

State of New York
Public Employment Relations Board

In the Matter of Fact Finding Between

Jamestown Board of Public Utilities

- and -

IBT Local 264 (Blue Collar Unit)

PERB CASE NO. M2007-221

Before: Donna R. Beal

REPRESENTATIVES

For Management

William L. Wright
Interim Labor Relations Administrator
Jamestown Board of Public Utilities

For the Union

Bradley Haag
Business Agent
Teamsters Local 264

BACKGROUND

A. The Parties:

Prior to 1994, the sanitation division of the Jamestown Board of Public Utilities (BPU) was a part of the City of Jamestown but at or around that time, the division was transferred to the BPU due to the financial condition of the division and the City was unable to sustain it. The parties have since negotiated three (3) contracts, 1996, 1999 and 2002. The current contract

expired on June 30, 2007 after being extended for a year. This occurred due to the failure to open the contract in a timely period and thus, the contract was extended to 2008 having the same terms and conditions.

The Teamsters Local 264 (union) represents twelve (12) employees in the sanitation division, however one member is currently on a long-term military leave.

B. Negotiations History:

The parties commenced negotiations mid-January 2007 and met approximately sixteen (16) times prior to the Union filing for impasse early December 2007. On February 7, 2008, a State mediator met with the parties. Several meetings took place between the parties following the mediation without resolution and in a letter dated September 9, 2008 the undersigned was assigned as the Fact Finder for the impasse.

A Fact-Finding hearing was held with the parties on October 8, 2008 and both parties provided information and material reflecting their respective positions on the unresolved issues. Briefs supporting their positions were due to the Fact Finder on November 12, 2008 and this date was extended. Rebuttals to the briefs were received on December 5, 2008.

C. Issues before the Fact Finder:

The following issues were addressed in fact-finding on Wednesday, October 8, 2008:

- I. Health Insurance
- II. Pension
- III. Discipline & Discharge
- IV. Wages

I. HEALTH INSURANCE

The Sanitation Department employees receive health insurance benefits through the Teamsters Union's Plan and the employees currently contribute \$32.50 per month for single coverage, \$50.00 per month for a two-person plan and \$60.00 per month for family coverage. According to total costs of the plan submitted by BPU, this represents 7.8% for single, 6.3% for the two-person plan and 5.7% for the family plan. In April of 2008, the Union went to a less expensive plan (Teamsters Select Plan from the Teamsters Supreme Plan) as a result of a lawsuit awarded in favor of the BPU regarding a parity provision in the contract which held the employer's contribution for health insurance for Teamsters to equal the contribution made by the employer for its IBEW members. As a result of the suit, the members of the Teamsters were ordered to choose to go to the less-expensive plan or pay higher insurance contributions. As a result, the members chose to go to the Teamsters' Select Plan.

- Position of BPU –

While the move to the less expensive plan was a cost savings over the previous plan, the costs of that health insurance continues to escalate every year and the BPU desires to have the employee contribution increased over the life of the contract. It proposes to let the current contribution remain for the 2008 and 2009 years but increase the amount of employee contribution to an amount that equals a 10% contribution for all levels of coverage for 2010. It points out in its rebuttal brief that the Select Plan's costs for the 2008 family plan have increased nearly \$100 more than the 2007 cost, \$184 more the second year and \$167 for the third year.

It further points out that they have already taken into account the savings it realized by the move from the Supreme plan to the Select plan in offering the wage increase.

- Position of the Union –

The Union provided data comparing the cost and benefits under their previous Supreme Plan to that of the Select Plan, which they now have. It further maintains that the BPU has enjoyed a savings by that move; it desires

to retain its current contribution rate for insurance. In response to the proposal by management of a percentage for the contribution rate, the Union stated it is “not interested in doing any sort of a percentage”.

RECOMMENDATION

While the health insurance issue is one that must be faced by everyone, it is not unusual or contrary to practice that both parties progressively adjust their ownership of the escalating costs of this benefit. It is therefore the recommendation that the rates remain at the current dollar amount for 2008 and 2009 but that the 2010 rate be figured at a percentage as follows:

Family – Employee contribution 8%

Two-person – Employee contribution 8%

Single – Employee contribution 10%

This recommendation is well below many of the percentages contributed by employees in both the public and private sector. The bargaining units that are with the City of Jamestown (5) have negotiated from 15% to 17% employee contribution. The above recommendation would occur in the last year of the contract and reflects approximately an additional 2% more than what each category is now paying if it was figured as a percentage.

II. PENSION

Of the twelve (12) employees in the Union, eight (8) of them are covered by the Teamster Retirement Plan and the remaining four (4) are in the New York State Employees Retirement System. The contribution made to the Teamster’s plan is \$2.35 per hour, significantly higher than the contribution made to the NYS System which is based on a percentage of the employee’s wages.

- Position of BPU –

An offer of an additional \$.10 per hour in each of the first two (2) years of the contract and \$.05 in the third year has been made. It is the BPU’s position that the Union’s proposal would only create a greater inequity within the bargaining unit.

- Position of the Union –

The Union originally proposed a \$.25 per hour increase on 7/1/07 and a \$.10 per hour increase each year of the contract. They subtracted \$.10 from what they figured to be an insurance savings to be put into the pension. Its position is for a contribution of \$2.55 for 2008, \$2.65 for 2009 and \$2.75 for 2010.

RECOMMENDATION

It is the recommendation that \$.10 be added for each of the first two (2) years of the contract (2008, 2009) and \$.05 cents to the third year (2010).

