

**THE NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF IMPASSE

between

THE TOWN OF UNION, NEW YORK

and

**THE CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 804**

NYS PERB Case: M2012-054

Report and Recommendations

of

Timothy W. Gorman,

Fact Finder

Appearances:

For the Association: Joann Mastronardi, Labor Relations Specialist, CSEA

For the District: Alan Pope, Town of Union Attorney

Date of Hearing: March 25, 2013

Date of Briefs: April 26, 2013

Date of Report: May 25, 2013

INTRODUCTION

In accordance with Civil Service Law §209.3, the New York State Public Employment Relations Board appointed me as Fact Finder in an impasse between the Town of Union, NY and the Civil Service Employees Association, Local 806. On March 25, 2013, a fact-finding hearing was held at the offices of the Civil Service Employees Association in Binghamton, NY. At this hearing both parties gave overviews of their respective bargaining positions. At the request of the fact finder, the parties submitted briefs, which were received by me on April 26, 2013. Upon receipt of these briefs, I declared the hearing closed.

BACKGROUND

The Town of Union, NY (hereafter the Employer or the Town) and Civil Service Employees Association, Local 806 (hereafter the Association or the Union) are parties to a collective bargaining agreement. This agreement expired on December 31, 2012. Bargaining for a new agreement began in January 2013. After several meetings between the parties, the New York State Public Employment Relations Board appointed a mediator to assist in the negotiations. Despite the mediator's efforts, the parties were unable to reach an agreement on a new contract. The Association subsequently declared an impasse and filed with the New York State Public Employment Relations Board for fact-finding.

OUTSTANDING ISSUES

The parties have identified six open issues:

1. Wages
2. Workday / Workweek Scheduling
3. Medical Insurance Plan
4. Subcontracting
5. Holiday Overtime Pay
6. Payment for Unused Sick Leave

Note: In its brief, the Association only addressed wages and workday/workweek scheduling. In its brief, the Town, in addition to addressing wages and workday/workweek scheduling, also addressed the Medical Insurance Plan, Subcontracting, Holiday Overtime, and Payment for Unused Sick Leave. For purposes of this report, it will be assumed that the Association either accepted or rejected the Town's position on these issues (The Association handwrote their acceptance or rejection into the parties' documentation at its last negotiation meeting).

SUMMARY OF THE PARTIES' POSITIONS

Wages

The Town's Position

The Town of Union has proposed a wage increase of 0.0% for 2012, 2.0% for 2013, and 2.5% for 2014 for bargaining unit members. In its preamble to its discussion of the issues, the Town cited a depletion of its General Fund, Highway Fund, and Parks District Fund as its justification for this (and other) proposals.

The Town projects a 2% annual increase in real estate taxes, and a 5% annual increase in sales tax revenue. It also forecasts a 2% annual increase in all expenditures, except for employee benefits, which the Town predicts will increase by 13% annually based on increases from 2011 to 2012. If nothing is done to rein in costs, including labor costs, the Town's reserve funds will be depleted by 2015. If this event occurs, the Town would have only four options available:

1. The reduction or elimination of certain municipal services - which is not a viable option
2. Certain jobs performed by union personnel would be performed by other entities through shared services
3. Reduction in the hours the Town offices are open for the public which is not an option in a town the size of Union
4. Reduction of full-time, benefit eligible employees

The Town also asserts that the above proposal for wage increases is in line with most other municipalities, all of which are facing financial challenges. Current sales tax revenue for the Town are below that of 2008, while its rate increase for pensions has gone from 6.3% in April 2009 to 18.9% in April 2013. In addition, its medical insurance costs for a family plan has increased (after employee contribution) from \$12,056 in 2009 to \$21,277 in 2013. These increases were borne by the Town without any offsetting revenue to help pay for them.

The Town asks the Fact Finder to give great weight to its increased expenses as well as its deteriorating financial condition.

The Association's Position

The Association rejects the Town's current offer of wage increase of 0.0% for 2012, 2.0% for 2013, and 2.5% for 2014. It cites both the Town of Vestal, NY along

with Broome County blue-collar employees' pay scales, which are \$5.00 to \$8.00 per hour higher than similar job titles and length of service for bargaining unit employees for the Town of Union.

Given that the Town has demanded major revisions to the workday/ workweek schedule of bargaining unit employees, a larger increase is warranted.

