

State of New York
Public Employment Relations Board

In the Matter of Fact-Finding Between

SHERIDAN, TOWN OF

- and -

IBT LOCAL 264 (TOWN OF SHERIDAN HIGHWAY DEPARTMENT)

PERB CASE NO. M2007-097

Before: Donna R. Beal – Mediator/Fact Finder

REPRESENTATIVES

For the Town

William Holcomb – Consultant
John Walker II – Town Supervisor
Richard Feinen – Deputy Town Supervisor

For the Union

Brad Haag – Teamsters Local 264
David C. Rouch

February 12, 2008

BACKGROUND

A. The Parties:

The Town of Sheridan (“Town”) and the Teamsters Local 264 (“the Union”) are parties to a collective bargaining agreement effective January 1, 2003 through December 31, 2005, with a one-year extension to December 31, 2006. The one-year extension followed fact-finding before Samuel Cugalj on July 14, 2006. His recommendations were not accepted on the part of the Town and the terms and conditions of the 2003-2005 contract were thus extended for 2006. Union represents 4 individuals holding the title of Machine Operators.

B. Negotiations History/Issues:

The Parties met five times, April 17, May 7, May 23, June 11 and June 15, 2007. The following four issues remained open at the time the Union declared impasse on July 17, 2007:

- I. Wages (3% increase each year of the contract)
- II. Health Insurance
- III. Overtime by Seniority
- IV. Length of the contract

This Fact Finder was appointed January 16, 2008.

Following discussions with the parties at the first meeting, February 8, 2008, attempts were made to mediate. One issue, **Overtime by Seniority**, was initialed and set aside. It was agreed that a second mediation session would be conducted and if the parties could not come to an agreement on the one main issue, **Health Insurance**, the parties would then go to formal fact-finding. During the second meeting, February 11, 2008, new issues surfaced and the parties tentatively agreed to several of them. Not reaching agreement on the health insurance issue, the parties agreed to file briefs with the Fact Finder no later than February 19, 2008. It was understood that all four (4) of the original issues, as well as the new issues of **Good Friday**, **Additional Sick Leave** and **Bereavement** would be addressed in the report.

I. Wages

Prior to this formal fact-finding, both Parties agreed that the wage increases would be:

4% - 2007

3% - 2008

3% - 2009

and should agreement be reached for a four-year contract

3% - 2010

In Fact Finder Cugalj's report dated September 29, 2006, a three percent (3%) wage increase was recommended for the years of 2006, 2007 and 2008.

II. Health Insurance

In 2002, the Town received notice that the insurance plan they had been carrying for the employees would increase dramatically and the Town moved the coverage to the Teamsters' plan. A LETTER OF UNDERSTANDING was signed by John Walker, Supervisor, and Glenn Miller, Business Agent, indicating the following:

“During recent contract negotiations, the parties agreed to A Health Insurance Select Plan for three (3) years at no cost to the employees.

Effective January 1, 2002, the Town instituted a \$6,900.00 Annual cap for health insurance costs. The negotiated Select Plan will enable the Town to fund this benefit at a cost of \$20,683 per employee during the term of the contract.”

This signed agreement does not indicate a date on which it was signed.

On or about the same period of time, a resolution was passed by the Town Board as follows:

**RESOLUTION #67-12/01
RESOLUTION REGARDING HEALTH INSURANCE BENEFITS
FOR TOWN OF SHERIDAN
DEPARTMENT OF PUBLIC FACILITIES EMPLOYEES**

WHEREAS, the Town of Sheridan provides certain health insurance benefits for the Town's Department of Public Facilities employees, and

WHEREAS, the cost for such benefits continues to escalate, and

WHEREAS, the Town Board wishes to maintain sound fiscal responsibility to the taxpayers of the Town.

NOW, THEREFORE, BE IT RESOLVED on motion of Councilman Sheffield and seconded by Councilman Feinen, that

1. A "cap" of \$6,900 per employee, per policy year, is hereby established on the total cost of insurance premiums to be paid by the Town of Sheridan.
2. If, and when, the cost per employee, per policy year, for insurance benefits exceeds the "cap", the excess amount will be the responsibility of the insured employee. Such excess amount is to be paid to the Town, one month in advance, on a monthly basis.
3. The "cap" of \$6,900 per employee, per policy year, shall become effective January 1, 2002 and shall remain, unless and until from time to time modified by the Town Board of the town of Sheridan.
4. The "cap" amount as set by the Town Board from time to time shall also apply to retiree benefits as may be provided from time to time by Town Board resolution.