III. DISCIPLINE & DISCHARGE

According to the BPU's brief, the current language regarding this issue reads:

“The above language notwithstanding, the Employer reserves the right to impose a one or two-day suspension upon any employee without pay as a penalty for cause deemed sufficient. However, the Employer agrees that such suspension will not be done in an arbitrary, capricious or malicious manner.” (Article XVI Page 13)

BPU proposed language on the subject and stated that it has been agreed upon with the exception of adding the following sentence:

“The severity of the offense and the penalty imposed shall not be subject to review by arbitration.”

- Position of BPU -

In its argument, BPU has stated that the current language has been confusing to arbitrators because it has been the subject of two (2) Supreme Court cases during the duration of the contract. It further states that in both cases, the judges found that the arbitrators misapplied the contractual standard and remanded the case for another decision based on the “arbitrary, capricious or malicious manner.” BPU feels that its proposal to add the additional sentence would clarify the existing language and eliminate the element of evaluating

the severity of the discipline and the penalty and thus eliminate the additional cost of possible litigation.

- **Position of Union** -

The Union argues that BPU's position is to do away with binding arbitration as a final step and give management the right to go to court should the arbitrator's decision not be in their favor. Their position is that the arbitrator's decision should be "final and binding".

At the time of the hearing, the Union expressed its concern for one (1) or two (2) day suspensions. No reference to that concern was given in its brief or rebuttal.

RECOMMENDATION

Having read the Order of the two Supreme Court cases referred to by BPU, one dated November 14, 2005 where BPU was the petitioner and one dated June 18, 2007 where the Union was the petitioner, I recommend that the additional sentence be added to the already approved contract language on the subject.

In both of these cases, the judge ruled that the parties remand the case to another arbitrator who would rule on the two-day suspension based on contract language of "arbitrary and capricious or malicious manner".

The new contractual language, in the opinion of this Fact Finder, addresses the issue of the one (1) or two (2) day suspensions.

IV. WAGES

The parties are in agreement that the succeeding contract would be a three (3) year contract.

- **Position of BPU** -

BPU has held that its offers on all economic issues has been made as a “total package”. It provided much information as to the declining population of the communities that it services as well as the cost of service. It also adds that the members enjoy a provision in their contract that allows them to go home after their work is completed but still get paid for a full eight (8) hours of work. They have estimated that the employees work a typical five (5) to seven (7) hours a day. Thus, the members truly earn more than the \$14.73 per hour.

In its’ brief, the BPU offered wage increases of \$.27 per hour effective April 1, 2008; \$.05 per hour effective January 1, 2009 and \$.07 per hour effective January 1, 2010. BPU’s offer dating April 1, 2008 rather than January 1, 2008 accounts for the time the less expensive insurance plan actually went into effect where it feels that the effective date should have been at the beginning of the year. As a result, the employer paid a higher amount for three (3) months and considers such as an employee benefit.

BPU agrees that the members of this bargaining unit have not had an increase in wages since 2005, as was explained in a previous issue of this fact-finding report.

- Position of the Union -

In the Union’s brief, it argues that since they have not had any increase since 2005, its proposal includes an increase for 2007 of \$.40; 2008 of \$.64; 2009 of \$.65 and 2010 of \$.67. It provided material to support its arguments that the employer realized a savings by the union moving to a less expensive insurance plan. It also argues that the BPU has given wage increases to other employees in the IBEW unit of 2.25% effective for the years 2005, 2006, 2007 and 2008 and their proposal is based on providing a 2.25% increase as the members of IBEW received for all of those years, along with the insurance savings of \$.29 per hour it figures the BPU will save for the 2008, 2009 and 2010 years. It further proposed a flat 2.25% increase for two other classifications of employees that are represented in the union, that of the full time labor pool employee who has benefits and the casual employee who has no benefits.

DISCUSSION

The Union's original demand was for \$1.00 per hour for each of the three (3) years, whereas the BPU's offer was to freeze the rate.

At the time of the Fact-Finding Hearing, the Union held at \$1.00 per hour, whereas management submitted information indicating that a previous offer had been made of \$.50 for the first year and \$.27 for the second with a freeze for the remaining years.

At fact-finding, BPU stated that its last proposal dated May 1, 2008 was \$15.10 for the first year (which equals \$.37 per hour), \$15.25 the second (which equals \$.15 per hour) and \$15.50 for the third (which equals \$.25 per hour).

As stated above, in its' brief, BPU offered \$.27 per hour for the first year, (which would equal \$15.27), \$.05 per hour for the second (which would equal \$15.32) and \$.07 per hour (which would equal \$15.39) for the third.

As one can see, the offers made by BPU are quite confusing.

In the Union's brief, as previously stated, proposal was for \$15.40 effective July 1, 2007, \$16.04 effective January 1, 2008, \$16.69 effective January 1, 2009 and \$17.36 effective January 1, 2010. Their demand took into consideration what they figured to be a \$.29 savings that the BPU enjoyed as a result of the decrease in health insurance plans. As stated previously, their demand was a straight 2.25% increase for the other two classifications that were in their unit. The BPU has not addressed at any time a different rate for these classifications, therefore these will not be addressed in this recommendation.

RECOMMENDATION

It is the recommendation that for the first year of the contract, retroactive to January 1, 2008, a 3% increase be granted to all employees in the unit. Effective January 1, 2009, a 2.25% increase be granted to all employees and effective January 1, 2010, a 2.25% increase be granted to all employees.

CONCLUSION

The above recommendations were made after considerable deliberations on the part of this Fact Finder. In order for the parties to reach an agreement, it will be necessary for both parties to compromise their positions and it is the hope that this can be accomplished.

Respectively submitted:

Donna R. Beal
Fact Finder

December 23, 2008