adjustments paid out over the two highest paid calendar years from January 1, 2013 until March 31, 2017

d. Section 4 – current contract language

e. Section 5 – current contract language

f. Add a new Section 9 as follows:

In the event of a snow code event, shifts will change to mandatory 12-hour shifts at the discretion of management.

2. The component of the City's proposal that would require certification for equipment proficiency on the equipment listed therein is not recommended.

18. General – Housekeeping (Full-time; Seasonal)

City's Proposal

The City proposes to change all references in the contract from “Cash” to “check” or “voucher.”

Union's Proposal

Current contract language

Recommendation

The parties reached the following Tentative Agreement to the above proposal, which is hereby recommended:

1. Article XV (Leaves of Absence, Section 2 (E) (Pay for Unused Sick Leave)

Amend 1st Sentence of as follows: Upon retirement or death, an employee, or his legal representative, shall have the right to convert his accumulated paid sick leave into ~~cash~~ a lump sum payment via check or voucher.

2. Addendum III (Hostlers), Section 3 (Compensatory Time)

Amend as follows: The City agrees to pay compensatory time at the rate of time and one half (1 ½) the regular hourly rate. All compensatory time must be used no later than one hundred eighty (180) days from the date it was earned. All compensatory time remaining after one hundred eighty (180) days will be paid ~~in cash~~ via check or voucher in the next pay period. Compensatory time shall be taken with the mutual consent of both the employee and his/her supervisor or, if the affected employee retains the maximum amount of time as prescribed by the Fair Labor Standards Act, which is two hundred forty (240) hours.

3. Addendum VII (Traffic Controllers), Section 4.A (Compensatory Time)

Amend as follows: the City agrees to pay Compensatory Time at the rate of 1.5 or time and one-half their regularly hourly rate. All compensatory time must be used no later than 180 days from the date it was earned. All compensatory time remaining after 180 days shall be paid ~~in cash~~ via check or voucher in the next pay period.

UNION PROPOSALS

[note:] Union Proposals 1-3 deal with contract articles covering Article XII (Full-time)/Article XII (Seasonal) – Seniority; Article XIII (Full-time) – Bid Procedure; and Article XVI (Full-time)/Article XIII (Seasonal) – Assignment of Work – Temporary Transfer. On September 16, 2016 the City presented a comprehensive (5 ½ pages) response, with counter-proposals, but these were not discussed during the remainder of the fact-finding process. With one exception, therefore, the undersigned does not have sufficient information to make a recommendation on Union Proposals 1-3. The sole exception is in Article XII (Full-time)/XI (Seasonal) – Seniority, Section 1, in which the parties have agreed to the deletion of “Work week bids.”]

1. Seniority – Article XII (Full-time)/XI (Seasonal)

Union’s Proposal

Amend Section 1 as follows: Job classification seniority shall be defined as an employee’s length of service while holding the same classification regardless of whether his Civil Service status is that of a Temporary Appointment or Legal. The employee shall receive credit for all time spent on the City’s payroll in that classification. Job classification seniority would be used to determine lateral transfer, shift and ~~all job work week bids.~~

City’s Proposal

Amend Section 1 as follows: Job classification seniority shall be defined as an employee’s **full-time or seasonal** length of service while holding the same classification regardless of whether

his Civil Service status is that of a Temporary Appointment or Legal. The employee shall receive credit for all **full-time or seasonal** time spent on the City's payroll in that classification. Job classification seniority would be used to determine **permanent** lateral transfer and shift (work week) bids **within the same job classification and operating division**. A "lateral transfer" is **defined as moving to a different work location or position within the same job classification and division**. Job seniority for seasonal employees shall be based upon the total amount of **service credit within the classification**.

Recommendations

Article XII (Full-time)/XI (Seasonal)

Section 1 – Delete "work week bids".

In view of the above Note, all remaining language to remain unchanged.

2. Bid Procedure – Article XIII (Full-time)

Union's Proposal

Amend Section 2 as follows: At the discretion of the Appointing Authority the bid notice may be posted in other Divisions within the Department. However, under no circumstances shall an Appointing Authority be required to award an **internal** bid to an employee from another Division. Bid notices posted in Divisions other than the Division which has the vacancy shall be labeled as Courtesy Bid Notices.

