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CONCILIATION AWARD

STATE
BOARD

STATE OF OHIO

Feb 25 10 40 AM '00

STATE EMPLOYMENT RELATIONS BOARD

February 25, 2000

In the Matter of:

City of Marietta

and

International Association of
Firefighters, Local No. 442

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Case No. 99-MED-08-0690

APPEARANCES

For the City of Marietta

Gregory B. Scott, Attorney
Edward L. Ostrowski, Jr., Attorney
Robert Boersma, Director of Public Safety
Ted Baker, Fire Chief

For the IAFF, Local No. 442

Henry A. Arnett, Attorney
Lauren Dutton, Chair, Bargaining Committee
Bruce Weckbacher, Committeeman
Jack Hansis, Committeeman
Dave Ross, Committeeman
James Wiblin, Committeeman

Conciliator

Richard E. Gombert

BACKGROUND

The parties to this conciliation are the City of Marietta (hereinafter sometimes referred to as the "City" or the "Employer") and the International Association of Firefighters, Local No. 442 (hereinafter sometimes referred to as the "IAFF", the "Union" or "Local No. 442"). There is a collective bargaining agreement involving the City and Local No. 442. It became effective on November 1, 1996. It expired on October 31, 1999.

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 14. PAY SCALES, ARTICLE 20. SICK LEAVE and ARTICLE 26. UNIFORM PURCHASE ALLOWANCE.

These matters were submitted to the fact-finding process. The Fact-Finder was Charles W. Kohler. He held a hearing on November 2, 1999. He issued his report on December 6, 1999. The City accepted his recommendations. The Union 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 December 28, 1999. The appointment was based on the preferences of the parties and the availability of conciliators. The conciliation hearing was held in the City Hall Annex in Marietta on February 7, 2000. It started at 10:55 a.m. It adjourned at 4:55 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 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;
- (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 first item for resolution is the exact number of issues involved in this case. The IAFF submitted a list of six issues prior to the hearing. The Employer believed that there were only four issues. The controversy concerns ARTICLE 14. PAY SCALES.

The expired collective bargaining agreement has only one section in this article. It contains a list of the job classifications and the hourly rate of pay for each job classification in each year of that three year labor contract. This chart is all that exists in this article.

The parties have negotiated long and hard over general wage increases. What should be in the new chart for the three years of a new collective bargaining agreement. They are still apart on these amounts. They have agreed that the general wage increase in the first year of the new labor contract will be retroactive to November 1, 1999.

The Union also has proposals concerning two new items for the collective bargaining agreement. They are (1) pension pick up and (2) a special amount per hour as EMT compensation. The IAFF has suggested that these two items could be included in the labor contract as two new sections in ARTICLE 14. The Employer opposes both of these items in their entirety.

The IAFF believes that there are three separate and distinct issues in this article. They are: (1) general wage increases; (2) pension pick up; and (3) EMT compensation. Each one is an issue. The Fact-Finder treated them separately. The Ohio Revised Code refers to conciliation on an issue-by-issue basis - - not article-by-article basis. Therefore, each one should be considered as an issue for resolution by the Conciliator.

The City believes that the issue is money. It is base pay, pension pick up and EMT pay. These items are all money items. How do we allocate money? It is all part of one issue. The Fact-Finder approached it in this manner. He considered them all together. Therefore, these three items should be considered as only one issue by the Conciliator.

The Local No. 442 argument is the more persuasive argument. The Ohio Revised Code does not define "issue". There does not appear to be any applicable case law defining "issue" insofar as O.R.C. 4117 is concerned. Therefore, the Conciliator will have to reach a decision based on the evidence presented to him in the case at bar.

The Employer position appears to be too broad. It wants to lump these three items together primarily because they all involve money. But, there are plenty of other items in the labor contract and in the current proposal that cost money. There wasn't any attempt by anyone to lump them into this issue. A clear example is the "fitness stipend". The parties have agreed to a fitness program wherein a firefighter can earn extra money (it calculates out to about a 1% wage increase) if the person attains specific fitness standards. The City has used this 1% in many of its calculations even though about one-third of the firefighters will probably not attain these goals in the first year of the labor contract. A second example is longevity. It is a pure money item. It is ARTICLE 16. LONGEVITY PAY. Both parties included this item as a separate issue in their initial submissions to the Conciliator. The mere fact that something costs money does not appear to be a definitive reason to conclude that it is all part of one issue.

There are two new items, i.e., specifically, pension pick up and EMT compensation. The only common thread seems to be that they cost money and that Local No. 442 proposed new language for ARTICLE 14. In reality, they are separate and distinct from each other. They do not contain the degree of commonality that would require that they be included as a single issue. Therefore, they will be considered as three separate issues in the case at bar.

The parties agree that the two disputes over sick leave and uniform purchase allowance are two separate issues.