Workday / Workweek Scheduling

The Town's Position

For revenue reasons stated above the Town needs to reduce operating costs by scheduling employees on other than an 8:00 am to 4:00 pm schedule. It proposes changes to Article 8.1.1 and 8.1.2 of the Collective Bargaining Agreement (CBA) as follows:

8.1.1 Workday: The Town Board will establish the beginning and ending times of normal operation. A Department Head will establish an employee's scheduled hours of work, which may differ from the normal hours of operation to meet the particular needs and requirements of the department. The regular hours of work each day for a given employee will be consecutive. **Once established, the beginning and ending of an employee's normal workday will not be changed without an advance written notice of at least thirty calendar days.** (Emphasis by the Town)

8.1.2 Workweek: The Town Board will establish the days a department will conduct business and/or provide services. The Department Head will establish an employee's scheduled days of work, which may differ from the normal days of operation to meet the particular needs and requirements of the department. The regular days of work each week for a given employee will be consecutive. **Once established, the employee's scheduled days of work will not be changed without an advance written notice of at least thirty calendar days.** (Emphasis by the Town).

The Town needs this flexibility because unlike the private sector, it provides its employees with substantial paid leave and this proposal is a way that the Town can continue to provide necessary services without incurring undue overtime. With this flexibility, the Town is able to schedule employees as needed throughout the year. This scheduling is not without limits, and would contain a proper 30-day notice to affected employees. It cites several village, town, and municipal labor contracts that have just this type of language.

The Association's Position

The Association rejects the Town's proposal to set the normal hours of operation as being a ploy to force the bargaining unit employees to be "at will", subject to any scheduling whim the Town may desire. The bargaining unit employees are a diverse group with many different titles that include clerical employees, highway employees, parks employees, as well as mechanics. With the Town's proposal items like childcare and other outside duties would be impossible for an employee to schedule. While the Town did propose a 30-day notice of any schedule change, this is insufficient, as it would affect the employees' right to any normalcy of life outside of work.

The Association was willing to work with the Town in Labor/Management meetings to work out a sensible schedule, but the Town refused. In closing, the Association cites other town, city, and municipal contracts, none of which contains any type of language similar to the Town's proposal.

Medical Insurance Plan

The Town's Position

For cost savings purposes, the Town needs the ability to shop for the best medical and drug prescription plan; one that would allow some flexibility, but be equivalent to the current plan. In negotiations, it asserts that the Association had no objection to this proposal.

The Association's Position

The Association, in its handwritten notations on the Town's May 22, 2012 proposal, did not object to the Town's shopping for a better medical and drug prescription plan as long as this insurance coverage was equal to, or better than the current plan.

Subcontracting

The Town's Position

The Town wishes to change the subcontracting language contained in the CBA. It believes that the intent of the current language would not allow it to reduce the current staff through attrition. In this changed language, the Town would reserve the right to subcontract unit work or operations so long as it did not directly result in the lay-off of current full time employees in the unit.

The Association's Position

The Association, in its handwritten notations on the Town's May 22, 2012 proposal, was suspicious of this proposal for job security reasons.

Holiday Overtime Pay

The Town's Position

The Town seeks to reduce operating cost by eliminating the need to pay two times the employees hourly rate plus holiday pay (in effect triple time) if an employee works a bank holiday.

It will make an exception and pay this triple rate for Independence Day, Thanksgiving Day, and Christmas Day. The Town believes that it needs to operate more like those businesses in the community that pay taxes to support public services.

The Association's Position

The Association, in its handwritten notations on the Town's May 22, 2012 proposal rejected this proposal.

Payment for Unused Sick Leave

The Town's Position

The Town proposes the following new contract language regarding sick leave:

13.2 Sick Days Upon Retirement: At the time an employee retires, the employee will be entitled to a cash settlement equal to the number of accrued sick days credited to said employee as follows:

Beginning with the year 2012, the cash settlement for the number of accrued sick days credited is 125 days and the number of accrued sick days credited in each succeeding year will be reduced by ten days (115 days for 2013; 105 days for 2014; 95 days for 2015; etc.)

As a cost saving measure the Town seeks to phase out cash payments (as many

municipalities and school districts have done) in favor of the New York State retirement plan outlined in Section 41(j) of New York State Retirement and Social Security Law (see http://www.osc.state.ny.us/retire/publications/vo1522/service_credit/sick_leave).

The Association's Position

The Association's handwritten notations on the Town's May 22, 2012 proposal were unclear, on one page it rejects the proposal, on the next page a handwritten "OK" was placed next to the same Town proposal.

FACT FINDER'S REPORT AND RECOMMENDATIONS

The Town makes a compelling case for its financial situation. It is no secret that tax revenue for most municipalities has been down for the last several years. It is with this in mind that I offer the following recommendations. The parties should not read these, nor interpret them as separate and unrelated. Rather I would like the parties to consider the recommendations as a whole and use it as a basis for continuing negotiations leading to a settlement of this impasse.