City's Proposal

- a. Amend Section 2 as follows: At the discretion of the Appointing Authority the bid notice may be posted in other Divisions within the Department. However, under no circumstances shall an Appointing Authority be required to award an **internal** bid to an employee from another Division. **An "internal bid" covers a different job position, responsibilities or job classification within the same operating division as the employee submitting the bid. Seasonal employees within the same division as the bid may submit an internal bid.** Bid notices posted in Divisions other than the Division which has the vacancy shall be labeled as Courtesy Bid Notices.
- b. Amend Section 3 (A) as follows: Bid notices shall be posted for the following vacancies as they are determined by the City:
 1. A vacancy in a work location to be filled by a **full-time or seasonal** employee from another work location in the same classification.

2. A vacancy on a shift to be filled by an employee from a different shift and/or from another work location in the same classification.

These types of vacancies shall be awarded to the employee with the most job classification seniority; provided he has the ability to perform the work involved. The City reserves the right under special circumstances to choose the most qualified employee.

- c. Amend Section 3 (B) as follows: If there is not a Civil Service eligibility list, no Civil Service exam pending, or there has been no reassignment, **internal bid or lateral transfer** and a vacancy is determined to exist by management, a bid notice shall be posted as set forth above and shall be filled as follows:

1. Preferential consideration will be given to **qualified employees within the bargaining unit**, first within the same classification as the vacancy and then another classification within the bargaining unit.

2. ~~These types of positions will be awarded to the most qualified employees with the most employment seniority.~~ If, as the result of this award, the change in position classification results in a promotion, the affected employee shall receive the higher of the base rate of pay for such classification or five percent (5%) higher than the employee's higher rate of pay.

Recommendation

Article XIII (Full-time) – Bid Procedure

In view of the above Note, the language of this Article to remain unchanged.

3. Assignment of Work – Temporary Transfer – Article XVI (Full-time)/ XIII (Seasonal)

Union's Proposal

Add the following to the end of Section 1: **If the employer does not provide a written explanation to the Union within five (5) working days prior to the effective date of the temporary transfer then such transfer shall be null and void.**

City's Proposal

a. Amend the introductory paragraph as follows:

All employees shall be required to perform any and all temporarily assigned duties, regardless of their usual or customary duties or job assignment. **For purposes of this Article, a "temporary transfer" is an assignment to perform duties on a full-time basis outside of the employee's regular job classification for a period exceeding the greater of eight (8) consecutive hours or one full work day.**

b. Amend Section 1 as follows: A temporary transfer shall not exceed thirty (30) working days ---- **(a1)** to fill a vacancy caused by an employee being on sick or other approved leave of absence, **(b2)**–to provide vacation relief scheduling, **(c3)** to fill an opening temporarily pending permanent filling of such opening, or **(d4)** to meet an emergency situation.

c. Amend Section 3 as follows: Notice **and explanation**. An employee shall be given a written notice of said transfer if the work assignment exceeds **one full work day** ~~eight (8) hours~~. **The City will provide the Union within seven (7) days after the date the temporary**

transfer commences a written explanation of the reason(s) for the transfer, unless the transfer is to meet an emergency situation, in which case the written explanation shall be provided fourteen (14) days after the date that the temporary transfer commences.

Recommendation

Article XVI (Full-time)/XIII (Seasonal)

In view of the above Note, the language of this Article to remain unchanged.

4. Job Evaluation and Classification – Article XVIII (Full-time)/XIV (Seasonal)

Union's Proposal

Amend Section 4 as follows: ~~The parties agree to continue discussions after ratification of this Agreement through a Labor Management Committee (LMC) on training for all bargaining unit employees.~~ **The City agrees to provide training and cross-training to all bargaining unit employees who are members of Teamsters Local 244. The City shall not discipline employees who have not been properly trained to perform their jobs in the proper manner. In addition, the City shall provide all employees with notice of policy, procedures, and protocols associated with their respective job classifications. All bargaining unit employees who are mandated to train other employees shall be paid an adjustment of seventy-five (.75) cents per hour for all time spent during the training process.**

City's Proposal

Current contract language.