The last item is longevity pay. The City accepted the Fact-Finder's recommendation. The Union did not. But, it did eventually believe that the recommendation was acceptable. So, both parties agreed to the Fact-Finder's recommendation. The issue was resolved. It involves a .5% wage increase. The Conciliator will not rule on this issue.

The first issue involves ARTICLE 14. PAY SCALES, Section 1: Wage Increase.

Union Position

The IAFF seeks general across-the-board wage increases of 4% - 4% - 4%. In short, the employees would receive a 4% wage increase at the start of each year in a new three year collective bargaining agreement. It believes that Local No. 442 members lag behind other firefighters in the comparable cities.

The evidence shows that Local No. 442 members are 5th among the six cities used in the wage comparison. Marietta is only at 94% of the SE Ohio average. It will fall to 91% in the near future. This situation is aggravated by the fact that Local No. 442 members have been assessed a large (31%) increase in their monthly premium for insurance coverage while four of the five comparables provide 100% employer paid medical insurance to their firefighters. The requested increases are necessary to close some of the gap. The Employer has not seriously advanced an inability to pay argument.

City Position

The Employer has offered general across-the-board wage increases of 3.0% - 3.5% - 3.5%. This offer is an acceptance of the Fact-Finder's Report. It is a stretch. The wage increases should be somewhat smaller. But, it has accepted the recommendation which was issued last December.

So, in January, the City settled with the F.O.P. for its law enforcement officers and the Teamsters for its non-uniformed personnel for these amounts. It also implemented the same wage increase for its non-union employees. This pattern should not be broken in this conciliation.

The proposed increases are fair. They far exceed the rate of inflation. They are higher than the SERB-reported statewide average for firefighter settlements for the same contract period. The hourly rates for Marietta firefighters are highly competitive. Further, its total compensation package is highly competitive. Marietta firefighters wages ranked 1st or 2nd among available comparables. They are not playing "catch up" with inflation, the residents of Marietta or with firefighters in comparable cities. The general wage increases over the past six years have fluctuated between 3% and 4%.

Discussion

There are cogent arguments on both sides of this issue. The evidence is clear that the Fact-Finder's recommendations became the basis for settlements with two other labor organizations and it became the basis for a unilateral wage increase for non-union employees. Therefore, the Fact-Finder's recommendation has been given serious consideration in the case at bar.

But, there is some new evidence in this case. It is compelling. It was not available to the Fact-Finder. Specifically, two of the comparables will negotiate wage increases somewhat in excess of the recommended wage increases.

There is a tentative agreement between the city of Portsmouth and its firefighters. The package includes general across-the-board wage increases of 5% - 5% - 5%. This proposal will be subjected to a vote in the near future.

There is a fact-finding in process between the city of Zanesville and its firefighters. The employer's proposal concerning general across-the-board wage increases is 4% - 4% - 4%. The union is seeking something in excess of those amounts. It is rather obvious that the eventual settlement will be at least 4% - 4% - 4%.

Then, it is noted that Cambridge has a deferred wage increase of 4% in March of 2000, Chillicothe had a deferred wage increase ranging from 1% to 10% in November of 1999 and Athens had a deferred wage increase of 3% in November of 1999.

These new facts skew the evidence. It leads to the conclusion that wage increases for firefighters in SE Ohio should be somewhat higher than the Fact-Finder's recommendation. The Local No. 442 position on this item is well-taken. It is adopted.

Award

The Conciliator awards the Union's final offer concerning ARTICLE 14, Section 1.

The second issue involves ARTICLE 14. PAY SCALES, Section 3: Employee's Share.

Union Position

The Ohio law requires that firefighters contribute 10% of their earnings to the Police and Firemen's Disability and Pension Fund. Local No. 442 wants the City to "pick up", and begin contributing on behalf of each employee, 2% of the employee's compensation to the PFDPF. This amount will increase to 4% on November 1, 2000 and to 5% on November 1, 2001.

The IAFF notes that there is some pension pick up by three of the comparables: Chillicothe (5%), Portsmouth (9%) and Zanesville (9.5%). It is time for Marietta to join this group and start paying some portion of the pension costs.

City Position

The Employer opposes this proposal in its entirety. It is just another money item. The firefighters are already being fairly compensated. This isn't the time to introduce this new form of compensation to the bargaining unit members.

Also, it notes that its other employees do not enjoy this form of compensation. The Fact-Finder rejected this item.

Discussion

The City's argument is the most persuasive. This is a new form of compensation. It is enjoyed by only about one-half of the comparables. There just isn't sufficient evidence to support the inclusion of pension pickup into the collective bargaining agreement at this time. The Employer's position is adopted.

Award

The Conciliator awards the City's final position concerning ARTICLE 14, Section 3.

The third issue involves ARTICLE 14. PAY SCALES, Section 4: EMT Compensation.