Again, this resolution does not list a date on which it was acted upon.

The current labor agreement reads:

“Section 21.1 – Effective March 1, 2003, for the term of this contract the Town will provide all bargaining unit employees of the Town of Sheridan with the New York State Teamsters Council Health and Hospital Fund’s Health Insurance at no Cost to the employees with the following options:

Medical – Select Plan
Rx Drugs – Option 1
Dental – Options 1
Disability – Option 1
Life and AD&D – Option 1
Vision – Scheduled Plan of Benefits
Legal – Scheduled Plan of Benefits ”

Further, a signed MUNICIPAL EMPLOYER PARTICIPATION AGREEMENT lists the monthly rates of :

Effective 3/1/2003 - \$531.92
Effective 1/1/2004 - \$572.00
Effective 1/1/2005 - \$619.67

Item #4. of that same signed agreement reads in part:

“----- and the Employer also agrees to continue to make contributions on all these employees for as long as there shall be a Collective Bargaining Agreement or Agreements between the Employer and the Union, subject to any and all rules and regulations or decisions covering this group that are issued by the Fund.”

Item #9 of this same agreement reads:

“This Participation Agreement shall become effective as of the date of execution hereof and the payments above provided shall be payable from and after 3/1/2003 and expire on 12/31/2005 . This Participation Agreement shall continue in full force and effect for the same term as the Collective Bargaining Agreement. Upon expiration, unless a new Participation agreement is signed and submitted to the Fund, the terms and

conditions of this Participation Agreement shall continue in effect. In that event, the employer shall pay the contribution rate in effect on January 1st of each calendar year. If the employer fails to comply with the above requirements, the Fund may terminate the employer's participation and take legal action against the employer for all amounts due the Fund..

Effective Date of Collective Bargaining Agreement 1/1/2003 . Expiration Date of Collective Bargaining Agreement 12/31/2005 . ”

This Participation Agreement was signed on February 21, 2003 by Glenn Miller, Business Representative, and John H. Walker II, Supervisor.

III. OVERTIME BY SENIORITY

This issue was initialed by both parties at the first session via mediation on February 8, 2008.

IV. LENGTH OF CONTRACT

This issue is subject to reaching an agreement on all other issues.

V. GOOD FRIDAY

During the mediation session on February 11th, the Town proposed the elimination of one holiday, Good Friday. The Union had agreed to this demand.

VI. ADDITIONAL SICK LEAVE

Also during the mediation session on February 11th, the Union proposed that sick days be increased from the current 75 to 90 days. The Town had agreed to this demand.

VII. BEREAVEMENT LEAVE

Further, on February 11th, the Town proposed the addition of Bereavement Leave to the contract. Language will be drafted and both parties initialed the definition of “immediate family.”

TOWN’S POSITION:

The brief filed for the Town by William L. Holcomb, Consultant, clarifies that the present issue before this fact finder, **Health Insurance**, was the same issue addressed by a previous fact finder which led to an imposed contract under the NYSPERB and Taylor Law procedures, effective for the year 2006.

The Town proposed the continuation of the current health insurance plan with employee contribution of 25% of the annual premium above the cap of \$6,900. Contract language found in Article 21, Section 21.1 was cited with the interpretation that “This sentence was intended to be a true sunset clause” and further claims that “The parties agreed that the Town will provide health insurance benefits at no cost to the employees only for the three years covered by the Contract. Following the three years, the Town would not be required to maintain the benefit at no cost to the employees.”

The Town acknowledges the legal requirements under Triborough Doctrine (27 PERB 3001 [1994]) and states that “PERB has also consistently held that while negotiated health benefits are part of the total compensation package, compensation can be the subject of a sunset clause, pursuant to the agreement of the parties.”

Several PERB cases were cited to support their position that when an

expired agreement contains a sunset clause, the employer is obligated to only maintain existing benefits (not to increase) at the same level provided at the time of the expiration of a contract until a new agreement is negotiated. In particular, 27 PERB 4540 (1994) was cited and quoted as follows:

“...pursuant to the parties’ agreement, [a sunset clause] is intended to terminate a substantive benefit specified in the collective bargaining agreement at a specific time or upon specified conditions. Where such termination proceeds or is simultaneous with the expiration of the agreement itself, the public employer’s refusal to continue to provide the terminated benefit after the expiration of the agreement does not violate the law.”