Positions of the Parties

Union

This proposal has four components:

- (1) The City to provide training and cross-training to all members of the bargaining unit.

- (2) The City shall not discipline employees who have not been properly trained to perform their jobs properly.
- (3) The City to provide employees notices of policy, procedures and protocols related to their job.
- (4) Employees who are “mandated to train other employees” to receive a \$.75/hour premium “for all hours spent in the training process.”

According to Mr. Williams, the reason for seeking training and cross-training is to provide a safe working environment, citing an instance where an employee in Waste Collection had been fired after one month, allegedly for not having been properly trained. At Step 3 it was shown that the employee had not received the procedures and policies of the job.

Regarding the components of the proposal covering employees being required to train other employees, Mr. Williams cited instances wherein bargaining unit employees were required to train non-employees to perform what could be considered bargaining unit work.

City

Regarding the components of the proposal that would require training and cross-training, as well as making employees aware of job policies and procedures, the City maintains that these issues can be raised in the grievance procedure (as a defense to disciplinary action). Regarding the \$.75/hr. training premium, the City will not agree to any additional plus adjustments; and further, the City foresees many disputes over what is considered “training.”

Discussion

The difficulty with this proposal is that it covers the entire, diverse bargaining unit with requirements that may only apply in a small number of cases. Surely an employee who is not properly trained on a particular job should not be subject to disciplinary action for failure to carry out that function. But this proposal carries with it extensive administrative burdens and associated costs. While the concept – every employee should receive proper training – cannot be argued against, this proposal is not feasible given the City’s financial situation.

Regarding the proposed \$.75 premium for employee trainers, this component of the proposal is likewise too broad, and the cost (in the form of a plus adjustment) is not something the City would live with.

Recommendation

This proposal, in its entirety, is not recommended.

Article XVIII (Full-time)/XIV (Part-time)

Existing language to remain unchanged.

5. Overtime – Article XVIII(Full-time)/ XV (Seasonal)

Union’s Proposal

The Union proposes adding the following to Section 2: The City shall meet with the Union and negotiate to modify schedules and shift changes. After negotiations have been completed the schedules and shifts shall remain in effect for the duration of the collective bargaining agreement.

City’s Proposal

Current contract language.

Positions of the Parties

Union

Mr. Williams stated that the proposal language is in response to certain Divisions, Animal Control in particular, that have “arbitrarily modified shifts” for all employees. Such actions are disruptive to family and life style obligations. He further stated that “[W]hat we want is to provide stability for the employees so that once they bid on a shift, it’s fixed for the duration of the agreement.”

City

According to Mr. Crisci the City has no interest in giving up the exclusive right to determine work schedules and shifts. Further, to lock in schedules and shifts for the duration of the agreement is “simply unfeasible.”

Discussion

Even though the proposal would only require the City to meet and negotiate over schedules and shift changes, the fact is that the proposal is clearly intended to negate the rest of Sec. 2, which gives the City the exclusive right to determine work schedules and the number of shifts. The Union’s objective of promoting stability is worthwhile, but cannot overcome the exclusive rights for which the City has bargained.

Recommendation

The proposal is not recommended.

Article XVIII (Full-time)/XV (Seasonal) – Overtime, Sec.2.

Existing language to remain unchanged.

6. Longevity -- XX (Full-time)/ New Article (Seasonal)

Union's Proposal

The Union proposals increasing longevity pay for full-time employees and creating longevity pay for seasonal employees as follows:

Years of Service

5 years	\$300.00 \$350
10 years	\$475.00 \$800
15 years	\$575.00 \$1,300
20 years	\$700.00 \$1,600
25 years	\$800.00 \$1,800

City's Proposal

Current contract language.

Positions of the Parties

This proposal is economic in nature. It is identical to the longevity schedule in the Warrensville Heights contract with the Union. The Union has contracts with other cities, all of which have longevity schedules that are superior to Cleveland.