Union Position

The IAFF believes that the bargaining unit members should receive an additional 35¢ per hour as EMT compensation. It notes that emergency medical service is a substantial portion of their job duties. There were 2415 runs in 1999 - - 2111 (87%) of them were EMS calls. The only other comparable, which requires firefighters to perform emergency medical service, is Chillicothe and that city pays an extra \$200.00 per year to its firefighters for this requirement. The other four comparables do not require their firefighters to perform this service.

City Position

The Employer opposes this item in its entirety. The firefighters have always performed this service as part of their basic job duties. It has been a part of their job description for at least the past 13 years. The City did not recently add some new duties to its employees. It was an integral part of the job description when most (if not all) of these employees were hired. The Fact-Finder recognized this history. He did not recommend any special EMT compensation. The Conciliator should show some deference to the Fact-Finder's thoughts on this item.

Discussion

The Employer's argument is well-taken. There isn't any doubt that history supports its position. The job is basically the same job that it has been for many years. There isn't anything substantially new. There may be some additional training. But, it did not really change the basic job. There has never been a provision for additional pay for EMT duties. It should not be added to this labor contract at this time. The City's position is adopted.

Award

The Conciliator awards the Employer's final position concerning ARTICLE 14, Section 4.

The fourth issue is ARTICLE 20. SICK LEAVE, Section 1. Accumulation.

Union Position

The Local No. 442 proposal would allow a member to use up to 24 hours of sick leave in two hour increments for personal reasons. It notes that members have, on occasion, some emergency needs. Also, firefighters in Cambridge and Portsmouth receive time off for personal reasons. The proposal does not include any new time off. It is merely a new allocation of time off that already exists in the collective bargaining agreement.

City Position

The Employer opposes this item in its entirety. The employees already have plenty of time off. They work for 24 hours. Then, they are off for 48 hours. Also, they have Kelly days. They are allowed to trade shifts. They have paid time off for vacation, holidays, injury leave, educational leave, jury duty, court leave and military leave. The City already has difficulty accommodating all of the existing absences of firefighters. This Local No. 442 proposal should be rejected.

Discussion

The Employer's argument is well-taken. The employees have plenty of time off. They are scheduled off about 262 days per year. Then, there are various other forms of time off. The Fact-Finder noted that the availability of vacation time, days off and the ability to trade days should allow firefighters to attend to personal matters without the creation of a new category of leave. The language proposed by Local No. 442 should not be added to the labor contract. The City's position is adopted.

Award

The Conciliator awards the Employer's final position concerning ARTICLE 20, Section 1.

The fifth issue is ARTICLE 26. UNIFORM PURCHASE ALLOWANCE, Section 1. Amount.

Union Position

The IAFF proposes that the current \$300.00 allowance should be increased to \$350.00 in the first year of the new collective bargaining agreement, \$375.00 in the second year and \$400.00 in the third year. There has not been any increase in this allowance for many years. The cost of uniforms has gone up substantially (i.e., 48%) over the last nine years. There has not been any increase in the allowance over this period of time. The proposed increases are justifiable.

City Position

The Fact-Finder recommended an increase in the uniform allowance to \$320.00 during the first year of the new collective bargaining agreement; an increase to \$340.00 in the second year; and an increase to \$360.00 in the third year. The Employer has accepted this recommendation. It notes that this offer will take Marietta firefighters above the average in year two of the labor contract. Furthermore, the City awards a \$400.00 probationary allowance to new firefighters - - a benefit not enjoyed by the other comparables. The Fact-Finder's recommendation should be endorsed.

Discussion


The Employer's argument is the most persuasive. There is justification for some increase in this allowance. But, this issue should be analyzed in its entirety. A Marietta firefighter receives a special \$400.00 allowance in his or her first year of employment and a special \$200.00 allowance when promoted. The other comparables do not have these special uniform allowances. The Fact-Finder's recommendation will clearly bring Marietta into an average, or above average, status with the comparables. The City's position is adopted.

Award

The Conciliator awards the Employer's final position concerning ARTICLE 26, Section 1.

Certification

This Conciliation Award is based upon the evidence and testimony presented to me at the hearing conducted on February 7, 2000 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
CONCILIATOR

Worthington, Ohio

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February 25, 2000

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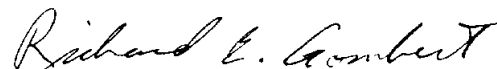
RE: SERB Case No. 99-MED-08-0690

Dear Messrs. Scott and Arnett:

I have enclosed one copy of my Conciliation Award in this case. Also, I have enclosed one copy of my bill for professional services.

Thank you for allowing me to be of service to you in this conciliation. If I can ever be of service to you in any future matter, please feel free to contact me.

Sincerely,



Richard E. Gombert

REG/lgc
enclosure

cc: Mr. George M. Albu ✓