The position is that “the Town is obligated to maintain health insurance benefits at the level provided during the final contract year throughout contract negotiations.” Further, that the Participation Agreement specifically lists effective dates from 3/1/2003 to 12/31/2005 and that the Town is obligated to provide the health insurance benefit at no cost to the employee only for the three year period specified.

UNION’S POSITION:

The brief filed by Brad Haag, Business Agent, points out that the Sheridan Highway Employees have been working without a contract since 12/31/2006, without raises and uncertain of their future benefits.

Since 2006, the Town has not paid the increase in insurance premiums to the New York State Teamsters Health and Welfare Fund, resulting in large late fees amounting to approximately \$30,000 as of this date. The position is that the Town is now asking for some “relief” from their penalty fees and should they succeed in their request, the Union feels that the money should be turned back into past wage increases over and beyond the wage offer of three (3%) percent, depending on what the Town is able to receive.

Their brief included copies of three (3) surrounding Towns showing their

contribution for health insurance for its highway employees as follows:

Town of Arkwright –Select Plan

100% paid for current employees
New employees pay 10% for first
Five (5) years after which Town to
Pay 100%

Town of Villenova – Select Plan

100% paid for current employees
Vision paid for by employees
(cost = \$2.00 wk. single; \$5.40 family)

Option of repudiating coverage
Employees receive \$1,000 annually

Town of Charlotte - Supreme Plan

Effective 1/1/2006
Employees pay 5% - 2006, 2007
Effective 1/1/2008
Employees pay 8%

It is noted that the Supreme Plan is more expensive as it covers more and has much lower co-pays.

The Union further points out that the Town of Sheridan's rates have been figured in the "Composite" family plan vs. the "Component" plan, thus saving the Town more money. Other towns have been under the "Component" plan where costs are figured separately using single, two person and family rates.

DISCUSSION:

The Town seeks to have its health insurance costs shared by its employees and while one cannot disagree with the need for cost containment, the Union had made movement on its position during the two mediation sessions. The Town in turn made movement on its position and had made offers to drop the “cap” previously created and move to a percentage of costs to be shared by the parties. Unfortunately, the percentages offered by both parties could not be agreed to.

In reviewing several other cases and studying trends within the Teamster contracts, it is noted that several locals have moved from the Supreme Plan to the Select Plan, thus saving the Towns their costs for health insurance. In this case, the Sheridan Local already had the lower plan but had 100% paid in the past few years and is quite reluctant to agree to the percentage of contribution the Town desires.

It is noted that the Town has not cried inability to pay but wishes to contain future costs it will incur by having the employees contribute towards their benefit.

In the Town’s brief, it included a comparison of what the previous fact finder had recommended compared to the positions of both parties at the time of the previous hearing. The fact finder had recommended “A 7% employee premium co-pay effective January 1, 2008”. This is figured to equal \$761.30 or \$14.64 per week per employee. The Town’s position was a contribution of 25% of the cost over the cap of \$6,900 which was instituted. This equaled \$993.96, or \$19.11 per week per employee. The Union’s position was a 3% contribution of the total cost which equaled \$326.28, or \$6.27 per week per employee.

RECOMMENDATION:

Effective January 1, 2008, employees will contribute 7% of the total cost of the premium. This percentage was discussed during the mediation session on February 12, 2008.

Effective January 1, 2009, employees will contribute 10% of the total cost of the premium.

During the 2009 year, the parties will study health insurance plans which would be of benefit to both parties and be placed in effect for the 2010 year. Employee contribution will continue at the rate of 10%.

Should the parties fail to reach agreement on a different plan and the current Teamster plan remain in effect, the employee contribution will increase to 15% of the total cost of the premium.

With the understanding that the rate of increase for the employees is 4% for 2007, 3% for 2008, 3% for 2009 and 3% for 2010, this Fact Finder feels that the above recommendation is not out of line and that the new concept of contributing to one's health insurance benefits which are constantly increasing each year is not too burdensome when one considers the full cost of this benefit in comparison to what each employee is expected to contribute.

Final Statement

These recommendations have been made with the intent that all issues have been addressed fairly and equitably for both parties. Settlement is long overdue and it is hoped that the parties can reach agreement and move forward in peace.

Respectfully submitted,

Donna R. Beal, Fact Finder