City

The City's "financial troubles dictate a rejection" of this proposal. The proposal would cost approximately \$231,750.00 over the life of the contract, at a time when the City is facing a

major deficit. Even with the passage of the tax increase, there will not be sufficient funds to “hand out generous wages increases left and right.”

Discussion

The Union introduced four contracts as an example of negotiated longevity increases that are higher than provided by the City in the prior agreement:

Warrensville Heights

<u>Completed Years of Service</u>	<u>Add Annual Compensation Payable After Application Anniversary Day (Non-Cumulative)</u>
3	\$250
4	\$300
5	\$350
6	\$400
7	\$500
8	\$600
9	\$700
10	\$800
11	\$900
12	\$1,000
13	\$1,100
14	\$1,200
15	\$1,300
16	\$1,400
17	\$1,500
18	\$1,600
19	\$1,700
20 or more	\$1,800

Willoughby Hills

<u>Completed Years of Service</u>	<u>Added Annual Compensation Payable After Applicable Anniversary Date (Non-cumulative)</u>
1-3	-0-
4	\$500
5	\$600
6	\$700
7	\$800
8	\$950
9	\$1050
10	\$1150
11	\$1250
12	\$1400
13	\$1500
14	\$1600
15	\$1750
16	\$1850
17	\$1950
18	\$2050
19	\$2150
20	\$2250
21	\$2350
22	\$2450
23 or more	\$2550 maximum

Brunswick

<u>YEARS OF SERVICE COMPLETED</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
4-5	\$300.00	300.00	300.00
6-7	\$500.00	500.00	500.00
8-9	\$700.00	700.00	700.00
10-11	\$900.00	900.00	900.00
12-13	\$1,100.00	1,100.00	1,100.00
14-15	\$1,300.00	1,300.00	1,300.00
16-17	\$1,500.00	1,500.00	1,500.00
18-19	\$1,700.00	1,700.00	1,700.00
20-21	\$1,900.00	1,900.00	1,900.00

22	\$2,100.00	2,100.00	2,100.00
23	\$2,300.00	2,300.00	2,300.00
24	\$2,500.00	2,500.00	2,500.00
25	\$2,700.00	2,700.00	2,700.00
26	\$2,800.00	2,800.00	2,800.00
27	\$2,900.00	2,900.00	2,900.00
28	\$3,000.00	3,000.00	3,000.00
29	\$3,100.00	3,100.00	3,100.00
30	\$3,200.00	3,200.00	3,200.00

Euclid

Five Years or more	3.5% of Employees base salary
Ten Years or more	5.0% of Employees base salary
Fifteen Years or more	6.5% of Employees base salary
Twenty Years or more	8.0% of Employees base salary

External comparators are entitled to some weight, and the above contracts lend support to the Union's assertion that the City's longevity schedule is not comparable to the others. It is noted that the four contracts cover suburban locations in the Cleveland area, and there was no evidence that any of them are in a financial hole similar to Cleveland's. Without convincing evidence establishing true comparisons to the City's financial condition, this proposal must be regarded as a proposed pay increase, which has been covered above.

Recommendation

This proposal is not recommended.

Article XX (Full-time) – Longevity

Existing language to remain unchanged

7. Vacations – Article XXIII (Full-time)

Union's Proposal

a. Add the following to Section 2 (H):

Employees shall be allowed to use vacation time in increments of one (1) per hour. The employer shall not mandate that an employee schedule or use vacation time increments of one (1) week.

b. Amend Section 2 (I) as follows:

Vacations shall be taken during each current year, ~~provided that~~ and the City ~~shall~~ **may** permit an employee to accumulate and carry over his vacation leave to the following year and must be taken during that period of time.

c. Add the following to Section 4:

All employees are to subject vacation request in writing to their supervisor. The supervisor shall submit a written response to the employees within ten (10) calendar days after receiving the request and indicate whether the vacation has been approved or denied. If the supervisor fails to respond to the vacation request as referenced above, then the vacation shall be deemed accepted.

Discussion

1. With due respect, the use of vacation leave in one-hour increments, as proposed by the Union, is likely to create extreme administrative difficulties.

