CONCILIATION AWARD

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

August 5, 1999

In the Matter of:	)	
	)	
City of Upper Arlington	)	
	)	
and	)	Case No. 98-MED-10-0936
	)	
International Association of Firefighters, Local 1521	)	
	)	

APPEARANCES

For the City of Upper Arlington

Daniel A. More, Assistant City Attorney
Cathe Armstrong, Finance Director
Bonnie Cross, Assistant City Manager
Robert Depinet, Human Resources Administrator
Mitch Ross, Fire Chief

For the IAFF, Local 1521

Henry A. Arnett, Attorney
Lyndon Nofziger, President
Mark Hollingshead, Committeeman
Jim Mild, Committeeman

Conciliator

Richard E. Gombert

BACKGROUND

The parties to this conciliation are the City of Upper Arlington (hereinafter sometimes referred to as the "City" or the "Employer") and the International Association of Firefighters, Local 1521 (hereinafter sometimes referred to as the "IAFF", the "Union" or "Local 1521"). There is a collective bargaining agreement involving the City and Local 1521. It became effective on January 1, 1994. It expired on December 31, 1998.

The parties have been attempting to negotiate a new collective bargaining agreement. They have resolved many of the issues. But, they have been unable to resolve issues involving three contractual provisions, specifically, ARTICLE 8. Corrective Action and Records, ARTICLE 14. Rates of Pay/Wages and ARTICLE 23. Insurance.

These matters were submitted to the fact-finding process. The Fact-finder was Marcus Hart Sandver, Ph. D. He held a hearing on April 23, 1999. The hearing was declared closed on May 5, 1999. He issued his report on May 14, 1999. The Union accepted his recommendations. The Employer did not do so. Consequently, the matter proceeded to the conciliation process.

The State Employment Relations Board appointed the undersigned to be the conciliator on June 3, 1999. The appointment was based on the preferences of the parties and the availability of conciliators. The conciliation hearing was held in the City Council Chambers at the Upper Arlington Municipal Center on July 12, 1999. It started at 9:30 a.m. It adjourned at 1:40 p.m.

The Conciliator is required to select the final offer of one party or the other without modification on an issue-by-issue basis. The selection between the final offers is based on the criteria set forth in Section 4117.14 (G)(7) of the Ohio Revised Code. That criteria is:

(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(c) The interest 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;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

ISSUES

The issues involve potential changes in three articles of the labor contract. The Conciliator will summarize the arguments and evidence furnished by the parties on each issue. Then, he will provide a synopsis of the rationale for his selection of a final offer.

The first issue involves Section 8.4. Records.

City Position

The parties are in agreement on most of the language in Article 8. The exceptions are Sections 8.4(B)(2) and 8.4(C). The Employer proposes changes in these two provisions. It believes the current language is a bad public policy and a bad management policy. It should not be forced to maintain a flawed policy.

The concern in Section 8.4(B)(2) involves the expungement of disciplinary records. Currently, written reprimands may be expunged after two years and suspensions of less than 30 days may be expunged after three years. The City believes these records should be maintained in an employee's personnel file ad infinitum. This information should be permanently maintained and considered in future disciplinary and promotional actions. The public should not be deprived of this information. The employees are paid with public funds. The public deserves the opportunity to fully and fairly assess the employee's job performance.

The Employer also wants to delete language in Section 8.4(C) that restricts City employee access to a member's personnel files. This matter is covered by Ohio law. The labor contract should not place additional requirements on the Employer.

Union Position

The IAFF believes that the current language should be maintained with only minor agreed upon changes. It notes that the current language is a compromise. It was reached in collective bargaining somewhere around ten years ago. It has remained, more or less, intact through several collective bargaining agreements. There isn't any evidence that this contractual language has caused any problems for the Employer with this bargaining unit. There are built in safeguards. It is not a problem. There should be some provision that allows a member to clear his record. The current practice should be maintained.

Then, Local 1521 is concerned about privacy. It notes that Employer representatives and the public have access to a member's personnel file. It wants to protect confidential documents that may be in the file. The current language is not a problem. The law tends toward protecting the personnel records of public employees as opposed to opening them to increased public scrutiny. State ex rel. Keller v. Cox, 85 Ohio St. 3d 279 (1999). The City can comply with the law. The contractual language should stay basically as it is in the current labor contract.

Discussion

There isn't any doubt that both parties firmly believe in their respective positions. The Employer desires a change in what it believes is a bad public policy. The IAFF wants to maintain what it believes is a reasonable compromise, which it reached in collective bargaining, that protects its members' ability to clean their records over time and protects their privacy.

The Union offers the better argument. The Conciliator reaches this conclusion for, at least, two reasons.

(1) The current language has been in place for about ten years. A key factor in a conciliation award is past collectively bargained agreements between the parties. It can not be ignored by a conciliator.

(2) There has not been any problem encountered by the parties with the current language. The City asserts that it is a bad public policy. But, it did not proffer any evidence indicating that the public has been injured in any way by the current practice.

The Conciliator reaches the same conclusion as the Fact-finder. There really isn't any evidence to justify a change. The parties have abided by this contractual provision for somewhere around ten years. There haven't been any problems. There isn't any reason to change it at this time.

Award

The Conciliator awards the Union's final offer concerning Sections 8.4. (B)(2) and 8.4. (C).

The second issue involves Sections 14.1. Rates of Pay, 14.10. Paramedic Supplement and 14.11. EMS Supplement.

Union Position

The IAFF does not seek an hourly rate increase for the platoon members in the first year. It does seek a change in the way overtime is calculated. It desires time and one-half for the 54th, 55th

and 56th hours worked in the work week. Therefore, the members should receive an increase of 5.66%. Local 1521 proposes increases of 3% to the base salary in each of the last two years of the new collective bargaining agreement.