Wages

The Town has proposed a wage increase of 0.0% for 2012, 2.0% for 2013, and 2.5% for 2014 for bargaining unit members. When considering this wage proposal I have taken into account my other recommendations for cost saving measures that the Town has put forward and that, as outlined below, I will recommend either in total or in part. If implemented these measures will save the Town money. Therefore, I believe

that these savings warrant a wage increase of 2.0% for 2012, 2.0% for 2013, and 2.5% for 2014, but only if the parties jointly adopt the remaining recommendation outlined below.

Workday / Workweek Scheduling

The Town seeks to have more flexibility in scheduling employees. The Union's claim that this will make the bargaining unit employees "at will" and subject to the whim of the Town is exaggerated. The Town needs the ability to schedule employees based on seasonal and other needs to maximize usage of Town employees work time. This language still requires the Town to give a 30-day notice if they wish to change an employee's work schedule. This should be enough time for employees to arrange for appointments, childcare etc. With this in mind, I recommend the parties adopt the Town's proposed language on workday / workweek scheduling. This language is below:

8.1.1 Workday: The Town Board will establish the beginning and ending times of normal operation. A Department Head will establish an employee's scheduled hours of work, which may differ from the normal hours of operation to meet the particular needs and requirements of the department. The regular hours of work each day for a given employee will be consecutive. Once established, the beginning and ending of an employee's normal workday will not be changed without an advance written notice of at least thirty calendar days.

8.1.2 Workweek: The Town Board will establish the days a department will conduct business and/or provide services. The Department Head will establish an employee's scheduled days of work, which may differ from the normal days of operation to meet the particular needs and requirements of the department. The regular days of work each week for a given employee will be consecutive. Once established, the employee's scheduled days of work will not be changed without an advance written notice of at least thirty calendar days.

Medical Insurance Plan

As the parties seem to agree on this issue I recommend that the Town be allowed to shop for a better medical and drug prescription plan so long as this insurance coverage is equal to, or better than the current plan.

Subcontracting

While the Association, in its handwritten notations on the Town's May 22, 2012 proposal, was suspicious of this proposal for job security reasons, I think this is just a case of clarifying some vague contract language. Therefore, I recommend that the parties adopt this new language. It is as follows:

5.1 (b) Subcontracting: The Town reserves the right to subcontract Unit work or operations so long as such subcontracting does not directly result in the lay-off of then current full-time permanent employees of the Unit. In addition, no Unit employees shall have his or her regular work schedule reduced as a direct result of the subcontracting of unit work. The Unit CSEA President shall be informed in writing by the Town of any subcontracting arrangements of unit work. Except in case of emergency, the Town shall notify the Unit CSEA President of any subcontracting of unit work at least ten days in advance of that work being performed by a subcontractor. In case of emergency, the Town shall notify the Unit CSEA President of the subcontracting of unit work as soon as possible. Nothing contained in the Agreement shall constitute a waiver of CSEA rights to negotiate the impact of subcontracting unit work.

Holiday Overtime Pay

In considering this issue, a search of other municipal and township labor agreements was illuminating. A review of how seven nearby townships and municipalities deal with holiday overtime showed that, while some paid time and one

half for all holidays worked, and others paid time and one half for bank holidays and double time for so-called “major” holidays (Independence Day, Thanksgiving Day, and Christmas Day) , none paid double time for all holidays worked.

Considering the Town’s concern about cost containment, this pyramiding of overtime seems excessive. I recommend that the parties change this provision in their CBA and adopt language stating that the Town will pay one and one half an employee’s hourly rate for bank holidays and double time for so-called “major” holidays (Independence Day, Thanksgiving Day, and Christmas Day).

Payment for Unused Sick Leave

Town seeks to phase out cash payments in favor of the New York State retirement plan outlined in Section 41(j) of New York State Retirement and Social Security Law. The Association’s views on this were unclear; therefore, it is difficult to make a recommendation. On this issue, I propose that the parties continue the bargaining process.

CONCLUSION

It was clear from the hearing that the parties do have mutual respect for each other even while zealously representing their respective interests. While I agreed with the Town's basic premise that it needs flexibility and cost containment to continue township operations and avoid default and/or bankruptcy, this concurrence does come with a cost, namely higher wages than the Town originally proposed to the Association. I believe that the cost savings that would result from my recommendations should allow for this wage increase and maintain the Town's solvency.

It is my hope that this report and recommendation, along with above-mentioned mutual respect will serve as a catalyst to restart the parties' negotiations and lead to an agreement that is mutually beneficial to all.

Date: _____ Signed: _____

Timothy W. Gorman, Fact Finder