2. The remainder of recommended language, including the Union's proposal for a ten-day response to vacation requests, is set forth in connection with the City's Proposal No. 10, at Page 43, above.

8. Pay Day – Article XXV (Full-time)/XXII (Seasonal)

Union's Proposal

Amend Section 5 as follows: The City will process ~~any significant~~ **all** paycheck errors **in excess of one-hundred (\$100) by vouchers within five (5) working days. If the City fails to process pay check errors which exceed one-hundred (\$100) in a timely manner, then the City shall pay a fine of twenty-five (\$25) per week until the employee is compensated for all losses associated with the paycheck error. Within six (6) working days, if possible.**

City's Proposal

Current contract language.

Positions of the Parties

Union

There have been many paycheck errors, some of them in the range of \$300 to \$600. Some employees have been subject to overdraft charges, and others have had to wait long periods to have the errors corrected. One employee, Emanuel Shepard, experienced an error of \$1,000. Having direct deposit of paychecks will not correct the problem. The proposal may seem "extreme," but the situation is "unacceptable."

City

The City acknowledges that there have been payroll errors, but suggests that some have been the result of improper timekeeping by employees. Moreover, the City believes that imposing penalties will not solve the problem, and in any event, any monetary penalties would be unacceptable to the City.

Discussion

As the Union contends, payroll errors are unacceptable. But as the City has responded, imposing monetary penalties would not likely solve the problem. The undersigned believes there are three problems with the existing language of Sec. 5. First, there is no attempt to define what is a “significant” pay check error; and to an employee any such error is significant. Second, there is no penalty attached to the City’s failure to correct the error. Finally, the expressed time period of six working days may not give the City enough time to make the correction.

Therefore the undersigned hereby recommends the following language change:

Recommendation

Article XXV (Full-time)/XXII (Seasonal) - Pay Day

Change existing language as follows:

The City will process all paycheck errors within ten (10) working days after being made aware of such error(s). Failure to correct such error(s) shall be grounds for a grievance under Article XXVII, Sec. 2 (Full-time)/XXV (Seasonal).

9. Hostlers – Addendum III (Full-time), Bridges and Docks – Addendum V (Full-time), Parks – Addendum VII (Full-time), Streets – Addendum XII (Full-time), Motor Vehicle Maintenance, Addendum XIV (Full-time),

Union’s Proposal

In five separate proposals, the Union proposes requiring that the City hire a total of 15 full-time employees in five different positions.

City’s Proposal

Current contract language.

Positions of the Parties

Union

The thrust of this proposal is that the classifications involved in the above Divisions or Departments have been vacated through retirements, and the City has not posted the vacancies. Instead the City has had the remaining work performed by non-bargaining unit personnel (such as police or laborers or ironworkers). Thus the Union’s jurisdiction has been eroded or encroached upon; and the remedy sought is contract language requiring the City to hire 15 employees across the above classifications.

City

The City's first objection to the proposal relates to the projected cost: \$2.45 million over the term of the contract.² Its second objection is that the City "currently sufficiently staffs its positions based on manpower needs." In this connection the City points to several Divisions (Bridges and Docks; Parks; Streets; Motor Vehicle Maintenance) in which there is no need, or little need for drivers who possess CDLs. Therefore, according to the City, it would be too inefficient and expensive to fully staff these classifications with bargaining unit personnel.

Discussion

At the outset, the undersigned is not inclined to recommend that the City hire 15 employees that it does not believe are necessary to meet its manpower needs.

On the other hand, the undersigned is persuaded that the City misperceives its obligations under the Agreement. In connection with various proposals the City has suggested that if a position does not require the employee to hold a CDL, the City is free to assign truck driving outside the bargaining unit, usually to a laborer. Article II of the Agreement ("Recognition"), Sec.2, expressly recognizes the Union as the exclusive representative of the employees in the listed classifications, which include "Truck Driver (all classifications)," among others such as "Hostler." The undersigned strongly believes that the contractual Recognition language refers to the work performed by employees in such classifications, and is jurisdictional in nature; and while it may be more efficient and less expensive to use non-bargaining unit

² Since the term of agreement will be substantially less than three years, this amount would be proportionally reduced.

personnel, the City is bound by the language of the Agreement. This proceeding is not an arbitration, but the evidence presented by the Union, including testimony of employees affected by the City's work assignments, should be given serious consideration by the City.