Also, it proposes that the salary levels for staff positions be changed so that the employees in these positions will receive the same wages (base salary plus FLSA overtime) as the employees on platoons. In short, the IAFF is accepting the Fact-finder's recommendation as its final position.

The Union proposes that paramedics receive a pay supplement of 5% of the hourly rate and that other individuals, who are not paramedics but who still ride on an EMS vehicle, should be paid a pay supplement of 50¢ per hour for the time spent riding on that vehicle.

City Position

The Employer believes that there should not be any change in the calculation of overtime. Instead, it has offered general across-the-board wage increases of 3% - 3% - 3%. In short, the employees would receive a 3% wage increase in each year of a new three year collective bargaining agreement. Also, it believes that the paramedic supplement should be maintained at its current level of $57.30 per pay period (biweekly) and that the EMS supplement should be maintained at its current rate of 43¢ per hour.

Discussion

The first item is the list of comparables. The City wants to use the following: Grandview, Westerville, Worthington, Norwich Township (Hilliard) and Washington Township (Dublin). The IAFF agrees with four of them - - but not Grandview. It's point is well-taken. The Grandview population is much smaller. Its fire department is much smaller. Its residents' median income isn't anywhere near the median income of the residents in the other five cities. Consequently, the list of comparables should not include Grandview.

Then, there is also a slight problem with the list of comparables proffered by Local 1521 in some of its exhibits. This list includes Delaware, Kettering (a Dayton suburb) and Shaker Heights (a Cleveland suburb). These three cities should not be used in this conciliation. They tend to confuse the issue. They aren't necessary. Therefore, in this conciliation, Upper Arlington will be compared to Westerville, Worthington, Norwich Township (Hilliard) and Washington Township (Dublin). These five cities are all in Franklin County.

There are four exhibits that are particularly apropos to this conciliation. They compare a five year firefighter in these five cities. The results are as follows: (1) Total Salary Compensation (Upper Arlington is 8.3% below average); (2) Total Hourly Compensation (UA is 9.2% below average); (3) Total Salary Compensation (including vacations and holidays) (UA is 4.8% below

average); and (4) Total Hourly Compensation (including vacations and holidays) (UA is 5.5% below average). This data leads to the conclusion that an increase of 5.66% in 1999 is justified. This increase will allow the Local 1521 members to be somewhat more comparable to the average firefighter in these Franklin County communities.

It should also be noted that the City did not really argue an inability to pay a 5.66% increase. It is on a sound financial base. However, it does dispute the implication that it is awash in excess monies. It notes that several items in the statistics are, in reality, one time "windfall" receipts. These items are not recurring items. Its point is well-taken. But, it is clear that the Employer can afford a 5.66% general wage increase in 1999.

The parties seem to agree that there should be general across-the-board wage increases of 3% in 2000 and 3% in 2001. Those salary adjustments are justified. They will probably be somewhat in excess of the rate of inflation. They are in line with general deferred wage increases in our economy.

Lastly, there is the matter of the paramedic supplement and the EMS supplement. The Union proposed changes in these sections seem to compliment the changes in the other sections of the labor contract. The Local 1521 position on these items is well-taken. It is adopted.

Award

The Conciliator awards the Union's final offer concerning Sections 14.1, 14.10 and 14.11.

The third issue involves insurance and Section 23.3. Coverage.

Union Position

The Union believes that the status quo should be maintained. The insurance benefits and coverage as well as the employee's contribution should remain at the levels that were in effect on December 31, 1998. Currently, fire department employees, like all other City employees, pay $2.97 per month for each dependent covered under their insurance policy. There isn't any reason to change this formula.

City Position

The Employer believes that there should be a change in the contribution rate for the employees in this bargaining unit. It proposes a contribution rate of 7% of the monthly premium (not to exceed $40.00 per month) for the life of this new labor contract.

The evidence is clear that the members enjoy the benefits of a very good group health plan. It is a result of the fact that they participate in a group that includes lower risk individuals, e.g., administrators, inspectors and clerical personnel. They reap the benefits of this favorable selection. They would not have such a good group health plan as a stand-alone group.

There is a real concern that the cost of this plan will rise in the future. The firefighters should participate in these increased costs.

The City has negotiated with other employee groups (e.g., the police) for contributions similar to what it is requesting from the firefighters. Also, it notes that the firefighters will not pay more than non-contract employees. It will continue to cover the employee at its own expense. However, it believes the employee should make a greater contribution toward his/her dependent coverage.

Discussion

The record evidence indicates that there is some overutilization of the insurance plan by the firefighters. The evidence also indicates that the plan will probably not be totally stable in the near future. The cost of this insurance will probably increase. There is a compelling argument to be made that the firefighters should participate, to some extent, in these rising costs.

The Employer proposal has two safeguards. (1) The employee cost for dependents' coverage will not exceed $40.00 per month. (2) The employee cost will not exceed the non-contract employee cost. This latter safeguard is commonly referred to as a "me too" clause. These safeguards are significant.

The City position concerning Article 23 is well-taken. It is adopted.

Award

The Conciliator awards the City's final offer concerning Section 23.3.

Certification

This Conciliation Award is based upon the evidence and testimony presented to me at the hearing conducted on July 12, 1999 and on the evidence submitted by the parties prior to and at the hearing. The final offer awards are based upon the procedures for conciliation as found in O.R.C. 4117 and associated administrative rules promulgated by the State Employment Relations Board. This Award involving the final offers by the parties concerning three articles of the new collective bargaining agreement are the only items that have been decided in this Conciliation Award.

Richard E. Gombert

RICHARD E. GOMBERT
CONCILIATOR

Worthington, Ohio