In view of the above discussion, this proposal will not be recommended.

Recommendation

Hostlers – Addendum III (Full-time), Bridges and Docks – Addendum V (Full-time), Parks Addendum VII (Full-time), Streets – Addendum XII (Full-time), Motor Vehicle Maintenance, Addendum XIV (Full-time),

Existing contract language to remain unchanged.

10. Animal Control Officer – Addendum IV (Full-time)

Union’s Proposal

The Union proposes adding a new Section 6 as follows: The employer shall provide a pay adjustment of one dollar (\$1.00) per hour to all Animal Control Officers for apprehending, impounding and euthanizing exotic and wild animals that are stray, injured, and/or diseased.

City’s Proposal

Current contract language.

Positions of the Parties

Union

The basis of this proposal is the contention that the position of Animal Control Officer (formerly known as dog wardens) is a particularly dangerous job, and as such deserves a higher pay rate. Each year, according to the Union, the six employees in the classification capture about 1500 wild animals (not including snakes), most of which are euthanized.³ Employee Keith Dozier testified regarding the danger to which the employees are exposed when capturing wild dogs, raccoons and coyotes in particular. As Mr. Williams stated, “We’re trying to make sure

³ With the recent passage of the income tax increase, the City expects to hire three additional Animal Control Officers.

they [Animal Control Officers] are fairly compensated for the dangerous task they are performing.”

City

This is at least the third contract cycle in a row in which the Union has proposed a pay adjustment or equity increase for the Animal Control Officers. Since February 2015, the Animal Control Officers have apprehended, impounded or euthanized only three exotic animals. The City also cites its financial condition as the reason for opposing this proposal.

Discussion

Despite the eloquent presentation of Mr. Williams and the testimony of Mr. Dozier, the Union has not presented a compelling argument to justify special consideration for this classification.

Therefore, this proposal is not recommended.

Recommendation

Addendum IV (Full-time – Animal Control Officer

Existing language to remain unchanged.

11. Parking Enforcement Officers – Addendum VI (Full-time)

Union’s Proposal

The Union proposes increasing the uniform maintenance of Parking Enforcement Officers from \$175 to \$350.

City’s Proposal

Current contract language.

Positions of the Parties

Union

The Union seeks to increase the uniform maintenance allowance for Parking Enforcement Officers from \$175 to \$300 per year, to equalize the similar allowance paid to Traffic Controllers (Addendum VIII). Mr. Williams stated that the employees in the two classifications “have the same type of clothing...rain jackets...boots...shirts...pants...jackets.” His statement was essentially confirmed by the testimony of employee Valerie Stuart, who works as a Parking Enforcement Officer.

City

The City characterizes this proposal as “another Union-disguised pay raise.” It states that no justification has been offered for this proposal “because none exists.” Given the City’s financial condition, “it is not in a position to hand out such pay increases.”

Discussion

Contrary to the City, the Union did present justification for this proposal; namely that the Parking Enforcement Officers work under the same conditions as Traffic Controllers. The City opposes every sort of increased compensation for good reason, but in this case did not present compelling evidence to support its position.

Recommendation

This proposal is recommended, as follows:

Addendum VI (Full-time) Parking Enforcement Officers

1. Uniform Maintenance Allowances. The City will provide uniforms for the first year of employment. Thereafter, effective April 1, 2017 the City shall provide an annual uniform allowance of \$250 and a Uniform Maintenance Allowance of \$350. The above shall be paid by voucher.

12. Waste Collection – Addendum IX (Full-time)

Union’s Proposal

Amend Section 4 as follows:

Drivers of one-person trucks shall be required to exit their vehicles to ~~adjust trash carts and to~~ collect spillage from the trash carts.

City’s Proposal

Current contract language.

Discussion

During extended discussions both on and off the record, the undersigned advised the parties that because this proposal is related to a pending arbitration at which the credibility of both parties’ representatives will be at issue, the undersigned will not make a recommendation in connection with this proposal.

13. West Side Market – Addendum XIII (Full-time)

Union’s Proposal

Add the following language: The City will utilize Teamsters Local 244 bargaining unit members (truck driver’s) to perform the truck driving/waste receptacle duties at the Westside Market that has historically been performed by Teamsters Local 244 members.

City’s Proposal

Current contract language.

Positions of the Parties

Union

The Union’s objective with this proposal is to prevent erosion of the bargaining unit. Mr. Williams stated that no Union members are present at the site, but Waste Collection trucks are there and being driven by non-bargaining unit employees.

City

The City regards this proposal as an attempt to “restrict the City’s operational authority in an unjustified and unacceptable manner.” The City is currently using small trucks at the West Side Market, that do not require a CDL. Therefore, this is not bargaining unit work.

Discussion

The City has historically assigned waste and trash removal at the West Side Market to members of the bargaining unit, but with retirements there are no bargaining unit members assigned there at this time. To use bargaining unit members at this time would be less efficient and more expensive, according to the City.

What makes the City's position problematic is the claim that vehicles not requiring a CDL do not belong to the bargaining unit. As already noted, Article II, Sec. 2 of the Full-time Agreement makes no distinction between trucks requiring a CDL, and those that do not. Under the Agreement, a truck is a truck, and driving a truck is within the jurisdiction of the Union. Any change in that requirement would have to be effectuated by agreement of the parties.

Therefore, this proposal is recommended.

Recommendation

West Side Market – Addendum XIII (Full-time)

Upon the effective date of this Agreement, the City will utilize Teamsters Local 244 bargaining unit members (truck drivers) to perform the truck driving/waste receptacle duties at the West Side Market that has historically been performed by Teamsters Local 244 members.

14. Motor Vehicle Maintenance – Addendum XIV (Full-time)

Union’s Proposal

Add the following language: The City shall pay all truck drivers one hundred dollars (\$100.00) for purchase of work/safety boots.

City’s Proposal

Current contract language.

Positions of the Parties

Union

The Union seeks to add \$100 to the uniform/uniform maintenance allowance to purchase safety boots “because that is not a part of their uniform/uniform maintenance allowance and it should be, because these people are mandated to wear safety boots.”

City

The City already pays Motor Vehicle Maintenance employees \$510 in uniform and uniform maintenance allowances, and no justification was presented to increase this benefit.

Discussion

The undersigned agrees with the City's position that insufficient justification was presented to support this proposal.

This proposal is not recommended.

Recommendation

Motor Vehicle Maintenance – Addendum XIV (Full-time)

Existing language to remain unchanged.

TENTATIVE AGREEMENT

Prior to the commencement of fact-finding, the parties had tentatively agreed to the following modification of Addendum XI (A), Section 1, of the prior Agreement, to be included in the new Agreement:

ADDENDUM – XI (A)

UTILITIES

The City of Cleveland and Teamsters Local 244 agreed to the following provisions which became part of the Utilities Addendum expressed on pages 44 and 45 of the 1987-1989 contract.

1. **Back-Hoe Premium Pay.** Employees in the classification of Truck Driver who operate a back-hoe shall be paid 70% of the appropriate maximum prevailing rate as listed in the City Record for all hours spent operating said back-hoe. ~~The City and the Union shall negotiate through the Labor Management Committee which prevailing rate will apply to this work.~~ The “appropriate maximum prevailing rate” for operating a back hoe by a bargaining unit employee shall be the Construction Equipment Operators – Group B rate, as listed in the City Record. The establishment of an agreed-upon wage rate shall not constitute a guarantee of any minimum amount of back hoe work by any bargaining unit employee. Nor shall it prevent the City from assigning back hoe work to qualified employees of other bargaining units at the same or different wage rates.

IT IS SO AGREED:

TEAMSTERS, LOCAL 244

FOR THE CITY:

Date

Date

Recommendation

The Tentative Agreement set forth above is hereby recommended.

Respectfully submitted,



Shaker Heights, Ohio
December 1, 2016